

This is the 16th Affidavit of
William E. Aziz in this case and
was made on December 7, 2017

NO. S-1510120
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

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

AND

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

PETITIONERS

AFFIDAVIT

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

1. I am the President of BlueTree Advisors Inc. ("**BlueTree**") which has been retained to provide my services as Chief Restructuring Officer ("**CRO**") to the Petitioners (the "**New Walter Canada Group**"). As such I have personal knowledge of the facts hereinafter deposed, except where such facts are stated to be based upon information and belief, and where so stated I do verily believe the same to be true.
2. This Affidavit is made in support of a motion by the New Walter Canada Group under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**") seeking the following Orders:
 - (a) An Order authorizing the New Walter Canada Group to direct Energybuild Holdings Ltd. ("**Energybuild Holdings**") to enter into the Offer Letter (the "**Offer Letter**") with Speciality Carbons Limited ("**Specialty Carbons**"), a redacted copy of which is attached as Exhibit "**A**", substantially in the form the attached to Confidential Aziz Affidavit (defined below), and

to take such additional steps and execute such additional documents as may be necessary or desirable to advance the negotiation and documentation of the transaction set out therein.

- (b) An Order that the confidential affidavit of William E. Aziz sworn the date hereof (to be filed) and the exhibits thereto (the "**Confidential Aziz Affidavit**") be sealed, kept confidential and not form part of the public record.
 - (c) An Order authorizing but not requiring Cambrian Energybuild Holdings ULC ("**Cambrian**") to advance up to a further £200,000 (for an aggregate maximum of £1,100,000) to Energybuild Group Limited ("**Energybuild Group**") or Energybuild Ltd. ("**Energybuild**"), on a secured basis, to provide working capital for Energybuild.
 - (d) An Order that the confidential affidavit of Philip L. Evans Jr., to be sworn, and the exhibits thereto (the "**Confidential Evans Affidavit**"), the confidential special report of the Monitor to be filed and the exhibits thereto, and any expert report that relies on the Confidential Evans Affidavit or the Monitor's report (collectively, the "**James Claim Confidential Materials**") (i) be sealed, kept confidential and not form part of the public record; and (ii) be treated as confidential and not disseminated by any party that receives a copy of any of the James Claim Confidential Materials (the "**James Claim Confidentiality Order**").
 - (e) An Order extending the stay of proceedings in respect of the New Walter Canada Group to February 28, 2018.
3. I was initially retained by Walter Energy Canada Holdings, Inc. ("**Walter Energy Canada**") to provide my services as CRO to Walter Energy Canada, its direct and indirect subsidiaries and affiliates, and the partnerships listed on Schedule "C" to the Initial Order (collectively, the "**Old Walter Canada Group**"). I was retained pursuant to an engagement letter dated December 30, 2015, as amended in response to certain requests made by Old Walter Canada Group stakeholders. BlueTree was appointed as CRO of the Old Walter Canada Group pursuant to the Order of this Honourable Court made on January 5, 2016 (the "**SISP Order**").
4. My engagement as CRO of the Old Walter Canada Group, other than as CRO of Cambrian, was terminated on December 15, 2016, when the entities comprising that group filed for bankruptcy.
5. The companies comprising the New Walter Canada Group (other than Cambrian) were incorporated on December 8, 2016, pursuant to the authorization granted in paragraph 5 of the Order of this Honourable Court made on December 7, 2016 (the "**CCAA Procedure Order**"). Each such company became a Petitioner in these CCAA proceedings and subject to the CCAA Charges

(as defined in the CCAA Procedure Order), and I became CRO of each new company in the New Walter Canada Group when the companies were formed.

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

- I. **The Speciality Carbons Offer Letter** 3
- II. **Sealing the Confidential Aziz Affidavit**..... 4
- III. **Approval of Further Advances to the Walter U.K. Group**..... 5
- IV. **Confidentiality Order for James Claim Confidential Materials** 6
- V. **Stay Extension**..... 7

I. **THE SPECIALITY CARBONS OFFER LETTER**

7. The New Walter Canada Group has taken a number of steps pursuant to the SISP Order to market the assets of its U.K. subsidiaries and operations (the “**Walter U.K. Group**”). As noted in my third affidavit sworn in these proceedings on August 9, 2016 (the “**Third Aziz Affidavit**”), in light of the bids received for the assets of the Walter U.K Group at the time, it was determined that the Old Walter Canada Group should focus on realizing value from its Canadian operations.
8. Subsequently, the Old Walter Canada Group and the New Walter Canada Group took additional steps to market the U.K. assets, including providing a confidential information memorandum to parties who had expressed an interest in submitting proposals for purchasing certain remaining assets owned by the Old Walter Canada Group and entering into non-disclosure agreements with potentially interested parties.
9. As described in my eighth affidavit sworn in these proceedings on December 20, 2016 (the “**Eighth Aziz Affidavit**”), an interested party had emerged regarding a potential sale of Energybuild and certain of its affiliates, pending resolution of certain claims that may be made against those companies. Those potential claims were subsequently addressed in the Settlement Term Sheet (the “**Term Sheet**”) between the New Walter Canada Group, the United Mine Workers of America 1974 Pension Plan and Trust (the “**1974 Plan**”), and Warrior Met Coal, Inc. (“**Warrior**”).
10. On December 5, 2017, the New Walter Canada Group received a draft of the Offer Letter from Speciality Carbons. The draft Offer Letter is, with certain exceptions, not a binding agreement and does not commit either party to enter into the proposed transaction. Rather, in the Offer Letter, Speciality Carbons lays out its preferred proposal (the “**Proposal**”) to acquire the entire issued share capital of Energybuild Limited, Energybuild Mining Limited and Mineral Extraction and

Handling Limited (together, the "**Energybuild Companies**") from Energybuild Holdings. A redacted copy of the Offer Letter is attached as Exhibit "A". An unredacted copy of the Offer Letter is attached as an exhibit to the Confidential Aziz Affidavit.

11. As noted, the Offer Letter sets out the Proposal pursuant to which Speciality Carbons will purchase the share capital of the Energybuild Companies for the consideration set out in the Offer Letter, plus any applicable stamp or other taxes payable by the buyer. Under the Offer Letter, the parties intend to use a previously provided draft share purchase agreement as the basis of a conditional share purchase agreement, which is to be exchanged as soon as possible with completion targeted for the end of February 2018. The Offer Letter lays out the terms and conditions upon which the proposed transaction is intended to be carried out.
12. There are certain provisions in the Offer Letter that will create binding legal obligations. The principal provision is an exclusivity clause which provides that Speciality Carbons will have exclusive rights to negotiate and enter into the transaction contemplated in the Offer Letter, and Energybuild Holdings will not solicit any other offers for the sale of the shares or assets of the Energybuild Companies, during the period following acceptance of the Offer Letter and until the earlier of (i) the day the Court refuses to approve Energybuild Holdings' acceptance of the Offer Letter, (ii) the exchange of the share purchase agreement or confirmation from Speciality Carbons that they no longer wish to proceed with the transaction, or (iii) February 28, 2018. Among other things, the exclusivity provision will permit Speciality Carbons to engage with certain governmental authorities in Wales regarding the mine and related matters.
13. In my view, the exclusivity obligations contained in the Offer Letter are reasonable and not likely to result in any prejudice to creditors. Speciality Carbon's offer emerged from the court-approved SISP and after considerable marketing efforts, including as part of the original sale process undertaken by Walter Energy, Inc. in its Chapter 11 proceedings, as well as the efforts leading to the Conuma Transaction and the Residual Assets Transaction that were approved by this Honourable Court. The Specialty Carbon offer is the best offer that has emerged from these efforts, and if a better offer were available in the market it would likely have emerged by now. As such, agreeing to the Offer Letter, including the exclusivity obligations contained therein, is fair and reasonable, and in the best interests of the New Walter Canada Group.

II. SEALING THE CONFIDENTIAL AZIZ AFFIDAVIT

14. As noted above, an unredacted copy of the Offer Letter is attached as an exhibit to the Confidential Aziz Affidavit. The terms of the Offer Letter are commercially sensitive, and should not be disclosed before the proposed transaction successfully closes.

15. Further, the Offer Letter contains a binding confidentiality provision which provides that the terms of the Offer Letter are confidential and subject to the terms of a confidentiality letter between Walter Energy Canada and Speciality Carbon.
16. The Confidential Aziz Affidavit should therefore be sealed until further order of this Honourable Court.

III. APPROVAL OF FURTHER ADVANCES TO THE WALTER U.K. GROUP

17. Pursuant to the authorization granted by the Orders of this Honourable Court made December 21, 2016, May 30, 2017, and October 6, 2017, Cambrian was authorized to advance a total of £900,000 to members of the Walter U.K. Group to provide working capital to Energybuild while efforts were made to sell the Walter U.K. Group or its assets. All the members of the Walter U.K. Group have guaranteed the loan and have granted security for those guarantees. As of the date of this affidavit, Cambrian has loaned a total of £800,000 to members of the Walter U.K. Group for these purposes and expects to advance the remaining £100,000 in the near term.
18. During this time, the New Walter Canada Group and the directors of the Walter U.K. Group have been analyzing Energybuild's business and seeking opportunities to sell Energybuild and its affiliates or their assets. As noted above, the New Walter Canada Group has now received the Proposal from Speciality Carbons to purchase the share capital of the Energybuild Companies, and the parties will be proceeding to finalize this proposed transaction. Further time is needed to negotiate the terms of the transaction with Speciality Carbons, and to achieve a resolution that is in the best interests of the New Walter Canada Group, the Walter U.K. Group and their respective stakeholders.
19. The New Walter Canada Group has been provided with cash flow forecasts for Energybuild that indicate a cash need of approximately £200,000 through to the end of the proposed extended Stay Period (defined below). As such, the New Walter Canada Group is seeking this Honourable Court's authorization to advance up to an additional £200,000 (for an aggregate maximum of £1,100,000) on a secured basis to the Walter U.K. Group to fund Energybuild's working capital needs while negotiations regarding a potential sale continue.
20. No additional funds will be advanced unless the New Walter Canada Group determines that such further advance will be in the best interests of Cambrian and the other members of the New Walter Canada Group.

IV. CONFIDENTIALITY ORDER FOR JAMES CLAIM CONFIDENTIAL MATERIALS

21. The New Walter Canada Group is seeking the James Claim Confidentiality Order to protect certain confidential information required to evaluate and respond to the claim asserted by Mr. Kevin James in these CCAA proceedings.
22. Mr. James has filed a Notice of Application dated October 6, 2017 (the "**James Application**"). The James Application alleges that Mr. James is entitled to royalties under a Royalty Sharing Agreement ("**RSA**") with Western Canadian Coal Corporation ("**Western**"), either under the current terms of the RSA or a rectified RSA sought by Mr. James. The James Application seeks damages in the amount of \$7,150,000 for breach of contract or unjust enrichment. Mr. James retained MNP LLP to provide an expert report to support the damages claimed in the James Application.
23. The New Walter Canada Group filed an Application Response dated November 3, 2017 (the "**Application Response**") stating, among other things, that Mr. James is not entitled to the relief he is seeking, that New Walter Canada Group believes the valuation of Mr. James' claim is inflated, and that the New Walter Canada Group will be relying on expert evidence to be adduced on the latter point.
24. Both Mr. James' expert and the expert retained by the New Walter Canada Group will be able to provide a more precise valuation of the royalty claim (to the extent it is legally tenable) if they have access to certain confidential information, such as confidential mining reports, feasibility studies, reserve information, and coal assessment reports and to certain details regarding the Conuma transaction to be set out in the confidential special report of the Monitor (collectively, the "**Confidential Information**"). The Confidential Information includes commercially sensitive technical reports that contain details regarding estimated reserves and proposed mine plans. The New Walter Canada Group intends to append the Confidential Information to an affidavit to be sworn by Mr. Evans.
25. The Confidential Information includes assets that were sold to Conuma in the Conuma Transaction. The disclosure of this information could harm Conuma's commercial interests.
26. The New Walter Canada Group is required to keep the Confidential Information confidential under the terms of the Asset Purchase Agreement made August 8, 2016 with Conuma (the "**Conuma APA**"), a redacted copy of which (without exhibits) is attached as Exhibit "**B**". Although the Conuma APA was entered into by the Old Walter Canada Group, the New Walter Canada Group is subject to the obligations of the Old Walter Canada Group as a result of the Order of this Honourable Court made December 21, 2017, styled the "CCAA Continuity and Vesting Order".


27. Pursuant to Section 5.5.2 of the Conuma APA, the New Walter Canada Group is required to keep confidential all information relating to the "Business" of Walter Energy Canada, which includes all information related to its coal production, sales and exportation activities carried on in Canada as well as all information pertaining to its operations, maintenance and related activities.
28. This Honourable Court approved the Conuma APA in an Approval and Vesting Order made August 16, 2016.

V. STAY EXTENSION

29. This Honourable Court granted a stay of proceedings in the Initial Order, until January 6, 2016 or such later date as this Honourable Court may order (the "**Stay Period**"). On January 5, 2016, this Honourable Court extended the Stay Period until and including April 5, 2016. On March 30, 2016, this Honourable Court extended the Stay Period until and including June 24, 2016. On June 24, 2016, this Honourable Court extended the Stay Period until and including August 19, 2016. On August 16, 2016, this Honourable Court extended the Stay Period until and including January 17, 2017. On January 16, 2017, this Honourable Court extended the Stay Period until and including May 31, 2017. On May 30, 2017, this Honourable Court extended the Stay Period until and including October 6, 2017. On October 6, 2017, this Honourable Court extended the Stay Period until and including December 15, 2017.
30. Since the last stay extension granted by this Honourable Court, I and the New Walter Canada Group have taken a number of steps to implement the Term Sheet, which was approved by this Honourable Court on October 6, 2017, and to develop a plan of compromise and arrangement. Among other things, the New Walter Canada Group and the Monitor have completed the "Unresolved Restructuring Claims Process" pursuant to an Order of this Honourable Court made on August 15, 2017 and as required under the Term Sheet, and are currently in the process of developing a plan of compromise and arrangement that can be put to the New Walter Canada Group's creditors in the near future.
31. The New Walter Canada Group has also settled the claim of Mitsui Matsushima Co., Ltd., one of two outstanding unresolved claims against the New Walter Canada Group.
32. The New Walter Canada Group has taken various steps in connection with Mr. James' claim, the second of two outstanding claims against the New Walter Canada Group.
33. The New Walter Canada Group and the Monitor have been engaged with Service Canada regarding certain matters in connection with a distribution to employee claimants.

- 34. The New Walter Canada Group is requesting an extension of the Stay Period until and including February 28, 2018. This extension is being requested to allow the New Walter Canada Group to finish preparing a plan of compromise and arrangement that can be put to the New Walter Canada Group's creditors, continue negotiating the transaction with Speciality Carbons and continue litigating Mr. James's claim.
- 35. From my review of the current cash flow projections, I do verily believe that the New Walter Canada Group will have sufficient operating cash to continue operations during the proposed extended Stay Period.
- 36. The New Walter Canada Group has been proceeding in good faith and with due diligence in these proceedings.
- 37. It is my understanding that the Monitor supports the extension of the Stay Period and will file a report attaching a cash flow forecast that demonstrates, subject to the assumptions more fully set out in the report, that the New Walter Canada Group has sufficient liquidity to continue its operations as currently conducted through to the end of the proposed extended Stay Period.
- 38. It is in the best interests of the New Walter Canada Group and all its stakeholders that the Stay Period be extended to February 28, 2018 to enable the New Walter Canada Group to finish preparing a plan of compromise and arrangement that can be put to the New Walter Canada Group's creditors, continue negotiating the transaction with Speciality Carbons and continue litigating Mr. James's claim.

SWORN BEFORE ME at Toronto, in
 the Province of Ontario, on
 December 7, 2017.

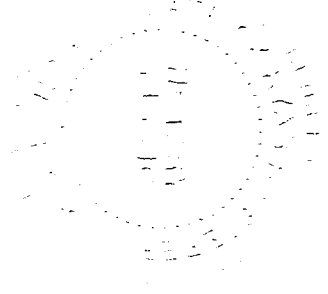


 Commissioner for Taking Affidavits
 and Notary Public in the Province of
 Ontario

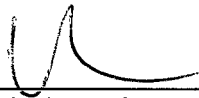
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WILLIAM E. AZIZ

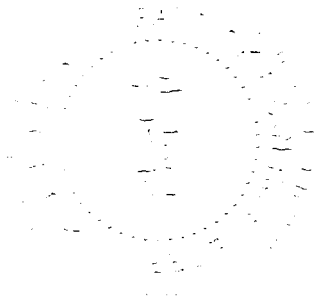


This is Exhibit "A" referred to in Affidavit #16 of **William E. Aziz** sworn December 7, 2017 at Toronto, Ontario.



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

Patrick Bresthe



Speciality Carbons Limited

r/o: Whitelion House

17 Newmarket Street

Usk

NP15 1AU

Great Britain

To: Blue Tree Advisors

Suite 5600

100 King Street West

First Canadian Place

Toronto, Ontario

Canada

Attention William E Aziz

E-mail: baziz@bluetreeadvisors.com

Date:

Dear Bill,

Offer

This letter sets out the terms pursuant to which we, **Speciality Carbons Limited** ("**Buyer**") offer to acquire the entire issued share capital of Energybuild Limited, Energybuild Mining Limited and Mineral Extraction and Handling Limited (together, the "**Energybuild Companies**") from **Energybuild Holdings Limited** (the "**Seller**") pursuant to the Sale and Investment Solicitation Process commenced in respect of Walter Energy Canada Holdings, Inc. ("**Walter**") and its subsidiaries and partnerships (the "**Proposed Acquisition**").

The purpose of this letter is to set out our preferred proposal (the "**Proposal**"). Except as provided for in the sections of this letter titled Exclusivity, Confidentiality, Intended Use, Costs, Rights of Third Parties, and Governing Law and Jurisdiction, the terms of this letter are not legally binding, and neither party shall be legally bound to proceed with the Proposal unless and until (i) a formal written share purchase agreement is entered into, and (ii) the share purchase agreement has been approved by the Supreme Court of British Columbia (the "**Court**") as part

of New Walter Energy Canada Holdings, Inc.'s proceedings under the *Companies' Creditors Arrangement Act* (Canada).

We will purchase the share capital of the Energybuild Companies for a consideration of [REDACTED] ("**Purchase Price**"). We will also be liable for any applicable stamp duty and any taxes falling on a buyer in respect of the transaction. Rather than negotiating detailed heads of terms we will use the previously provided draft share purchase agreement as the basis of a conditional share purchase agreement, which is to be exchanged as soon as possible with completion targeted for the end of February 2018.

The consideration will be payable as to [REDACTED] (less the deposit [REDACTED] already paid) on completion. On completion, Seller agrees to make an advance [REDACTED] to Energybuild Ltd. (the "**Working Capital Advance**") (on a secured basis with security covering all of the Energybuild Companies' assets) to provide working capital for the Energybuild Companies, and the Working Capital Advance shall be due and payable 9 months after completion. Buyer shall provide a guarantee to Seller for the obligations of Energybuild Ltd. to repay the Working Capital Advance, which shall be secured by a charge over the shares in the Energybuild Companies.

Cambrian Energybuild Holdings ULC ("**Cambrian**") shall also continue to have a charge on the assets of the Energybuild Companies granted to secure the repayment of the funds advanced to Energybuild Ltd., directly or indirectly, by Cambrian (the "**Cambrian Advance**", and together with the Working Capital Advance, the "**Advances**"). Following completion, Seller shall repay a portion of the Cambrian Advance from that portion of the Purchase Price that is not used by Seller to fund the Working Capital Advance and the Cambrian Advance shall be reduced by the amount so paid. Upon repayment of the Working Capital Advance the Cambrian Advance shall be waived or forgiven or otherwise addressed in a manner satisfactory to Buyer that is intended to preserve all available tax losses in Energybuild Ltd and to minimize the creation of any additional tax liability resulting from any such action.

Seller and Cambrian agree to enter into good faith negotiations regarding a potential subordination by Seller and Cambrian, on terms reasonably acceptable to Seller and Cambrian, of the Advances to the repayment and associated security to third party loans and associated security ("**Third Party Loans**") made to the Buyer following completion, provided that any such Third Party Loans are made for *bona fide* refinancing purposes.

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

- a. The current operating lease for Aberpergwm Estate and all recent correspondence;
- b. The Lease relating to Treforgan and all recent correspondence;
- c. All current planning permissions and recent correspondence with the local authority;
- d. All current licenses and recent correspondence with the Coal Authority;
- e. All current licenses and recent correspondence with the Environmental Agency; and
- f. Any other documents with reference to permits, licenses, leases or other property titles or contracts required for the bidder to operate the mine without interference

and completion of the share purchase agreement will be conditional inter alia of the Buyer being satisfied with the status of these documents.

The following provisions shall also apply to this offer:

1. The Seller will sell the shares in the Energybuild Companies with full title and free from all encumbrances, claims, liens, equities, charges and adverse rights of any description.
2. Unless otherwise set out herein, the sale of the shares in the Energybuild Companies shall be on an "as is, where is basis".
3. The Seller will give a full indemnity to the Buyer in respect of any claims contrary to the representation and warranty that the shares in the Energybuild Companies are being sold with full title and free from all encumbrances, claims, liens, equities, charges and adverse rights of any description.
4. The Seller shall make provision for all liabilities of the Energybuild Companies existing as of the Closing Date, other than the following liabilities, which, for greater certainty, shall remain liabilities of the Energybuild Companies and shall not be paid or addressed by the Seller:
 - 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 Energybuild Companies by the Welsh Assembly or such governmental authority, including in connection with equipment financing;
 - e. any claims or liabilities of any kind, whether pursuant to contract, purchase order or otherwise, arising (i) in the ordinary course of business and not yet due and payable as of the Closing Date and (ii) that apply to goods to be received or services to be provided or other accruals related to the period after the Closing Date;
 - f. any claim for ordinary course trade payables, including telephone, internet and other communication services, security, electricity, insurance, real property leases and similar matters;
 - g. any claim of UK Methane Limited or its affiliates (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 Energybuild Companies;
 - 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 provided further that (i) the Seller shall have no liability to the Buyer for any claims until the aggregate amount of such claims exceeds £100,000; and (ii) in no circumstances shall the Seller be liable for any amount in excess of the Purchase Price.

5. Notwithstanding the limit of liability contained in paragraph 4, completion of the transaction will be conditional on the Seller proving to the Buyer's satisfaction that there are no outstanding liabilities to the Energybuild Companies in respect of
 - a. Any intercompany loans made to the Energybuild Companies by Walter Energy, Inc. or any of its US affiliates and assigned to Warrior Met Coal LLC (the "**Warrior Claim**"); and
 - b. any claim made by the United Mine Workers of America 1974 Pension Plan and Trust in relation to liabilities of Walter Energy, Inc. or any of its US affiliates (the "**UMWA Claim**").
6. Prior to completion, all intercompany loans and all other balances between, on the one hand, the Energybuild Companies, and on the other, Seller and any of its present or former affiliates other than the Energybuild Companies other than (i) the Working Capital Advance, and (ii) the Cambrian Advance, shall be converted to a contribution of capital, waived or forgiven in manner satisfactory to Buyer that is intended to preserve all available tax losses in Energybuild Ltd and to prevent the creation of additional tax liability resulting from any such action. The Seller shall consult with the Buyer regarding any such steps and shall have no liability to the Buyer for any adverse tax consequences of any steps taken after consultation with the Buyer. For greater certainty, the Advances shall remain outstanding and the security for the Advances shall remain in place until the Working Capital Advance is repaid in full.
7. Prior to the acquisition by the Buyer the directors of Energybuild Ltd, Energybuild Mining Ltd and Mineral Extraction and Handling Ltd shall resign as directors and employees, without any liability to the Buyer or to any of the Energybuild 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 Seller effective upon such resignation. The Energybuild Companies shall indemnify the Buyer in full in relation to any claims, losses, damages or liabilities howsoever arising out of the employment and/or directorship of Chris Daniels with any of the Energybuild Companies.

Exclusivity

In the period following acceptance of this offer until the earlier of (i) the day the Court refuses to approve the Seller's acceptance of this letter, (ii) the exchange of the share purchase agreement or confirmation from the Buyer that they no longer wish to proceed with this transaction, or (iii) 28 February 2018, the Buyer shall have exclusive rights to negotiate and enter into the transaction contemplated in this offer and the Seller shall not solicit any other offers for the sale of the shares or assets of the Energybuild Companies.

Confidentiality

The terms of this letter are confidential to the parties and their advisers and are subject to the confidentiality letter between Walter and Buyer dated 25th February 2016 in relation to the Proposed Acquisition (the "**Confidentiality Letter**"), which, subject to the terms of this

paragraph, continues in full force and effect. Notwithstanding the foregoing or anything to the contrary contained in the Confidentiality Letter, this letter may be disclosed to (i) the Court, and (ii) any affiliate of Seller.

Intended Use

The Buyer fully intends to continue to carry out mining operations at the Aberpergwm mine.

Costs

Each party is responsible for its own professional and other costs incurred in connection with the Proposed Acquisition, the share purchase agreement described herein and any other documentation required to enter into a legally binding agreement.

Rights of Third Parties

Except with respect to Cambrian Energybuild Holdings ULC, New Walter Canadian Coal Corp., and New Walter Energy Canada Holdings, Inc., no person that is not a party to the agreement constituted by this letter shall be able to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999. For greater certainty, each of Cambrian Energybuild Holdings ULC, New Walter Canadian Coal Corp., and New Walter Energy Canada Holdings, Inc. shall be entitled to rely on and enforce the terms of this letter agreement as if they were parties hereto.

Governing Law and Jurisdiction

The agreement constituted by this letter and any dispute or claim arising out of, or in connection with, it, its subject matter or formation shall be governed by, and construed in accordance with, the laws of England and Wales, and the courts of England and Wales shall have the non-exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this letter, its subject matter or formation.

Signed for and on behalf of the Buyer

SPECIALITY CARBONS LIMITED

By: _____
Name:
Title:

Signed for and on behalf of the Seller

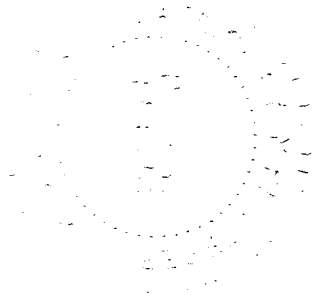
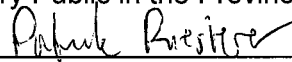
ENERGYBUILD HOLDINGS LIMITED

By: _____
Name:
Title:

This is Exhibit "B" referred to in Affidavit #16 of **William E. Aziz** sworn December 7, 2017 at Toronto, Ontario.



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



ASSET PURCHASE AGREEMENT

BY AND AMONG

**WALTER ENERGY CANADA HOLDINGS, INC., AND THE OTHER ENTITIES
LISTED IN SCHEDULE A HERETO**

AND

CONUMA COAL RESOURCES LIMITED AND THE GUARANTORS HEREUNDER

DATED AS OF AUGUST 8, 2016

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SCHEDULES

The following Schedules form an integral part of this Agreement.

Schedule A	List of Seller Entities
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Schedule 2.1.1(a)	Mineral Tenures
Schedule 2.1.1(c)	Permits
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Schedule 2.2.1	Purchased Deposits
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Schedule 5.3.8	Financial Assurances
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Schedule 7.1(d)	Required Consents

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement is dated August 8, 2016, among Walter Energy Canada Holdings, Inc. (“**Walter Energy Canada**”), and the other entities listed in Schedule A hereto (collectively, the “**Seller**”), Conuma Coal Resources Limited (the “**Purchaser**”) and the Guarantors (collectively, the “**Parties**”).

WHEREAS

- A. Walter Energy Canada applied for and was 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 Walter Energy Canada (the “**Monitor**”) in the CCAA proceedings bearing Court File No. S-1510120 (the “**CCAA Proceedings**”);
- B. On January 5, 2016, the Court granted an Order (the “**SISP Order**”) which, among other things, approved the Sale and Investment Solicitation Process in connection with the sale of all or substantially all of the Assets or Business of the Seller (the “**SISP**”). 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 June 10, 2016;
- C. Pursuant to the SISP Order, PJT Partners LP (the “**Financial Advisor**”) was authorized and directed to carry out the SISP and BlueTree 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 the Monitor;
- D. The Purchaser has been selected as the Successful Bidder in accordance with the SISP; and
- E. The Seller has agreed to transfer to the Purchaser, and the Purchaser has agreed to purchase and to assume, the Assets and the Assumed Liabilities (as defined below) from the Seller upon the terms and conditions set forth hereinafter.

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

ARTICLE 1 INTERPRETATION

1.1 Definitions

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

“**Accounts Payable**” means any and all amounts relating to the Business owing to any Person by the Seller incurred after the effective time of the Initial Order in connection

with the purchase of goods or services in the Ordinary Course that are provided to the Purchaser or received by the Purchaser after the Closing or in connection with any Real Property Taxes owing for the period after the Closing.

“**Accounts Receivable**” means, with respect to the Seller, all accounts receivable, notes receivable, purchase orders, completed work or services not yet billed, chattel paper, notes and other rights to payment, including those consisting of all accounts receivable in respect of services rendered or products sold to customers by the Seller, any other miscellaneous accounts receivable of the Seller, and any claim, remedy or other right of the Seller related to any of the foregoing.

“**Accrued Liabilities**” means any and all Liabilities relating to the Business (i) incurred after the effective time of the Initial Order to the Closing Date but which are 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.

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

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

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

“**Agreement**” means this Asset Purchase Agreement, including the recitals, and all Schedules attached hereto (as amended and supplemented in accordance with Section 10.5) and all amendments hereto made in accordance with Section 10.8.

“**Ancillary Agreements**” means, in each case in a form reasonably acceptable to the Seller and the Purchaser: (i) bill(s) of sale for the assignment and conveyance of the Assets from the Seller to the Purchaser; (ii) deeds transferring title to the water rights described in Schedule 2.1.1(f) to the Purchaser; (iii) an assignment and assumption agreement for the assignment and assumption of the Assumed Liabilities from the Seller to the Purchaser; and (iv) any necessary agreements to effect the transfer of the Mineral Tenures in accordance with applicable Laws.

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

“**Assets**” has the meaning set forth in Section 2.1.1.

“**Assigned Contracts**” means those Contracts listed in Schedule 2.1.1(i) hereto.

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

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

“**Belcourt Put Option**” has the meaning set forth in Section 2.2.5.

“Books and Records” means all accounting records, all other information in any form relating to the Business or Assets, including sales and purchase records, lists of suppliers and customers, lists of potential customers, credit and pricing information, personnel and payroll records of Transferred Employees, Tax records, business reports, plans and projections, production reports and records, inventory reports and records, business, engineering and consulting reports, marketing and advertising materials, research and development reports and records, maps, all plans, surveys, specifications, and as-built drawings relating to the plant, buildings, structures, erections, improvements, appurtenances and fixtures situate on or forming part of the Mineral Tenures, the Owned Real Property and the Leased Real Property, including all such electrical, mechanical and structural drawings related thereto, environmental reports, soil and substratum studies, inspection records, financial records, and all other records, books, documents and data bases recorded or stored by means of any device, including in electronic form, relating to the Business, the Assets and the Transferred Employees that are owned by the Seller provided however that the term “Books and Records” shall not include any of the foregoing items that do not relate to the Assets or to any Employees who are not Transferred Employees.

“Buildings” means, individually or collectively, as the context requires, all of the buildings, structures and fixed improvements located at any of the Seller’s Mines and owned by the Seller, and improvements and fixtures contained in or on such buildings and structures used in the operation of same, but excluding improvements and fixtures not owned by the Seller.

“Business” means the coal production, sales and exportation activities of the Seller carried on in Canada, and all operations, maintenance and other activity related thereto.

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

“Business Information” means all books, records, files, catalogues, data, information (including tangible and intangible information such as drill core, drill logs, assays, metallurgical test work, mine plans and similar information), agreements, operating records, operating, safety and maintenance manuals, engineering and design plans, blueprints and as-built plans, specifications, drawings, reports, procedures, facility compliance plans, test records and results, other records and filings made with regulatory agencies regarding operations of the Business, environmental procedures and similar records, correspondence with present or prospective, customers and suppliers, advertising materials, software programs, documentation and sales literature owned by the Seller that are used or held for use in connection with the Business, including information, policies and procedures, manuals and materials and procurement documentation used in the Business and information received pursuant to Section 2.1.1(b), including all data and documents contained in the Data Site as of the Closing Date, provided however that the term “Business Information” shall not include any of the foregoing items that are not the Property of the Seller, including any items that are the Property of Walter Energy, Inc. or any of its Affiliates or any of their successor and assigns other than the Seller.

“Cash Collateral” has the meaning set forth in Section 5.3.8.

“**Cash Collateral Transfer Agreement**” has the meaning set forth in Section 5.3.8.

“**Cash Purchase Price**” has the meaning set forth in Section 2.2.1.

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

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

“**Claim**” has the meaning set forth in Section 2(1) of the CCAA.

“**Closing**” has the meaning set forth in Section 2.3.1.

“**Closing Date**” has the meaning set forth in Section 2.3.1.

“**Collective Agreements**” means, collectively, the Construction and Allied Workers’ Union, Local 68 collective agreement for the Willow Creek Mine and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union collective agreement for the Wolverine Mine.

“**Competition Act**” means the *Competition Act* (Canada).

“**Confidentiality Agreement**” has the meaning set forth in Section 5.5.1.

“**Consent**” means any approval, authorization, consent, order, license, permission, permit, including any Permit, qualification, exemption or waiver by any Government Entity or other Third Party.

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

“**Contract Mining Agreement**” has the meaning set forth in Section 5.3.6.

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

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

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

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

“**Cure Costs**” means all amounts required to remedy any monetary defaults in respect of any Assigned Contract, as set forth in Schedule 2.1.1(i).

“**Current Assets**” means the (i) Inventories, (ii) Accounts Receivable, (iii) Purchased Deposits, and (iv) other current assets of the Business, each as determined in accordance

with generally accepted accounting principles used by Seller applied on a consistent basis, but excluding cash.

“Data Site” means the online data room maintained by the Financial Advisor in accordance with the SISP.

“Deposit” has the meaning set forth in Section 2.2.3(a).

“Employees” means individuals employed or retained by the Seller as employees, on a full-time, part-time or temporary basis, relating to the Business, including those employees of the Business on disability leave, parental leave or other absence, but excludes any consultants and independent contractors.

“Employee Costs” means (i) notice of termination, termination pay, pay in lieu of notice, severance pay, vacation pay, holiday pay, all forms of wages and compensation and other costs, Liabilities and obligations including entitlement to benefit coverage, stock options or incentive compensation whether due under contract, statute, common law or otherwise relating to the Employees; (ii) any and all obligations and Liabilities in respect of Employees and (iii) any and all obligations and Liabilities in respect of Employees under any Collective Agreement.

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

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

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

“Excluded Assets” has the meaning set forth in Section 2.1.2.

“Excluded Contracts” means any Contracts that are not Assigned Contracts.

“Excluded Liabilities” has the meaning set forth in Section 2.1.4.

“Excluded Pre-Closing Fines” means any monetary fines and penalties to the extent that such monetary fines and penalties arise from or relate to acts or omissions of Seller or the Business occurring on or before the Closing Date, including any monetary fines and penalties for which Seller or any of its Affiliates have received a written notice of violation or notice of claim (or other notice of similar legal intent or meaning) from any Government Entity relating to a violation on or prior to the Closing Date.

“Equipment” means all machinery, vehicles, tools, production equipment, servers and networking equipment, handling equipment, furniture, furnishings, computer hardware and peripheral equipment, coal production technology, rail and truck terminal equipment, spare parts, supplies and accessories used in the Business and owned or leased by the Seller, and any of the parts and components thereof and any of the warranties associated therewith.

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

“Financial Advisor” has the meaning set forth in the recitals to this Agreement.

“Financial Assurances” means letters of credit in the amount of \$22,570,494.00, posted by or on behalf of Seller with various Government Entities to secure Seller’s reclamation and other obligations with respect to the Permits, as detailed in Schedule 5.3.8.

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

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

“**Guarantors**” means, collectively, ERP Compliant Fuels, LLC, a Delaware limited liability company, ERP Compliant Coke, LLC, a Delaware limited liability company, Seneca Coal Resources, LLC, a Delaware limited liability company, and Seminole Coal Resources, LLC, a Delaware limited liability company, , and “Guarantor” shall mean any one of them.

“**Guaranty**” has the meaning given in Section 10.17.

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

“**Indemnification Security Interest**” has the meaning given in Section 5.3.10.

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

“**Intellectual Property**” means intellectual property of the Seller of any nature and kind including all domestic and foreign trade-marks, business names, trade names, domain names, trading styles, patents, trade secrets, confidential information, software, industrial designs and copyrights, whether registered or unregistered, and all applications for registration thereof, and inventions, formulae, recipes, product formulations and chemistries, processes and processing methods, technology and techniques and know-how, provided however that the term “Intellectual Property” shall not include any of the foregoing items that are not the Property of the Seller, including any items that are the Property of Walter Energy, Inc. or any of its Affiliates or any of their successor and assigns other than the Seller, such as any name using word “Walter” or the phrase “Walter Energy”.

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

“**Investment Canada Act**” means the *Investment Canada Act* (Canada).

“**Inventories**” means all inventory of any kind or nature, merchandise, stockpiles and goods, related to the Business and maintained, held or stored by or for Seller on the Closing Date, whether or not prepaid, and wherever located, held or owned, and any prepaid deposits for any of the same, including all coal inventory located upon or within Seller’s Property or belonging to Seller, disposables and consumables used, or held for use, in connection with the Business, including any goods in transit.

“**Knowledge**” or “**aware of**” or “**notice of**” or a similar phrase shall mean, with reference to the Seller, the actual knowledge of those Persons listed in Schedule 1.1(a) after reasonable inquiry, and with reference to the Purchaser, the actual knowledge of those Persons listed in Schedule 1.1(a) after reasonable inquiry.

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

“**Leased Real Property**” means real property which is used by the Seller relating to the Business or Assets and which is leased, subleased, licensed to or otherwise occupied by the Seller and excludes Owned Real Property.

“**Leases**” means all unexpired leases, leasing agreements, licenses or other occupancy or rental agreements.

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

“**Licensed Intellectual Property**” means all Intellectual Property licensed by the Seller or which it has the right to use, excluding the Owned Intellectual Property, and is used in the Business, including the software and the Intellectual Property listed in Schedule 2.1.1(I).

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

“**LOC Issuer**” has the meaning set forth in Section 5.3.8.

“**Mines**” means the Seller’s Wolverine, Brule and Willow Creek mines, and all Mineral Tenures related to such mines.

“**Mineral Tenures**” means the mineral claims, mining leases, mining licenses, coal licenses, coal leases, recorded claims, leased claims, leases of recorded claims, locations, quartz claims, placer claims, placer leases, undersurface rights and other mining rights, tenures and concessions of which the Seller is the recorded holder related to the Mines, Business or Assets, including those Mineral Tenures listed in Schedule 2.1.1(a).

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

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

“Notifiable Transactions Regulations” means the notifiable transactions regulations SOR/87-348 made under the Competition Act.

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

“Ordinary Course” means the ordinary course of the Business consistent with past practice, as such practice is, or may have been, modified as a result of the CCAA Proceedings.

“Owned Intellectual Property” means all Intellectual Property which is owned by the Seller and used in the Business, including the software and the Intellectual Property listed in Schedule 2.1.1(I).

“Owned Real Property” means real property currently used in or reasonably required for the Business, owned or purported to be owned in fee simple by the Seller, and real property currently used in or reasonably required for the Business, other than Leased Real Property, in which the Seller has an interest.

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

“Permit” means any approval, license, authorization, certificate, consent, decree, consent decree, registration, exemption, permit (including where applicable, export permit), certificate of authorization, environmental assessment certificate, waste management plan, operational certificate, approval in principle, certificate of compliance, voluntary remediation agreement, mine development permit or other Government Entity approval required by applicable Law required (i) to conduct the Business; or (ii) in relation to the Assets, including those dealing with mining, reclamation, air, water, effluent, explosives, special use and Environmental Laws.

“Permitted Encumbrances” means (i) statutory Liens for Taxes or governmental assessments, charges or claims the payment of which is not yet due, or for Taxes which are being contested in good faith by appropriate proceedings; (ii) any other Liens set forth in Schedule 1.1(b); and (iii) zoning, entitlement, building and land use regulations, minor defects of title, servitudes, easements, rights of way, restrictions and other similar charges or encumbrances which do not impair in any material respect the use or the value of the Assets or Business, and which are not listed as Excluded Assets, but excluding the Administration Charge, the Directors’ Charge, the KERP Charge, the Success Fee Charge, and the Intercompany Charge.

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

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

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

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

“**Purchase Price**” has the meaning set forth in Section 2.2.1.

“**Purchased Deposits**” means (i) the unused portion of amounts prepaid by or on behalf of the Seller with respect to any Assigned Contracts acquired by the Purchaser at the Closing, (ii) the unused portion of any amounts prepaid by or on behalf of the Seller in respect of any Permits, (iii) the unused portion of any amounts prepaid by or on behalf of the Seller in respect of any real property or other Taxes, (iv) all deposits (including customer deposits and security deposits for rent, electricity and otherwise) and prepaid charges and expenses of the Seller, and (v) the unused portion of any amounts prepaid by or on behalf of the Seller in respect of any insurance premiums for insurance policies set forth on Schedule 2.1.1(h) that are Assets, (including in each of the foregoing cases the right to receive any refund of any unutilized amounts thereof), including without limit those set forth on Schedule 2.2.1; provided however that the term “Purchased Deposits” shall not include any deposits or prepaid charges and expenses paid in connection with or relating exclusively to any Excluded Assets, and any amounts or value paid by or on behalf of the Seller in respect of any Liabilities associated with employment matters.

“**Purchaser**” has the meaning set forth in the preamble to this Agreement.

“**Purchaser’s Certificate**” has the meaning given in Section 5.3.10.

“**Real Property**” means, collectively, the Owned Real Property and the Leased Real Property.

“**Release**” means any release, spill, emission, discharge, leaking, pouring, emptying, escaping, pumping, dumping, injection, deposit, disposal, dispersal, leaching, spraying, abandonment, throwing, placing or migration into the indoor or outdoor Environment or into or out of any Property.

“**Required Consents**” has the meaning set forth in Section 7.1(d).

“**Sale Hearing**” has the meaning set forth in Section 5.1.2.

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

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

“**Seller**” has the meaning set forth in the preamble to this Agreement.

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

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

“**Subsidiary**” of any Person means any Person Controlled by such first Person.

“**Successful Bid**” has the meaning set forth in the SISP

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

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

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

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

“**Third Party**” means any Person that is neither a Party nor an Affiliate of a Party.

“**Transaction Documents**” means this Agreement, the Ancillary Agreements and all other ancillary agreements to be entered into, or documentation delivered by, any Party pursuant to this Agreement.

“**Transaction Orders**” has the meaning set forth in Section 5.1.4.

“**Transfer Approvals**” has the meaning set forth in Section 5.3.5.

“**Transfer Documents**” has the meaning set forth in Section 5.3.5.

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

“**Transferred Employees**” means (i) the unionized Employees listed in Schedule 5.9.1 not terminated as of the date of execution of this Agreement and (ii) all Employees who accept the Purchaser’s offer of employment made pursuant to Section 5.9.1.

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

1.2 Interpretation

1.2.1 Gender and Number

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

1.2.2 Certain Phrases and Calculation of Time

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

1.2.3 Headings

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

1.2.4 Currency

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

1.2.5 Statutory References

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

1.2.6 Schedules

All Schedules attached hereto or referred to herein, as may be amended or supplemented in accordance with Section 10.5, are hereby incorporated in and made a part of this Agreement as if set in full herein. Any capitalized terms used in any Schedule but not otherwise defined therein shall be defined as set forth in this Agreement.

ARTICLE 2 PURCHASE AND SALE OF ASSETS

2.1 **Purchase and Sale**

2.1.1 Assets

Subject to the terms and conditions of this Agreement, at the Closing, the Purchaser shall purchase and cause to be assigned and assumed from the Seller, and the Seller shall sell, transfer, assign, convey and deliver to the Purchaser all of its right, title and interest in and to all the Property and assets of the Seller (other than the Excluded Assets), wherever located, real, personal or mixed, tangible or intangible, owned, leased, licensed, used or held for use in or relating to the Business (herein collectively called the "Assets") free and clear of all Liens (other than Permitted Encumbrances) pursuant to the Approval and Vesting Order, when granted, including, but not limited to, all right, title and interest of the Seller in, to and under:

- (a) the Mineral Tenures, including the Mineral Tenures listed in Schedule 2.1.1(a);
- (b) the Business Information, subject to Section 2.1.2(b);
- (c) the Consents of Government Entities (including those listed in Schedule 7.1(d)) to the extent transferable at Law including all Permits listed in Schedule 2.1.1(c) and all pending applications for Permits;
- (d) all Current Assets, but not including any rights described in Section 2.1.2(d);
- (e) all Books and Records, including copies of Tax records related to the Assets and the Business;

- (f) all water rights, permits, Consents and other riparian rights of any kind relating to the Business, the Mines, or the Mineral Tenures, including all rights and interests listed in Schedule 2.1.1(f);
- (g) if Seller exercises the Belcourt Put Option pursuant to Section 2.2.5, all partnership interests, marketable shares and securities of Belcourt Saxon Coal Limited Partnership and Belcourt Saxon Coal Ltd. (“**Seller’s Belcourt Interests**”) (the mineral tenures and other principal assets of Belcourt Saxon Coal Limited Partnership and Belcourt Saxon Coal Ltd. are described in Schedule 2.1.1(g));
- (h) property and casualty insurance policies and such other insurance policies as are listed on Schedule 2.1.1(h) (excluding any director and officer insurance policies) and the right to receive insurance recoveries under such policies in respect of losses after the Closing;
- (i) all Assigned Contracts;
- (j) the Buildings;
- (k) the Equipment;
- (l) the Owned Intellectual Property and the Licensed Intellectual Property;
- (m) the Owned Real Property and the Leased Real Property; and
- (n) the Cash Collateral.

It is the intention of the parties that Purchaser acquire, lease or sublease all Assets, properties and rights of Seller and its Affiliates related to the Business, including all mining, processing, loading, transporting, marketing, and selling of coal and all reclamation activities, but excluding the Excluded Assets.

2.1.2 Excluded Assets

Notwithstanding anything in this Section 2.1 or elsewhere in this Agreement or in any of the other Transaction Documents to the contrary, the Seller shall retain its right, title and interest in and to, and the Purchaser shall not acquire and shall have no rights or obligations or Liabilities with respect to the right, title and interest of the Seller in and to, the following assets (collectively, the “**Excluded Assets**”):

- (a) all rights of the Seller under this Agreement and the Ancillary Agreements;
- (b) all records prepared in connection with the sale of the Assets to the Purchaser, all records and information in the possession of the Seller but not owned by the Seller and all corporate, financial and taxation records of the Seller and records of the Seller that do not relate to the Business, provided that the Business Information contained in the Data Site will be transferred as stated in Section 2.1.1(b) above;

- (c) any assets set forth in Schedule 2.1.2(c), as may be amended or supplemented in accordance with Section 10.5;
- (d) any deposits associated with Contracts that are not Assigned Contracts (other than such Purchased Deposits as are listed on Schedule 2.2.1) and any deposits held in trust accounts to secure payment of the reasonable fees and disbursements of the Monitor, the Financial Advisor and any professional advisors of the Seller and of the Monitor, any deposits provided to any Government Entity in respect of Tax Liabilities (other than in respect of real property Taxes), and any amounts paid by or on behalf of the Seller in respect of any employment Liabilities;
- (e) following the Closing, copies of any book, record, literature, list and any other written or recorded information constituting Business Information (the original of which has already been assigned or transferred to Purchaser) to which the Seller in good faith determines it is reasonably likely to need to access for bona fide Tax or legal purposes;
- (f) all information, materials, documents, reports and/or records, whether written or electronic, prepared by the Seller's legal counsel, whether or not prepared before or after Closing, that is attorney-client privileged and any and all attorney work product;
- (g) marketable shares, notes, bonds, debentures or other securities of or issued by corporations, or other Persons, which are related or not related to the Business and certificates or other evidences of ownership thereof owned or held by or for the account of the Seller and all shares in other Affiliate corporations or partnership units of Affiliate partnerships that are legally or beneficially owned by the Seller, provided that if the Belcourt Put Option is exercised, the Seller's Belcourt Interests shall be excluded from this provision and included in the Assets;
- (h) extra-provincial, sales, excise or other licences or registrations issued to or held by the Seller, whether relating to the Business or otherwise to the extent not transferable;
- (i) any known or unknown Claims any Seller may have against any Person other than a Claim for Accounts Receivable;
- (j) refunds in respect of reassessments for Taxes relating to the Business or Assets paid prior to the Closing;
- (k) refundable Taxes;
- (l) director and officer insurance policies and the right to receive insurance recoveries under (i) any insurance policies for losses that occurred prior to Closing and (ii) any director and officer insurance policies in respect of any matters at any time;
- (m) any letters of credit posted by or on behalf of the Seller;

- (n) all cash, cash equivalents, bank balances, and moneys in possession of banks, the Monitor and other depositories, but excluding the Cash Collateral;
- (o) any equity or other interest in the Wales operations or assets of Cambrian EnergyBuild Holdings ULC;
- (p) Contracts relating to the foregoing provided that they are not Assigned Contracts; and
- (q) Excluded Contracts.

2.1.3 Assumed Liabilities

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

- (a) all Liabilities of the Seller in respect of the Mineral Tenures which are assumed and assigned pursuant to the Approval and Vesting Order arising from and after the Closing;
- (b) all Liabilities for, or related to any obligation for, any Tax that the Purchaser bears under Article 6 (including, for the avoidance of doubt, Transfer Taxes imposed in connection with this Agreement and the transactions contemplated hereunder or any other Transaction Document and the transactions contemplated thereunder);
- (c) all Liabilities with respect to the post-Closing operation of the Business or ownership of the Assets;
- (d) all Liabilities (i) arising from or in connection with any Assigned Contracts from and after the Closing Date (or breach thereof from and after the Closing Date), and (ii) any Cure Costs associated with such Assigned Contracts up to a maximum of [REDACTED] (with Seller paying all Cure Costs above such amount);
- (e) all amounts payable or Liabilities that must be assumed to obtain the Consents or Transfer Approvals, including filing and other fees related thereto, but excluding (i) any penalties or interest and (ii) any expenses incurred by Seller other than those expenses of the Seller that are to be paid, reimburse or otherwise satisfied by the Purchaser hereunder, including as set out in Article 5;
- (f) all Environmental Liabilities, other than Excluded Pre-Closing Fines;
- (g) All Liabilities arising from and after the Closing Date with respect to the Purchaser’s employment or termination of employment of any Transferred Employees; and
- (h) All Accounts Payable and Accrued Liabilities.

2.1.4 Excluded Liabilities

Except for the Assumed Liabilities, the Purchaser shall not assume and shall not be responsible for any of the Liabilities of the Seller, whether present or future, known or unknown, absolute or contingent and whether or not relating to the Business or the Assets (collectively, the “**Excluded Liabilities**”).

2.2 Purchase Price

2.2.1 Purchase Price

Pursuant to the terms and subject to the conditions set forth in this Agreement, in consideration of the sale of the Assets pursuant to the terms hereof, the Purchaser shall (i) pay to the Seller an amount equal to [REDACTED] cash plus an amount in cash [REDACTED] converted to U.S. Dollars on the Closing Date at the rate quoted by the Bank of Nova Scotia in respect of the Purchased Deposits at Closing plus any Cure Costs up to a maximum [REDACTED] (the “**Cash Purchase Price**”), which Cash Purchase Price shall be adjusted as set out in Section 2.2.5 in the event Seller does not exercise the Belcourt Put Option; and (ii) assume from the Seller and become obligated to pay, perform and discharge, when due, the Assumed Liabilities ((i) and (ii), collectively, the “**Purchase Price**”).

2.2.2 Allocation of Purchase Price

The Purchase Price will be allocated among the Assets in accordance with Schedule 2.2.2, and the values so attributed to the Assets are the respective fair market values thereof. The Seller and the Purchaser shall cooperate in the preparation of and execute any elections and agreements that may be necessary or desirable under any Tax Laws to give effect to the allocations described in Schedule 2.2.2, and the Seller and the Purchaser shall prepare and file their respective Tax returns in a manner consistent with those allocations, elections and agreements.

2.2.3 Deposit

- (a) Contemporaneously with the execution and delivery of this Agreement by the Purchaser, the Purchaser has paid a deposit payable to the order of the Monitor, in [REDACTED] (the “**Deposit**”).
- (b) The Deposit shall be held, pending Closing, by the Monitor in an interest bearing account with a bank.
- (c) If the Closing does not occur by reason of the material uncured default of the Purchaser, the full amount of the Deposit (plus accrued interest), less any applicable withholding Tax, shall become the property of and be retained by the Monitor on behalf of the Seller as liquidated damages and not as a penalty. The Seller’s recourse against the Purchaser and the Guarantors in such circumstances shall be limited to the right of the Monitor on behalf of the Seller to retain the Deposit and to seek recovery of an additional amount for any actual damages of Sellers, provided however that the recovery for such additional damages is not to exceed [REDACTED] incurred as a result of such failure to Close.

- (d) If the Closing does not occur for any reason other than the default of the Purchaser, the full amount of the Deposit (plus accrued interest), less any applicable withholding Tax, shall be returned by the Monitor to the Purchaser and the Purchaser shall have no further recourse against the Seller.

2.2.4 Satisfaction of Purchase Price

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

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

2.2.5 Belcourt Put Option

Seller shall have the option (the “**Belcourt Put Option**”), exercisable within 60 days following the Closing, to cause Purchaser to purchase Seller’s Belcourt Interests for a cash payment of [REDACTED], *provided* Seller presents satisfactory evidence by written notice to Purchaser that all requirements of each applicable joint venture agreement to permit the sale of Seller’s Belcourt Interests to Purchaser have been satisfied or waived. The Monitor shall retain [REDACTED] the Cash Purchase Price attributed to the Seller’s Belcourt Interests and shall not disburse that amount until the earlier of:

- (a) the day that the Seller notifies Purchaser that it has exercised the Belcourt Put Option,
- (b) the day that is 61 days following the Closing, and
- (c) the day that the Seller provides notice to Purchaser that Seller has determined, acting reasonably, that the Belcourt Put Option cannot be exercised .

If the Belcourt Put Option is exercised, [REDACTED] of the Cash Purchase Price attributed to the Seller’s Belcourt Interests shall become the property of and be retained by the Monitor on behalf of the Seller.

In the event that the Belcourt Put Option is not exercised, the Monitor shall pay to the Purchaser [REDACTED] of the Cash Purchase Price attributed to the Seller’s Belcourt Interests in the case of circumstances in clause (b) of the foregoing sentence, within 1 Business Day of the day specified therein, and in the case of circumstances in clause (c) of the foregoing sentence, within 5 Business Days of the day specified therein; in each case, the Cash Purchase Price shall be reduced accordingly.

Any payments due after the Closing Date but prior to the exercise of the Belcourt Put Option in respect of the Mineral Tenures relating to Seller’s Belcourt Interests shall be paid by the Seller, provided however that the Purchaser shall reimburse Seller for any such payments if the Belcourt Put Option is exercised, such reimbursement to be made within 5 Business Days of the exercise

of the Belcourt Put Option by wire transfer of immediately available funds to the account specified by the Monitor.

2.3 Closing

2.3.1 Place of Closing

The completion of the purchase and sale of the Assets and the assumption of the Assumed Liabilities (the “**Closing**”) shall take place at the offices of DLA Piper (Canada) LLP, 666 Burrard Street, Vancouver, British Columbia, commencing at 10:00 a.m. local time on a mutually agreed upon date (which date shall be no later than September 15, 2016) no later than two Business Days after the day upon which all of the conditions set forth under Article 7 (other than conditions to be satisfied at the Closing, but subject to the waiver or fulfillment of those conditions) have been satisfied or, if permissible, waived by the Seller and/or the Purchaser (as applicable), or at such other place and on such other date and at such other time as shall be mutually agreed upon in writing by the Purchaser and the Seller (the day on which the Closing takes place being the “**Closing Date**”). Legal title, equitable title and risk of loss with respect to the Assets will transfer to the Purchaser, and the Assumed Liabilities will be assumed by the Purchaser at the Closing.

2.3.2 Actions and Deliveries At Closing

At the Closing:

- (a) the Purchaser shall pay to the Monitor, on behalf of the Seller, in cash, the Cash Purchase Price less the Deposit, by wire transfer of immediately available funds to an account or accounts designated by the Monitor;
- (b) the Seller and the Purchaser shall deliver duly executed copies of and enter into the Transaction Documents to which it is contemplated that they will be parties, respectively;
- (c) the Purchaser shall deliver the officer’s certificates required to be delivered pursuant to Section 7.2(a) and Section 7.2(b);
- (d) the Seller shall deliver the officer’s certificates required to be delivered pursuant to Section 7.3(a) and Section 7.3(b);
- (e) the Seller shall deliver a certified copy of the Approval and Vesting Order; and
- (f) each Party shall deliver, or cause to be delivered, to the other any other documents reasonably requested by such other Party in order to effect, or evidence the consummation of, the transactions contemplated herein or otherwise provided for under this Agreement, provided however that all material physical or electronic deliveries required hereunder to be made by the Seller shall be at the Purchaser’s expense to the extent the aggregate actual out-of-pocket cost of such deliveries exceeds \$5,000.00.

2.3.3 Delivery of the Monitor’s Certificate

When the conditions set out in Article 5 and Article 7, as applicable, have been satisfied or waived, the Purchaser and Seller will each deliver to the Monitor written confirmation of same, following which the Monitor will deliver an executed copy of the Monitor's Certificate to the Purchaser's counsel in escrow upon the sole condition of receipt by the Monitor of the amount referred to in Section 2.2.1 that is required to be paid at the Closing Date. Following written confirmation of receipt by the Monitor of such funds, the Monitor's Certificate will be released from escrow to the Purchaser. Upon such delivery, the Closing will be deemed to have occurred. The Monitor will file a copy of the Monitor's Certificate with the Court and provide evidence of such filing to the Purchaser.

2.3.4 Non-Assignable Rights

Nothing in this Agreement shall be construed as an assignment of, or an attempt to assign to the Purchaser, any Contract, Permit or Consent which, as a matter of law or by its terms, is (i) not assignable, or (ii) not assignable without the approval or consent of the issuer thereof or the other party or parties thereto or a Court Order, without first obtaining such approval, consent or a Court Order (collectively "**Non-Assignable Rights**"). In connection with such Non-Assignable Rights, the Seller shall, at the request of the Purchaser:

- (a) use commercially reasonable efforts to assist the Purchaser in applying for and use commercially reasonable efforts to assist the Purchaser in obtaining any of the approvals, Consents or Permits contemplated in Section 5.3, provided that nothing shall require the Seller to make any payment to any Person in order to obtain such approvals, Consents or Permits; and
- (b) if the Seller is unable to obtain any Consent necessary for the assignment of any Assigned Contract at the Purchaser's request to be made on or prior to the later of August 20, 2016 or the date that is 12 days prior to the Closing Date, use commercially reasonable efforts to obtain a Court Order prior to the Closing Date, in form and substance reasonably satisfactory to the Purchaser, authorizing the assignment of such Assigned Contract, subject to the payment by the Purchaser and Seller, as set forth herein, of all amounts required to remedy any monetary defaults in respect of such Assigned Contract; and
- (c) to the extent permitted by applicable Law, co-operate with the Purchaser in any reasonable arrangements designed to provide the benefits of such Non-Assignable Rights to the Purchaser, which may include holding specified Non-Assignable Rights in trust for the Purchaser or acting as agent for the Purchaser for a period of two months following the Closing Date or such longer period as the Seller, at its discretion, may agree, provided that, during such period, the Purchaser shall perform the obligations of the Seller under such specified Assigned Contract and be entitled to receive all money becoming due or payable under, and other benefits derived from, the specified Assigned Contract immediately upon receipt by the Seller.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

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

3.1 Organization and Corporate Power

- 3.1.1 The Purchaser is duly organized and validly existing under the Laws of the jurisdiction in which it is organized. The Purchaser has the requisite corporate power and authority to enter into, deliver and perform its obligations pursuant to each of the Transaction Documents to which it is or will become a party.
- 3.1.2 The Purchaser is qualified to do business as contemplated by this Agreement and the other Transaction Documents and to own or lease and operate its properties and assets, including the Assets, except to the extent that the failure to be so qualified would not materially hinder, delay or impair the Purchaser's ability to carry out its obligations under, and to consummate the transactions contemplated by, this Agreement and the Ancillary Agreements to which it is or will become a party.

3.2 Authorization; Binding Effect; No Breach

- 3.2.1 The execution, delivery and performance of each Transaction Document to which the Purchaser is a party, or is to be a party to, have been, or will be, duly authorized by the Purchaser at the time of its execution and delivery. Assuming due authorization, execution and delivery by the Seller, each Transaction Document to which the Purchaser is a party constitutes, or upon execution thereof will constitute, a valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its respective terms, except as such enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws now or hereafter in effect relating to creditors' rights generally or general principles of public policy.
- 3.2.2 The execution, delivery and performance by the Purchaser of the Transaction Documents to which the Purchaser is, or on the Closing Date will be, a party do not and will not conflict with or result in a breach of the terms, conditions or provisions of, constitute a default under, result in a violation of, or require any Consent (other than the any action by or declaration or notice to any Government Entity) pursuant to (i) the articles, charter, by-laws, partnership agreement or operating agreement of the Purchaser; (ii) any material Contract or other document to which the Purchaser is a party or to which any of its assets is subject; or (iii) any Laws to which the Purchaser or any of its assets is subject, except, in the case of (ii) and (iii) above, for such defaults, violations, actions and notifications that would not individually or in the aggregate materially hinder, delay or impair the performance by the Purchaser of any of its obligations under any Transaction Document.

3.3 Brokers

Except for fees and commissions that will be paid by the Seller out of the Cash Purchase Price, no broker, finder or investment banker is entitled to any brokerage, finder's or similar fee or commission in connection with the transactions contemplated by this Agreement and the other Transaction Documents based upon arrangements made by or on behalf of the Purchaser or any of its Affiliates.

3.4 GST/HST Registration

The Purchaser shall be duly registered as of the Closing for the purposes of the Tax imposed under Part IX of the *Excise Tax Act* (Canada) and shall provide to the Seller its registration number no later than 10 days prior to Closing.

3.5 Financing

The Purchaser has now, and at all times from the date hereof through and after the Closing Date, will have, sufficient funds available to pay the Cash Purchase Price and all other amounts payable under the Transaction Documents and to otherwise consummate the transactions contemplated hereby and thereby, and to pay all fees and expenses related thereto and to perform all obligations when due under the Assigned Contracts. The Purchaser acknowledges that its obligations under this Agreement and the other Transaction Documents are not subject to any conditions regarding its ability to obtain financing for any portion of the foregoing amounts. In addition, the Guarantors agree, on a joint and several basis, to guarantee the payment and performance of all of Purchaser's obligations hereunder, under the other Transaction Documents and pursuant to any Assigned Contracts.

3.6 Regulatory, Transfer and Other Approvals

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

3.7 Purchaser's Qualifications to Obtain Transfer Approvals and Hold Permits

The Purchaser, after diligent review is aware of no facts that would prevent the issuance of Transfer Approvals from any Government Entities for the transfer of the Permits from the Seller to the Purchaser or for the obtaining of replacement Permits by the Purchaser for those Permits presently held by the Seller that are not transferable.

3.8 Investment Canada Act; Competition Act

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

3.9 No Other Representations or Warranties

3.9.1 Notwithstanding anything contained in this Agreement to the contrary, the Purchaser acknowledges and agrees that none of the Seller or any other Person (including the CRO, the Financial Advisor, the Monitor or any of their advisors) is making any representations or warranties whatsoever, express or implied, beyond those expressly given by the Seller in Article 4, or with respect to any other information provided to

the Purchaser in connection with the transactions contemplated hereby, including as to the probable success or profitability of the ownership, use or operation of the Business, title to the Assets, the Employees (including any representation and warranty that any of the Employees will accept an offer of employment), the Assumed Liabilities, or as to the accuracy or completeness of any information regarding any of the foregoing that any Seller, or any other Person, furnished or made available to the Purchaser or its representatives. The Purchaser further represents that none of the Seller or any other Person has made any representation or warranty, express or implied, as to the accuracy or completeness of any information regarding the Seller, the Business or the transactions contemplated by this Agreement not expressly set forth in this Agreement, and none of the Seller or any other Person will have or be subject to liability to the Purchaser or any other Person resulting from the distribution to the Purchaser or its representatives or the Purchaser's use of any such information, including Data Site information provided to the Purchaser or its representatives, in connection with the sale of the Business. The Purchaser acknowledges that it has conducted to its satisfaction its own independent investigation of the Business and the Assets and, in making the determination to proceed with the transactions contemplated by this Agreement, the Purchaser has relied solely on the results of its own independent investigation.

- 3.9.2 The Purchaser acknowledges and agrees that, in determining whether to enter into this Agreement, Purchaser (i) has had an opportunity to conduct any and all due diligence regarding the Assets, the Business and the Assumed Liabilities prior to the execution of this Agreement and that the obligations of the Purchaser are not conditional upon any additional due diligence; (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets to be acquired and obligations and Liabilities to be assumed in entering into this Agreement; and (iii), except for the representations and warranties set out in Article 4, did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of Law or otherwise) from or by the Seller, the CRO, the Monitor, any of their Affiliates or any partner, employee, officer, director, accountant, agent, financial, legal or other representative of any of the Seller, the CRO, the Monitor or any of their Affiliates, regarding the Assets to be acquired or the Assumed Liabilities or the completeness of any information provided in connection therewith, except as expressly stated herein.
- 3.9.3 The Purchaser acknowledges and agrees that the enforceability of this Agreement against the Seller is subject to entry of the Approval and Vesting Order.

3.10 As Is Where is Transaction

The Purchaser hereby acknowledges and agrees that, except as otherwise expressly provided in Article 4 of this Agreement, the Seller makes no representations or warranties whatsoever, express or implied, with respect to any matter relating to the Assets, the Business, the Mines and Seller's ownership and operation thereof or Liabilities, including Environmental Liabilities, associated therewith, and the quantity, quality, suitability for mining or costs of mining of any Mineral Tenures included in the Assets. Without in any way limiting the foregoing, the Purchaser acknowledges that the Seller has not given, will not be deemed to have

given and hereby disclaims any warranty, representation, covenant, express or implied, of existence, location, size or quality of any mineral deposit, or condition or fitness for any particular purpose as to any portion of the Assets. Accordingly, the Purchaser shall accept the Assets at the Closing "as is", "where is" and "with all faults". No representation is made by the Seller or by any person as to the accuracy or completeness of the Schedules and the Purchaser acknowledges and agrees that it has made its own investigation as to the content thereof.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE SELLER

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

4.1 Organization and Corporate Power

The entities that form the Seller exist under the Laws of their respective jurisdictions. Subject to the entry of the Approval and Vesting Order in the Court in connection with the transactions contemplated hereby and in the other Transaction Documents, the Seller has the requisite corporate power to enter into, deliver and perform its obligations pursuant to each of the Transaction Documents to which it is or will become a party.

4.2 Authorization; Binding Effect; No Breach

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

4.3 GST/HST/PST Registration

- 4.3.1 The entities that form the Seller are registered for the purposes of the Tax imposed under Part IX of the *Excise Tax Act* (Canada) and they shall provide to the Purchaser their registration numbers no later than 10 days prior to Closing.
- 4.3.2 The entities that form the Seller are registered for the purposes of the Tax imposed under the *Provincial Sales Tax Act* (British Columbia) and they shall provide to the Purchaser their registration numbers no later than 10 days prior to Closing.

4.4 Regulatory, Transfer and Other Approvals

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

4.5 Tax Act

Each of the entities that form the Seller are not non-residents of Canada within the meaning of the Tax Act.


4.6 No Brokers

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

4.7 No Cultural Business – Investment Canada Act

The Assets are not a cultural business, and Sellers were not carrying on a cultural business, within the meaning of the Investment Canada Act.

4.8 Competition Act

To the Knowledge of Seller, 

4.9 No Other Representations and Warranties

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

ARTICLE 5 COVENANTS AND OTHER AGREEMENTS

5.1 CCAA Proceedings

5.1.1 The Seller and the Purchaser acknowledge that this Agreement and the transactions contemplated hereby are subject to the approval of the Court in the CCAA Proceedings.

- 5.1.2 The Seller shall use its commercially reasonable efforts to have the Court enter on August 15, 2016, upon a hearing to be held on a date specified by the Court (the “**Sale Hearing**”), an order in form and in substance acceptable to the Purchaser approving the sale of the Assets to the Purchaser pursuant to this Agreement and vesting in and to the Purchaser the Assets free and clear of all Liens and Claims (other than Permitted Encumbrances) (the “**Approval and Vesting Order**”).
- 5.1.3 In the event that there are any other Orders required by the Court in connection with the transactions contemplated hereby, including in respect of the assignment of any Assigned Contracts (the “**Additional Orders**”), the Seller shall have the right to seek such Additional Orders at the same time as the Approval and Vesting Order.
- 5.1.4 In the event that there is more than one Successful Bid and the Seller desires to seek the Court’s approval of any other transaction order(s) (collectively, the “**Transaction Orders**”) the Seller shall have the right to seek such Transaction Orders at the same time as the Approval and Vesting Order.
- 5.1.5 The Purchaser and the Seller will cooperate in obtaining entry of the Approval and Vesting Order and the Additional Orders, and the Seller will deliver, or will request the Monitor to deliver, as applicable, to the Purchaser prior to service and filing, and as early in advance as is practicable to permit adequate and reasonable time for the Purchaser and its counsel to review and comment upon, copies of all proposed pleadings, motions, notices, statements, schedules, applications, reports and other material papers to be filed by the Seller or Monitor, as applicable, in connection with such motions and relief requested therein and any objections thereto.
- 5.1.6 The Purchaser, at its own expense, will promptly provide to the Seller and the Monitor all such information within its possession or under its control as the Seller or the Monitor may reasonably require to obtain the Approval and Vesting Order and the Additional Orders.
- 5.1.7 In the event leave to appeal is sought, an appeal is taken or a stay pending appeal is requested with respect to the Approval and Vesting Order or any the Additional Order, the Seller shall promptly notify the Purchaser of such application for leave to appeal, appeal or stay request and shall promptly provide to the Purchaser a copy of the related notice(s) or Order(s). The Seller and the Purchaser acknowledge and agree that, in the event leave to appeal is sought with respect to the Approval and Vesting Order or any Additional Order, the Closing Date shall be extended until two Business Days following dismissal of (i) the application for leave to appeal, or (ii) if leave is granted, the appeal.

5.2 Cooperation

- 5.2.1 Prior to the Closing, upon the terms and subject to the conditions of this Agreement, each of the Parties shall use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, and cooperate with each other in order to do, all things necessary, proper or advisable under applicable Law to consummate the transactions contemplated by this Agreement as soon as practicable, including the preparation and filing of all forms, registrations and notices required to

be filed to consummate the Closing, making witnesses available in the Court or by declaration, as necessary, in obtaining the entry of the Approval and Vesting Order, and the taking of such actions as are necessary to obtain any requisite Consent; provided, however, at no time shall the Seller be obligated to make any payment or deliver anything of value to the Purchaser or any Third Party (other than filing with and payment of any application fees to Government Entities, all of which shall be paid or reimbursed by the Purchaser unless otherwise provided herein) or to the Purchaser in order to obtain any Consent.

- 5.2.2 The Seller and the Purchaser shall promptly notify the other of the occurrence, to such Party's Knowledge, of any event or condition, or the existence, to such Party's Knowledge, of any fact, that would reasonably be expected to result in (i) any of the conditions set forth in Article 7 not being satisfied; or (ii) any of the representations and warranties in Article 3 or Article 4 not being true and correct.
- 5.2.3 The Purchaser and the Seller acknowledge and agree that time is of the essence in effecting the Closing and otherwise consummating the transactions contemplated herein, and that it will promptly and timely provide written requests, execute and deliver all required documents and materials and use commercially reasonable efforts to perform all necessary and required actions, including to obtain Transfer Approvals for Permits from appropriate Government Entities.

5.3 Transfer Approvals and Financial Assurances

- 5.3.1 To the extent required by applicable Laws, each of the Parties agrees to prepare as promptly as practicable and in any event, within ten (10) Business Days following the selection of Purchaser as the Successful Bidder (as defined in the SISP), all necessary documents, registrations, statements, petitions, filings and applications for the Transfer Approvals and any other Consent of any other Government Entities required to satisfy the condition set forth in Article 7.
- 5.3.2 Each of the Parties shall use commercially reasonable efforts to (i) cooperate with each other in connection with any filing or submission and in connection with any investigation or other inquiry, including any proceeding initiated by a private party; (ii) keep the other Parties informed in all material respects of any material communication received by such Party from, or given by such Party to, any Government Entity and of any material communication received or given in connection with any proceeding by a private party, in each case regarding any of the transactions contemplated hereby, including providing to the other Parties copies of all such material communications given or received; (iii) provide to the other Party reasonable opportunity to comment on drafts of filings and submissions prior to submitting same to a Government Entity; and (iv) consult with each other in advance of any meeting or conference (whether in person or by telephone) with any Government Entity, including in connection with any proceeding by a private party, and provide the other Party an opportunity to participate in any meetings of a substantive nature with a Government Entity. The foregoing obligations in this Section 5.3 shall be subject to any attorney-client, solicitor-client, work product, or other privilege, and each of the Parties hereto shall coordinate and cooperate fully with the other Parties hereto in exchanging such information and providing such

assistance as such other Parties may reasonably request in connection with the foregoing. The Parties will not take any action that will have the effect of delaying, impairing or impeding the receipt of any required authorizations, Consents, Orders or approvals.

- 5.3.3 If any objections are asserted with respect to the transactions contemplated hereby under any Law or if any suit is instituted by any Government Entity or any private party challenging any of the transactions contemplated hereby as violative of any Law or if the filing pursuant to Section 5.3 is reasonably likely to be rejected or conditioned by a Government Entity, each of the Parties shall use commercially reasonable efforts to resolve such objections or challenge as such Government Entity or private party may have to such transactions, including to vacate, lift, reverse or overturn any Action, whether temporary, preliminary or permanent, so as to permit consummation of the transactions contemplated by this Agreement.
- 5.3.4 Each of the Seller and the Purchaser shall use its commercially reasonable efforts to satisfy (or cause the satisfaction of) the conditions precedent to such Party's obligations hereunder as set forth in Section 7.1(a) to the extent the same is within its control and to take, or cause to be taken, all other action and to do, or cause to be done, all other things necessary, proper or advisable under all applicable Laws to consummate the transactions contemplated by this Agreement, including using its commercially reasonable efforts to obtain any Consent of a Government Entity required to be obtained in order for the Parties to consummate the transactions contemplated by this Agreement.
- 5.3.5 No later than ten (10) Business Days following the selection of Purchaser as the Successful Bidder, the Purchaser agrees to contact the applicable Government Entities and use its commercially reasonable efforts to understand what information those Government Entities will require in order to timely grant the transfer of the Permits from the Seller to the Purchaser or what information those Government Entities will require the Purchaser to submit in order for the Purchaser to obtain replacement Permits for those Permits presently held by the Seller that are not transferable. Promptly following the Closing but in any event within five (5) Business Days thereof, the Purchaser will file with the appropriate Government Entities (i) all applications, letters and other instruments of transfer for all of the Assets and the Permits which are subject to approval, consent or other processing by such Government Entities; (ii) all required notices of transfers of Permits or any of the other Assets; and (iii) all applications, letters, instruments or notices for all of the Assets for approval or other processing by such Government Entities as necessary to obtain replacement Permits for those Permits presently held by the Seller that are not transferable, (with those items referenced in sub-clauses (i), (ii), and (iii) above collectively referred to as the "**Transfer Documents**"), as may be required or desirable in order to effect and document the approved transfer of all Permits from the Seller to the Purchaser or the issuance to the Purchaser of such new or replacement Permits as may be required (the "**Transfer Approvals**"). The Purchaser will diligently pursue on a commercially reasonable efforts basis all Transfer Approvals necessary to complete transfer of such Assets and Permits from the Seller to the Purchaser or obtain Permits in the Purchaser's own name as soon as

practicable following the Closing Date, including the posting of any financial assurances instruments as may be required by the appropriate Government Entity in excess of the Financial Assurances already in place by the date required by such Government Entity, and will keep the Seller apprised of the status of its efforts to secure such Transfer Approvals. Purchaser agrees that it will not submit or file with any Government Entity new, revised or amended mine plans for any of the Mines and that it will not act in a manner that materially departs from the current mine plan for any of the Mines prior to obtaining the Transfer Approvals, including the approval of the transfer of the Permits to the Purchaser or the issuance of new permits in the Purchaser's name. Subject to the commitments under Section 2.3.4 and Section 5.3.6, the Purchaser shall have no right to conduct any activities under any Permit or Contract that has not been assigned, transferred or re-issued to the Purchaser. The Seller agrees that it will cooperate in good faith with the Purchaser in its efforts to obtain the Transfer Approvals, and upon written request by the Purchaser, use their good faith efforts (at Purchaser's expense and risk) to make the appropriate Employees available to assist the Purchaser in that process.

5.3.6 Contract Mining Agreement

- (a) The Seller and the Purchaser agree that, from and after the Closing until the earlier of (i) the date that is three months following the Closing Date, which shall be extended month to month as set out herein for a maximum of six additional months following the Closing Date in the event one or more Transfer Approvals have not been obtained through no fault of the Purchaser, or (ii) such time as the Transfer Approvals have been received, Purchaser may operate under the Permits as the designated operator and contract miner, which contract mining operation shall be pursuant to the terms of a contract mining agreement in form mutually agreeable to Purchaser and Seller and executed and delivered by the Parties at Closing (the "**Contract Mining Agreement**").
- (b) Such Contract Mining Agreement (i) shall provide, at a minimum, that Purchaser and the Guarantors shall indemnify and hold harmless Seller from any and all Liabilities arising out of or resulting from Purchaser's operations of the Mines or any other activities occurring at the Mines, including in respect of operations conducted under Seller's applicable Permits, (ii) shall have a term of three months and shall be extended month to month in the event one or more Transfer Approvals have not been obtained through no fault of the Purchaser for a maximum of six additional months from the Closing Date, subject to Section 5.3.6(c).
- (c) Any extension of the Contract Mining Agreement in excess of the six month period following the Closing Date shall occur only if, (A) on the day that is seven months following the Closing Date, the Purchaser and the Guarantors pay ██████████ respect of such extension to the seventh month, (B) any extension of the Contract Mining Agreement in excess of seven months shall occur only if, on the day that is eight months following the Closing Date, the Purchaser and the Guarantors pay ██████████ respect of such extension to the eighth month, and (C) any extension of the Contract Mining Agreement in excess of eight months shall occur only if, on the day that is nine months following the Closing Date, the

Purchaser and the Guarantors pay ██████████ respect of such extension to the ninth month. The Contract Mining Agreement shall terminate at the end of the day that is ten month following the Closing Date unless otherwise agreed by the Parties. Further, if the Contract Mining Agreement shall be extended beyond its three month term, Purchaser shall be responsible for all reasonable and documented out-of-pocket costs not to exceed ██████████ month associated with the continuation of the CCAA Proceedings during such extension if, in the reasonable opinion of the Monitor, the CCAA Proceedings could be concluded if not for fact that the Purchaser had not obtained the transfer of the Permits or issuance of new permits prior to such time.

- (d) Subject to applicable Law, Seller grants Purchaser the right to conduct, at the sole cost and expense of Purchaser, mining operations at the Brule Mine (in accordance with the mine plan for the Brule Mine currently in effect) and related processing and loading operations at the Willow Creek Mine following the Closing on the applicable Real Property under the applicable Permits, pursuant to and in accordance with the terms and conditions of the Contract Mining Agreement, as the designated operator during the term of the Contract Mining Agreement. Notwithstanding the foregoing, it is agreed that no person other than the Purchaser shall be permitted to conduct any operations at any of the Mines without the Seller's express written consent, which may be withheld for any reason.
 - (e) Seller shall not take any action to cancel or terminate the Permits during the term of the Contract Mining Agreement and shall have (and Purchaser grants) all rights of entry onto the Real Property that are reasonably necessary or desirable in connection with any steps necessary or desirable to prevent the termination of the Permits, provided however that the Purchaser shall pay to the Seller in advance of any such action an amount equal to the Seller's reasonable estimate of the cost of such action and the Seller shall have no obligation to undertake any action prior to the receipt of such amounts. Notwithstanding anything to the contrary contained herein, Purchaser shall reimburse, indemnify and hold harmless Seller and/or its Affiliates from any and all Liabilities incurred by Seller and/or its Affiliates as a result of any action taken by Seller at Purchaser's or its Affiliates' request pursuant to this Section 5.3.6 (including as a result of any simple negligence by Seller), or any action not taken by the Seller as a result of Purchaser's failure to request any such action or Purchaser's failure to pay to the Seller in advance an amount equal to the Seller's reasonable estimate of the cost of such action.
- 5.3.7 Purchaser and the Guarantors shall, and shall cause their Subsidiaries to, take all actions and do, or cause to be done, all things necessary or desirable under applicable Law to put in place with the applicable Government Entities as promptly as possible any financial assurances necessary to obtain the Transfer Approvals. Seller shall (at Purchaser's sole cost and expense) cause the Financial Assurances with respect to the Permits in place as of the Closing to remain in place until the earlier of the end of the term of the Contract Mining Agreement or such time as the Transfer Approval with respect to such Permits is received. At all times from and after Closing and prior to the transfer to Purchaser of the Permits, Purchaser shall,

and shall cause its Affiliates to, at Purchaser's sole cost and expense, comply with applicable Law governing, and all conditions and requirements of, or pertaining to, any such Permits, including any requirements requested by Seller to comply with Environmental Law. Purchaser shall promptly deliver to Seller written notice of any incidents, violations or occurrences, which Seller shall have the right, but not the obligation, to cure at Purchaser's sole expense (including right of entry onto the applicable Real Property), and Purchaser and the Guarantors shall promptly reimburse Seller for the full costs of any such cure.

- 5.3.8 The Financial Assurances posted by Seller with respect to the Permits are comprised of \$22,570,494.00 of letters of credit, as shown on Schedule 5.3.8. The providers that have issued such Financial Assurances (the "**LOC Issuers**") currently hold cash collateral posted by Seller in the amount of \$22,570,494.00, as also shown on Schedule 5.3.8 (the "**Cash Collateral**"). The Parties acknowledge and agree that Purchaser's willingness to enter into this Agreement is premised on Seller's agreement to remit such Cash Collateral either (x) to the applicable Government Entity to replace the existing Financial Assurances or (y) to the Purchaser or its surety providers promptly following (i) the delivery to the Seller of evidence satisfactory to the Seller that appropriate financial assurance has been delivered by or on behalf of the Purchaser to the applicable Government Entity and such financial assurance is acceptable to such Government Entity in respect of the Permits and Transfer Approvals and (ii) delivery to the Seller of evidence satisfactory to the Seller that the existing letters of credit comprising Financial Assurance have been released and that the LOC Issuers have no further right to retain the Cash Collateral under the Cash Collateral Agreement dated January 5, 2016 among the LOC Issuer, Morgan Stanley Senior Funding, Inc., Walter Energy Canada and Brule Coal Partnership (the "**Walter Cash Collateral Agreement**"); *provided however*, that in the event Purchaser provides satisfactory evidence that an existing letter of credit comprising Financial Assurances has been released, and Seller asserts that the LOC Issuer still has a right to retain the Cash Collateral under the Walter Cash Collateral Agreement other than by reason of an act or omission of the Purchaser, including pursuant to Section 5.3.9(x), Seller shall within five (5) Business Days following Purchaser's provision of satisfactory evidence remit to Purchaser by wire transfer of immediately available funds an amount in cash equal to such letter of credit, and upon receipt of such funds Purchaser's rights hereunder with respect to (and only with respect to) such amount of Cash Collateral shall be satisfied. Seller therefore covenants and agrees that it will seek to obtain all required agreements and approvals from the LOC Issuers to remit the Cash Collateral in the manner contemplated by the preceding sentence or in accordance with a Cash Collateral Transfer Agreement to be entered into among Purchaser, Seller and the LOC Issuers on or prior to the Closing (the "**Cash Collateral Transfer Agreement**"). If the Seller is unable to obtain the agreement of the LOC Issuers to the Cash Collateral Transfer Agreement, the Seller shall seek to obtain a Court Order to require that the Cash Collateral be released as contemplated herein and, failing which, the Seller shall deliver any Cash Collateral received by Seller to the Purchaser or as the Purchaser shall direct as soon as reasonably practicable following receipt thereof.

5.3.9 Notwithstanding anything in this Agreement to the contrary, from and after the Closing, Purchaser shall, at its sole cost and expense, (x) until such time as Purchaser has replaced or taken assignment of the Financial Assurances or other required financial assurances, pay or reimburse Seller within five (5) Business Days of receipt of notice from Seller, which such notice shall reference the applicable Financial Assurances, the cost of any premiums or other amounts that become due after the Closing Date with respect to such Financial Assurances, and (y) Purchaser shall reimburse Seller for all out-of-pocket costs and expenses incurred by Seller in connection with any action taken by Seller at the request of Purchaser.

5.3.10 To secure the Purchaser's indemnification obligations to the Seller hereunder and under the Contract Mining Agreement, upon the vesting of the Assets in the Purchaser in accordance with the terms of this Agreement and the Approval and Vesting Order, the Purchaser hereby grants the Seller a first-lien security interest in the Real Property Assets (including all coal leases) and the Mineral Tenures including all accretions, substitutions, replacements, additions and accessions to any of them and all proceeds of any of the foregoing (the "**Indemnification Security Interest**"). The Purchaser acknowledges that value has been given and that the Indemnification Security Interest granted herein shall attach to the Real Property Assets (including all coal leases) and the Mineral Tenures upon the vesting in the Purchaser of such Assets. Upon the Seller's and the Monitor's receipt from the Purchaser of a certificate certifying that (i) all Transfer Approvals and Permits contemplated hereunder and under any Ancillary Agreements have been transferred or issued, as applicable, to the Purchaser, and (ii) there have been no incidents, violations or occurrences during the term of the Contract Mining Agreement that give rise to an unresolved Claim against the Seller (the "**Purchaser's Certificate**"), the Monitor shall thereafter deliver a second Monitor's certificate to the Purchaser certifying that it received the Purchaser's Certificate and the Indemnification Security Interest shall be extinguished. Notwithstanding the foregoing, the Indemnification Security Interest shall not apply to mined or extracted coal.

5.3.11 Purchaser agrees to take such steps in respect of the Contracts as are set out in Schedule 2.1.1(i).

5.4 Pre-Closing Access to Information

5.4.1 Prior to the Closing, the Seller shall (a) give the Purchaser and its authorized representatives, upon advance notice and during regular business hours, access to all books, records, reports, plans, certificates, files, documents and information related to the Assets, personnel, officers and other facilities and properties of the Business; and (b) permit the Purchaser to make such copies and inspections thereof, upon advance notice and during regular business hours, as the Purchaser may reasonably request; provided, however, that any such access shall be conducted at Purchaser's expense, in accordance with Law (including any applicable Bankruptcy Law), under the supervision of the Seller's personnel and in such a manner as to maintain confidentiality and not to interfere with the normal operations of the Business of the Seller; and (c) permit the Purchaser to undertake (at the Purchaser's sole cost and expense) a non-invasive environmental assessment of the Mineral Tenures.

5.4.2 Notwithstanding Section 5.4.1, the Seller shall not be required to disclose any information, records, files or other data to the Purchaser where prohibited by any Laws or which would result in the disclosure of any trade secrets of Third Parties or violate any obligation of the Seller to any Third Party or that would have the effect of causing the waiver of any solicitor-client privilege or subsisting agreement of confidentiality.

5.5 Confidentiality

5.5.1 Prior to the Closing, the Purchaser shall keep confidential all information disclosed to it by the Seller or its agents relating to the Seller or the Business in accordance with the terms of the confidentiality agreement signed by the Purchaser and the Seller (the “**Confidentiality Agreement**”). Such information is confidential and proprietary to the Seller 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 Seller 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 Seller in connection with this Agreement, and not previously made public and shall continue to maintain the confidence of all such information.

5.5.2 After the Closing, the Seller shall keep confidential all Personal Information it disclosed to the Purchaser and all information relating to the Business, except information which:

- (i) is part of the public domain;
- (ii) becomes part of the public domain other than as a result of a breach of these provisions by the Seller; or
- (iii) was received in good faith after Closing from an independent Person who was lawfully in possession of such information free of any obligation of confidence.

5.6 Public Announcements

Prior to the Closing and except as necessary for the Party to make any filing with the Court to obtain approval of the transactions contemplated by this Agreement, no Party shall issue any press release or public announcement concerning this Agreement or the transactions contemplated by this Agreement without obtaining the prior written approval of the other Party, which approval will not be unreasonably withheld or delayed, unless, in the reasonable judgment of the Purchaser or the Seller, disclosure is otherwise required by applicable Law (including the Securities Laws), the CCAA or the Court with respect to filings to be made with the Court in connection with this Agreement or by the Securities Laws of the Securities Commissions or any

stock exchange on which the Purchaser lists securities, provided that the Party intending to make such release shall use commercially reasonable efforts consistent with such applicable Law and the Court requirement to consult with the other Party with respect to the text thereof.

5.7 Further Actions

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

5.8 Transaction Expenses

Except as otherwise provided in this Agreement or the Ancillary Agreements, each of the Purchaser and the Seller shall bear its own costs and expenses (including brokerage commissions, finders' fees or similar compensation, and legal fees and expenses) incurred in connection with this Agreement, the other Transaction Documents and the transactions contemplated hereby and thereby. Without limiting the foregoing, Purchaser shall pay all recording costs associated with transferring the Mineral Tenures in accordance with applicable Laws and all costs associated with obtaining any Transfer Approvals.

5.9 Employees

5.9.1 No less than ten (10) Business Days prior to the Closing Date, the Purchaser shall offer employment in writing to all Employees of the Seller listed on Schedule 5.9.1 who are entitled to offers pursuant to the Collective Agreements or applicable Law and, subject to Section 5.9.2, on terms and conditions of employment which are substantially similar in the aggregate for each such individual Employee as those currently available to such individual Employee and the Purchaser shall recognize all past service of each Employee who becomes a Transferred Employee for all purposes, including participation in any benefit plan, vacation, any other service entitlements and any required notice of termination, termination or severance pay (whether contractual, statutory or at common law). Schedule 5.9.1 shall also include such factual details as are necessary for the Purchaser to calculate a reasonable estimate of severance payments and other Liabilities that will be assumed by Purchaser with respect to each Employee who becomes a Transferred Employee. The Seller and the Purchaser shall exercise commercially reasonable efforts to persuade all such Employees to accept such offers of employment.

5.9.2 For the avoidance of doubt, Purchaser intends to negotiate amendments to the existing Collective Agreements prior to or following the Closing Date. Purchaser shall, prior to the Closing Date, use reasonable efforts to enter into amended or new collective bargaining agreements with the Construction and Allied Workers' Union, Local 68 for the Willow Creek Mine and the United Steel, Paper and Forestry,

Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union for the Wolverine Mine, in each case on terms that are mutually acceptable to the parties and the applicable Employees. Notwithstanding the foregoing, the negotiation of such amended or new collective bargaining agreements shall not be a condition to the Closing.

- 5.9.3 The Seller shall be responsible for all Employee Costs for any Employees other than Transferred Employees to the extent required under applicable Law for any Employees who are not Transferred Employees (including all unpaid wages, salary, incentive compensation, benefits and vacation pay up for each such Employee).
- 5.9.4 The Purchaser shall become the successor employer for Seller's past and present unionized employees for purposes of applicable Laws and, accordingly, shall be bound by and comply with the terms of such Collective Agreements (as such may be amended in accordance with Section 5.9.2) including continuing the employment after the Closing Date of the Employees covered by such Collective Agreements effective from the Closing Date.
- 5.9.5 To the extent that Purchaser makes offers to past employees not covered by Collective Agreements, Purchaser shall make all such offers of employment in accordance with the requirements of the *Employment Standards Act* (British Columbia).

5.10 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 Seller according to the terms of this Agreement, the Purchaser shall promptly deliver such amount or instrument to the Seller; and (b) the Seller receives any payment that is for the account of the Purchaser according to the terms of this Agreement or relates to the Business, the Seller 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 5.10 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.

5.11 Notification of Certain Matters

The Seller shall give written notice to the Purchaser and the Purchaser shall give written notice to the Seller, as applicable, promptly after becoming aware of (a) the occurrence of any event, which would be likely to cause any condition set forth in Article 7 to be unsatisfied in any material respect at any time from the date hereof to the Closing Date; or (b) any notice or other communication from (i) any Person alleging that the Consent of such Person is or may be required in connection with any of the transactions contemplated by this Agreement; or (ii) any Government Entity in connection with any of the transactions contemplated by this Agreement; provided, however, that the delivery of any notice pursuant to this Section 5.11 shall not limit or otherwise affect the remedies available hereunder to the Seller or the Purchaser.

5.12 Risk of Loss

5.12.1 Until the Closing, the Assets will remain at the risk of the Seller. If any destruction or damage in excess of [REDACTED] occurs to the Assets on or before the Closing or if any or all of the Assets are appropriated, expropriated or seized by Government Entity or other lawful authority on or before the Closing, the Seller will give notice thereof to the Purchaser as promptly as practical and the Purchaser will have the option, exercisable by notice to the Seller on or before the Closing:

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

5.13 Seller Activities

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

- (a) carry on the Business in the usual and Ordinary Course and use commercially reasonable efforts to maintain, preserve and protect the Assets in the condition in which they exist on the date hereof;
- (b) refrain from disclaiming any Assigned Contracts without the prior written consent of the Purchaser;
- (c) use its commercially reasonable efforts to preserve the present business operations, organization and goodwill of the Business;
- (d) (A) comply in all material respects with all applicable Law regarding the Business or any Asset, (B) comply in all material respects with contractual obligations applicable to or binding upon it pursuant to any Assigned Contracts (other than those obligations the compliance with which is excused during the CCAA Proceedings), and (C) maintain in full force and effect all Permits and comply with the material terms of each such Permit;
- (e) other than in the sale of Inventories in the Ordinary Course, refrain from assigning, licensing, transferring, conveying, leasing or otherwise disposing of any of the Assets;
- (f) not waive or release any material right of Seller that constitutes an Asset;

- (g) not amend any Collective Agreement or negotiate, enter into or amend any other collective bargaining agreements covering Employees or that would affect the Assets;
- (h) not incur any indebtedness or assume, guarantee or endorse the obligations of any Person, other than in the Ordinary Course or such indebtedness, assumptions, guarantees or endorsements of obligations of any Person that do not constitute Assumed Liabilities;
- (i) not, in any material respect, (A) grant any increase in the wages, salaries, compensation, or other benefits payable to any Employee or (B) increase benefits or obligations with respect to the Employees under any benefit plan, in either case except as required pursuant to the existing terms of any benefit plan or Collective Agreement;
- (j) not enter into any Contract which restricts the ability of the Business to engage in any business in any geographic area or channel of distribution; and
- (k) maintain the Books and Records in the usual and Ordinary Course, and record all transactions on a basis consistent with that practice.

5.14 Transition Services

Purchaser agrees to reasonably make available to the Seller, for so long as the stay remains in place under the CCAA Proceedings (provided that if such period exceeds one year from the Closing Date, the Purchaser's obligations to make Transferred Employees available shall terminate unless the Parties agree to extend that commitment to a later date, such agreement not to be unreasonably withheld), at no cost to Seller and on a timely basis, certain key Transferred Employees as are reasonably necessary to assist the Seller and the Monitor from time to time in the performance of their respective duties and responsibilities pursuant to, and in the exercise of any authority given to them under, applicable Law, the Initial Order, the Approval and Vesting Order, and any claims process Order issued by the Court and other incidental matters pursuant to and in accordance with a mutually acceptable transition services agreement to be entered into prior to the Closing Date; provided, such services shall not exceed ten percent (10%) of any Transferred Employee's regularly scheduled work hours.

ARTICLE 6 TAX MATTERS

6.1 Transfer Taxes

- 6.1.1 The Parties agree that the Purchase Price is exclusive of any Transfer Taxes. Subject to Section 5.8 and Section 6.2, the Purchaser shall promptly pay directly to the appropriate Tax Authority, or promptly reimburse the Seller upon demand and delivery of proof of payment, all applicable Transfer Taxes that are properly payable by the Purchaser or the Seller under applicable Law in connection with this Agreement and the transactions contemplated herein and the other Transaction Documents and the transactions contemplated therein. The Purchaser shall indemnify and save harmless the Seller from and against any Transfer Taxes that

may be imposed on, claimed from or demanded of the Seller, including as a result of the transactions contemplated hereby or as a result of any elections made or omitted to be made or any refusal of any Government Entity to accept any such election.

- 6.1.2 If the Purchaser wishes to claim any exemption relating to, or a reduced rate of, Transfer Taxes, in connection with this Agreement or the transactions contemplated herein or the other Transaction Documents and the transactions contemplated therein, the Purchaser shall be solely responsible for ensuring that such exemption or election applies and, in that regard, shall provide the Seller prior to Closing with its permit number, GST/HST number, or other similar registration numbers and/or any appropriate certificate of exemption, election and/or other document or evidence to support the claimed entitlement to such exemption or reduced rate by the Purchaser. The Seller shall make commercially reasonable efforts to cooperate to the extent necessary to obtain any such exemption or reduced rate.

6.2 Tax Elections

At the Purchaser's sole expense, the Purchaser and the Seller shall, where such election is available, jointly execute an election under Section 167 of Part IX of the *Excise Tax Act* (Canada) in the forms prescribed for such purposes such that the sale of the Assets by the Seller will take place without payment of any GST/HST. The Purchaser shall file the election forms referred to above with the proper Tax Authority, together with the Purchaser's GST/HST return for its GST/HST reporting period during which the transaction of purchase and sale contemplated herein occurs. Notwithstanding such election, in the event that it is determined by the CRA that there is a GST/HST liability of the Purchaser to pay GST/HST on all or part of the Assets sold pursuant to this Agreement, the Parties agree that such GST/HST, as the case may be, shall, unless already collected from the Purchaser and remitted by the Seller, be forthwith remitted by the Purchaser to the CRA, as the case may be. If it is determined that the elections are not available, the Seller agrees to provide reasonable cooperation to the Purchaser to expedite the Purchaser's claims for input tax credits, input tax refunds or rebates of GST/HST. Regardless of whether an election is made pursuant to this Section 6.2, the Seller agrees that it shall collect no GST/HST in respect of any real property acquired by the Purchaser so long as the notification requirement in Section 3.4 of this Agreement is satisfied.

6.3 Tax Characterization of Payments Under This Agreement

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

6.4 Records

- 6.4.1 After the Closing Date, the Purchaser and the Seller will make available to the other, as reasonably requested, and to any Tax Authority, all information, records or documents relating to Liability for Taxes with respect to the Assets, the Assumed Liabilities, the Business for all periods prior to or including the Closing Date, and will preserve such information, records or documents until the expiration of any applicable statute of limitations or extensions thereof. In the event that one Party

needs access to records in the possession of the other Party relating to any of the Assets, the Assumed Liabilities, the Business for purposes of preparing Tax Returns or complying with any Tax audit request, subpoena or other investigative demand by any Tax Authority, or for any other legitimate Tax-related purpose not injurious to the other Party, the other Party will allow representatives of the first Party, at the first Party's sole expense, access to such records during regular business hours at the other Party's place of business for the sole purpose of obtaining information for use as aforesaid and will permit the other Party to make extracts and copies thereof as may be necessary or convenient.

- 6.4.2 The Purchaser shall take all reasonable steps to preserve and keep the Books and Records delivered to it in connection with the completion of the transactions contemplated by this Agreement, including in respect of the conduct of the Business prior to the date of the Initial Order, for a period of six years from the Closing Date, or for any longer period as may be required by any Law or Government Entity, and shall make such records available to the Seller, the Monitor, the CRO or any trustee in bankruptcy of the Seller on a timely basis, as may be required by it, including in connection with any administrative or legal proceeding that may be initiated by, on behalf of, or against the Seller.

6.5 Property Tax Matters

A portion of the Purchase Price equal to the amounts payable to the applicable Tax Authority for the unpaid portion of Real Property Taxes in respect of Assets for the pre-Closing period shall be retained by the Monitor on behalf of the Seller for remittance to the applicable Tax Authorities.

ARTICLE 7 CONDITIONS TO THE CLOSING

7.1 Conditions to Each Party's Obligation

The Parties' obligation to effect the Closing is subject to the satisfaction or the express written waiver of the Parties, at or prior to the Closing, of each of the following conditions:

- (a) the process to obtain the Transfer Approvals shall have been commenced pursuant to Section 5.3;
- (b) there shall be in effect no Law or Order prohibiting the consummation of the transactions contemplated hereby that has not been withdrawn or terminated;
- (c) none of the Parties nor any of their respective directors, officers, employees or agents, will be a defendant or third party to or threatened with any litigation or proceedings before any Government Entity which could prevent or restrict that Party from performing any of its obligations in this Agreement or any Transaction Document;
- (d) all Consents listed in Schedule 7.1(d) or waivers thereof shall have been obtained ("**Required Consents**"); and

- (e) the Approval and Vesting Order shall have been entered, in form and substance acceptable to the Purchaser and the Seller, and shall have become a Final Order.

7.2 Conditions to the Seller's Obligation

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

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

7.3 Conditions to Purchaser's Obligation

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

- (a) except for any failure to be true and correct that has not had a material adverse effect on the ability of the Seller to consummate the transactions contemplated by this Agreement, each representation and warranty contained in Article 4 shall be true and correct (i) as if restated on and as of the Closing Date; or (ii) if made as of a date specified therein, as of such date. The Purchaser shall have received a certificate of the Seller to such effect signed by a duly authorized officer thereof;
- (b) the covenants, obligations and agreements contained in this Agreement to be complied with by the Seller on or before the Closing shall have been complied with in all material respects. The Purchaser shall have received a certificate of the Seller to such effect signed by a duly authorized officer thereof; and
- (c) each of the deliveries required to be made to the Purchaser pursuant to Section 2.3.2 shall have been so delivered,

ARTICLE 8 TERMINATION

8.1 Termination

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

- (a) by mutual written consent of the Seller and the Purchaser;
- (b) by either Party, upon written notice to the other:
 - (i) in the event of a material breach by such other Party of such other Party's representations, warranties, agreements or covenants set forth in this Agreement, which breach (A) would result in a failure of the conditions to Closing set forth in Section 7.2 or Section 7.3, as applicable; and (B) is not cured within seven days from receipt of a written notice from the non-breaching Party;
 - (ii) if a Government Entity issues an Order prohibiting the transactions contemplated hereby;
 - (iii) if the Approval and Vesting Order is not entered by August 25, 2016; or
- (c) if the Closing does not take place by September 15, 2016;

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

8.2 Effects of Termination

If this Agreement is terminated pursuant to Section 8.1, all further obligations of the Parties under or pursuant to this Agreement shall terminate without further Liability of any Party to the other except for the provisions of Section 1.1 (Definitions), Section 1.2 (Interpretation), Section 2.2.3 (Deposit), Section 4.6 (No Brokers) Section 5.5 (Confidentiality), Section 5.6 (Public Announcements), Section 5.8 (Transaction Expenses), Section 8.2 (Effects of Termination), Section 10.1 (Monitor's Capacity), Section 10.2 (Chief Restructuring Officer), Section 10.3 (Releases), Section 10.6 (Remedies) Section 10.7 (No Third-Party Beneficiaries) Section 10.9 (Successors and Assigns), Section 10.10 (Governing Law; Submission to Jurisdiction), Section 10.11 (Notices) and Section 10.16 (Entire Agreement).

ARTICLE 9 POST-CLOSING ACTIVITIES AND AGREEMENTS

9.1 Responsibility for Services to the Mines

All charges for water, electricity, natural gas, telephone, sewer, trash disposal and other recurring services provided to the Mines which relate to such services provided prior to the

Closing Date will be for the account of the Seller, and all charges for such services provided on and after the Closing Date will be for the account of Purchaser, regardless of the date on which the invoice or other statement for such services is rendered.

9.2 General Post-Closing Access to the Assets

In addition to the other provisions hereof granting to the Seller access to the Mines after the Closing Date for certain specified purposes, the parties agree that upon reasonable prior notice to Purchaser, the Seller will be given reasonable access to the Mines and to the Assets during normal business hours as necessary to enable the Seller to carry out or respond to day-to-day operational requirements, reporting requirements of Government Entities, removal of Excluded Assets from the Mines, ongoing tax and accounting functions and obligations, and other activities of the Seller with respect to the sale of the Assets and the winding down of the Seller's responsibilities with respect thereto. All such activities of the Seller will be conducted in a manner which complies with Purchaser's safety and operating procedures and in a manner which will not interfere unreasonably with the activities of Purchaser. All such activities of the Seller shall only be conducted in the presence of a representative of the Purchaser.

9.3 Post-Closing Cooperation

Notwithstanding the Purchaser's commercially reasonable efforts, in the event the Transfer Approvals cannot be completed, or the issuance of new Permits cannot be achieved prior to the Closing pursuant to Section 5.3.5 above, the Parties shall cooperate after the Closing Date for the purpose of giving effect to the Transfer Approvals or achieving the issuance of new Permits and thereafter providing the complete, immediate and unrestricted release of the Seller's liabilities with respect thereto. In furtherance thereof, each Party shall prepare and submit such documents and applications as shall be necessary or appropriate, and cooperate with reasonable requests of the Government Entities to effectuate the Transfer Approvals or to achieve the issuance of new Permits.

ARTICLE 10 MISCELLANEOUS

10.1 Monitor's Capacity

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

10.2 Chief Restructuring Officer

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

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

10.3 Releases

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

10.4 No Survival of Representations and Warranties or Covenants

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

10.5 Purchaser Disclosure Supplements

From time to time prior to the Closing, the Purchaser shall have the right to supplement or amend the Schedules hereto with respect to any matter that, if existing, occurring or known at the date of this Agreement, would have been required to be set forth or described in the respective Schedules. The Schedules shall be deemed amended by all such supplements and amendments for all purposes. Without limiting the generality of the foregoing, from the date hereof until the Closing Date, Purchaser shall have the right, upon written notice to Seller, to exclude any Contract that is a "designated assigned contract" on listed on Schedule 2.1.1(i) from the Assigned Contracts, or supplement the list of Assigned Contracts to include any Contract that is related to the Business that should have been listed on Schedule 2.1.1(i) for any reason, provided however that (i) there shall be no reduction to the Purchase Price in respect of any such exclusion (other than in respect of any Cure Cost associated with such Contract), and the Cash Purchase Price shall be increased if so specified with respect to a designated assigned contract as listed on Schedule 2.1.1(i); and (ii) the Purchaser shall have no right (A) to exclude any contract that is a "designated assigned contract" from the list of Assigned Contracts after Purchaser has made a request pursuant to Section 2.3.4(b) that the Seller seek a Court Order authorizing the assignment of such Assigned Contract and (B) to request pursuant to Section 2.3.4(b) that the Seller seek a Court Order authorizing the assignment of any supplemental Assigned Contract that

is added after the later of August 20, 2016 or the date that is 12 days prior to the Closing Date. Any Contract so excluded by Purchaser shall be deemed to no longer be an Assigned Contract and shall be deemed an Excluded Asset. Any disclosure schedules hereto shall be amended to reflect any changes made pursuant to this Section 10.5.

10.6 Remedies

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

10.7 No Third-Party Beneficiaries

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

10.8 Consent to Amendments; Waivers

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

10.9 Successors and Assigns

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

10.10 Governing Law; Submission to Jurisdiction

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

10.10.2 To the fullest extent permitted by applicable Law, each Party (i) agrees that any Claim, Action or proceeding by such Party seeking any relief whatsoever arising

out of, or in connection with, this Agreement or the transactions contemplated hereby shall be brought only in the Court; (ii) agrees to submit to the nonexclusive jurisdiction of the Court for purposes of all legal proceedings arising out of, or in connection with, this Agreement or the transactions contemplated hereby; (iii) waives and agrees not to assert any objection that it may now or hereafter have to the laying of the venue of any such Action brought in such a Court or any Claim that any such Action brought in such a Court has been brought in an inconvenient forum; (iv) agrees that mailing of process or other papers in connection with any such Action or proceeding in the manner provided in Section 10.11 or any other manner as may be permitted by Law shall be valid and sufficient service thereof; and (v) agrees that a judgment in any such Action or proceeding, once finally determined, settled or adjudicated, and all rights to appeal, if any, have been exhausted or have expired, shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Law.

10.11 Notices

All demands, notices, communications and reports provided for in this Agreement shall be deemed given if in writing and delivered, if sent by facsimile, electronic mail, courier or sent by reputable overnight courier service (delivery charges prepaid) to any Party at the address specified below, or at such other address, to the attention of such other Person, and with such other copy, as the recipient Party has specified by prior written notice to the sending Party pursuant to the provisions of this Section 10.11.

(a) If to the Purchaser, to:

Conuma Coal Resources Limited
15 Appledore Lane
P.O. Box 87
Natural Bridge, Virginia 24578
Attention: Thomas M. Clarke

Facsimile: []
Email: tom.clarke@kissito.org

With copies (which shall not constitute notice) to:

[]

Conuma Coal Resources Limited
P.O. Box 305
Madison, WV 25130
Attention: Ken McCoy

Facsimile: []
Email: kmccoy@erpfuels.com

(b) If to the Seller, to:

Bill Aziz
WALTER ENERGY CANADA HOLDINGS, INC.
PO Box 2140
235 Front Street
Tumbler Ridge, BC V0C 2W0
Email: baziz@bluetreadvisors.com

And to:

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

With a copy to the Monitor:

Philip J. Reynolds and Anthony Tillman
KPMG INC.
Bay Adelaide Centre
333 Bay Street, Suite 4600
Toronto, ON M5H 2S5
Facsimile: 416.777.3364 and 604.691.3036
Email: pjreynolds@kpmg.ca and atillman@kpmg.ca

and a copy to counsel to the Monitor:

Wael Rostom and Caitlin Fell
McMillan LLP
181 Bay Street, Suite 440
Toronto, ON M5J 2T3
Facsimile: 416.865.7048
Email: wael.rostom@mcmillan.ca and caitlin.fell@mcmillan.ca

With a copy to the Financial Advisor:

Steve Zelin and Kerry Greer
PJT PARTNERS INC.
280 Park Avenue
New York, NY 10017
Facsimile: []
Email: Zelin@pjtpartners.com and Greer@pjtpartners.com

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

10.12 Schedules

The Schedules attached hereto constitute a part of this Agreement and are incorporated into this Agreement for all purposes as if fully set forth herein.

10.13 Counterparts

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

10.14 No Presumption

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

10.15 Severability

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

10.16 Entire Agreement

The Transaction Documents set forth the entire understanding of the Parties relating to the subject matter thereof, and all prior or contemporaneous understandings, agreements,

representations and warranties, whether written or oral, are superseded by the Transaction Documents, and all such prior or contemporaneous understandings, agreements, representations and warranties are hereby terminated. In the event of any irreconcilable conflict between this Agreement and any of the other Transaction Documents, the provisions of this Agreement shall prevail, regardless of the fact that certain Ancillary Agreements may be subject to different governing Laws (unless the other Transaction Documents expressly provides otherwise).

10.17 Guaranty

To induce Seller to enter into this Agreement, each Guarantor hereby unconditionally and irrevocably guarantees (the “**Guaranty**”), as a principal and not as a surety, to Seller and its successors and assigns the obligations of Purchaser hereunder and under each other agreement, document or instrument contemplated hereby or thereby. This Guaranty shall be a continuing guarantee and shall be a guarantee of payment and performance and not merely collection. Suit may be brought or demand may be made against Purchaser or any Guarantor, or against any of them, separately or together, without impairing the rights or remedies of Seller. Seller shall not be required to make any demand upon Purchaser, or to pursue or exhaust all of Seller’s rights or remedies against Purchaser, prior to making any demand on or invoking any of Seller’s rights and remedies against any Guarantor. Each Guarantor hereby agrees that neither Seller’s rights or remedies nor any Guarantor’s obligations under the terms of this Guaranty shall be released, diminished, impaired, reduced or affected by any claim or defense that this Guaranty was made without consideration or is not supported by adequate consideration. Seller may, at any time and from time to time, without the consent of, or notice to, any Guarantor, and without discharging any Guarantor from any of its obligations hereunder: (a) amend, modify, alter or supplement this Agreement or any of the other Transaction Documents, in accordance with its or their terms; and (b) exercise, or refrain from exercising, any rights against Purchaser, any Guarantor or any other Person. This Guaranty is binding not only on each Guarantor, but also on each Guarantor’s successors and assigns.

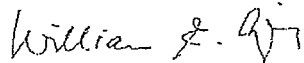
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IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date first written above.

SELLER:

WALTER ENERGY CANADA HOLDINGS, INC.

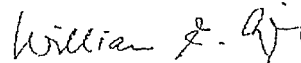
By:



Name: William E. Aziz
Title: Chief Restructuring
Advisor

WALTER CANADIAN COAL ULC

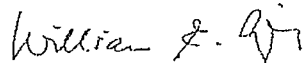
By:



Name: William E. Aziz
Title: Chief Restructuring Advisor

WOLVERINE COAL ULC

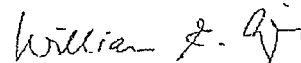
By:



Name: William E. Aziz
Title: Chief Restructuring
Advisor

BRULE COAL ULC

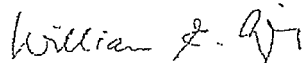
By:



Name: William E. Aziz
Title: Chief Restructuring Advisor

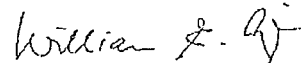
WILLOW CREEK COAL ULC

By:



PINE VALLEY COAL, LTD.

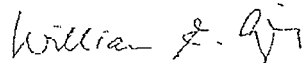
By:



Name: William E. Aziz
Title: Chief Restructuring Advisor

0541237 B.C. LTD.

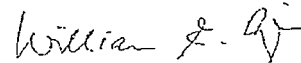
By:



Name: William E. Aziz
Title: Chief Restructuring
Advisor

WALTER CANADIAN COAL PARTNERSHIP, by its General Partner, WALTER CANADIAN COAL ULC

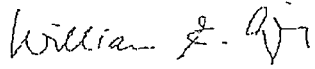
By:



Name: William E. Aziz
Title: Chief Restructuring Advisor

**WOLVERINE COAL
PARTNERSHIP, by its General
Partner, WOLVERINE COAL ULC**

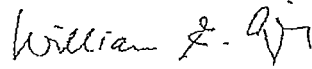
By:



Name: William E. Aziz
Title: Chief Restructuring
Advisor

**BRULE COAL PARTNERSHIP, by its
General Partner, BRULE COAL ULC**

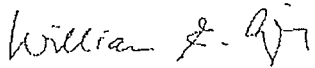
By:



Name: William E. Aziz
Title: Chief Restructuring Advisor

**WILLOW CREEK COAL
PARTNERSHIP, by its General
Partner, WILLOW CREEK COAL
ULC**

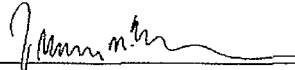
By:



Name: William E. Aziz
Title: Chief Restructuring
Advisor

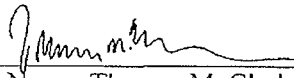
PURCHASER:

CONUMA COAL RESOURCES LIMITED

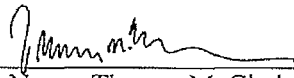
By: 
Name: Thomas M. Clarke
Title: Managing Member and Treasurer

GUARANTORS:

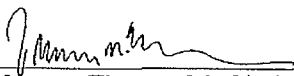
ERP COMPLIANT FUELS, LLC

By: 
Name: Thomas M. Clarke
Title: Managing Member and Treasurer

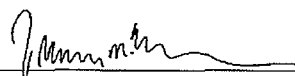
ERP COMPLIANT COKE, LLC

By: 
Name: Thomas M. Clarke
Title: Managing Member and Treasurer

SENECA COAL RESOURCES, LLC

By: 
Name: Thomas M. Clarke
Title: Managing Member and Treasurer

SEMINOLE COAL RESOURCES, LLC

By: 
Name: Thomas M. Clarke
Title: Managing Member and Treasurer

Schedule A

List of Seller Entities

1. Walter Canadian Coal ULC
2. Wolverine Coal ULC
3. Brule Coal ULC
4. Willow Creek Coal ULC
5. Pine Valley Coal, Ltd.
6. 0541237 B.C. Ltd.
7. Walter Canadian Coal Partnership
8. Wolverine Coal Partnership
9. Brule Coal Partnership
10. Willow Creek Coal Partnership

NO. S-1510120
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

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

AND

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

PETITIONERS

AFFIDAVIT #16 OF WILLIAM E. AZIZ

OSLER HOSKIN & HARCOURT LLP

Barristers & Solicitors
1055 West Hastings Street
Suite 1700, The Guinness Tower
Vancouver, BC V6E 2E9

Tel. No. 416.862.4924

Fax No. 416.862.6666

Client Matter No. 1164807