

This is the 15th Affidavit of  
William E. Aziz in this case and  
was made on October 3, 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 (i) approving the Settlement Term Sheet Re Plan of Compromise and Arrangement (the "**Term Sheet**"), in the form substantially attached hereto as Exhibit "A", among the members of the New Walter Canada Group, Warrior Met Coal, LLC ("**Warrior**"), and the United Mine Workers of America 1974 Pension Plan and Trust (the "**1974 Plan**"); (ii) authorizing and directing the New Walter Canada Group to comply with their obligations under the Term Sheet; and (iii) directing Warrior and the 1974 Plan to comply with their obligations under the Term Sheet.
  - (b) An Order authorizing but not requiring Cambrian Energybuild Holdings ULC ("**Cambrian**") to advance up to a further £300,000 (for an aggregate maximum of £900,000) to Energybuild Group Limited ("**Energybuild Group**") or Energybuild Ltd. ("**Energybuild**"), on a secured basis, to provide working capital for Energybuild.
  - (c) An Order extending the stay of proceedings in respect of the New Walter Canada Group to December 15, 2017.
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:

<b>I.</b>	<b>Activities Since Last Update .....</b>	<b>3</b>
<b>II.</b>	<b>THE TERM SHEET .....</b>	<b>5</b>
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**I. ACTIVITIES SINCE LAST UPDATE**

**A. Sale of the BelSax Assets**

7. As described in my eleventh affidavit sworn on June 27, 2017 (the "**Eleventh Aziz Affidavit**"), New Walter Canadian Coal Corp. entered into an agreement with Peace River Coal Inc. ("**PRC**") dated as of May 31, 2017 (the "**BelSax APA**") that contemplated the sale of the New Walter Canada Group's 50 percent interest in Belcourt Saxon Limited Partnership and Belcourt Saxon Coal Ltd., and certain related assets (collectively, the "**BelSax Assets**"). The BelSax APA and the transaction contemplated therein was approved by the Order of this Honourable Court made July 11, 2017.

8. The BelSax APA provided a number of conditions that had to be complied with at or prior to closing in Articles 5 and 7, all of which have now been satisfied or waived by the parties. On August 4, 2017, the Monitor delivered its certificate to PRC and New Walter Canada stating that (i) PRC had paid and the Monitor had received the purchase price; (ii) the conditions set out in Articles 5 and 7 had been satisfied or waived; and (iii) the transaction contemplated in the BelSax APA had been completed.

**B. Update Regarding Other Matters**

9. Since May 18, 2017, the date of the tenth affidavit I swore in these CCAA proceedings, the New Walter Canada Group has been engaged in the following activities:

- (a) Engaged in extensive negotiations with the 1974 Plan and Warrior regarding the 1974 Plan's claim and reached an agreement to settle the 1974 Plan Claim, which is discussed in greater detail below.
- (b) Negotiated and completed the sale of the BelSax Assets.
- (c) Made a number further advances in the aggregate amount of £350,000 to Energybuild Group, on a secured basis, to provide it with working capital pursuant to the authorization granted in the Order of this Honourable Court made May 30, 2017.
- (d) Engaged in negotiations regarding the satisfaction of certain conditions precedent for the sale of Energybuild and certain of its affiliates.
- (e) Attended to other matters relating to the operation of Energybuild.
- (f) Continued to conduct the claims process established by the Order of this Honourable Court made on August 16, 2016 (the "**Claims Process**"), including engaging in discussions with parties holding disputed claims regarding the process for the advancing those claims.
- (g) Consulted with the Monitor regarding the acceptance of the claim of Pelly Construction Ltd. in connection with the demobilization of certain equipment and camp facilities previously located on mine sites sold to Conuma.
- (h) Consulted with the Monitor regarding the acquisition by CRG Financial LLC of certain claims of the former employees of the Wolverine mine.
- (i) Commenced the claims process established by the Order of this Honourable Court made August 15, 2017 (the "**Unresolved Restructuring Claims Process**").

- (j) Disclaimed certain cooperation agreements with First Nations, to the extent that those agreements were not assumed by Conuma Coal Resources Limited, in furtherance of the Unresolved Restructuring Claims Process.
- (k) Arranged for directors and officers liability insurance for the New Walter Canada Group to be extended to September 30, 2018, with certain provisions in the event that the CCAA proceedings are complete in advance of that date.

## II. THE TERM SHEET

10. The Term Sheet is the result of lengthy arm's length negotiations between the New Walter Canada Group, the 1974 Plan and Warrior, and is a full and final settlement of all outstanding issues among those parties in these CCAA proceedings. As described in greater detail below, the Term Sheet provides for, among other things, (i) a settlement and allowance of the claims advanced by Warrior in these CCAA proceedings; (ii) a settlement of the claim advanced by the 1974 Plan in these CCAA proceedings, and related litigation and costs; (iii) the principal terms of a plan of compromise or arrangement ("**Plan**") to be brought forward by the New Walter Canada Group for this Honourable Court's approval provided that certain pre-conditions are satisfied; and (iv) releases in respect of claims asserted by Warrior and the 1974 Plan against the Walter UK Group<sup>1</sup> to permit a sale of the Walter UK Group or any of its assets.

11. Any capitalized terms used in this section that are not otherwise defined have the meaning given to them in the Term Sheet.

### A. Settlement of Warrior's Claims

12. The Term Sheet provides for a settlement and allowance of the following two claims asserted by Warrior in these CCAA proceedings: (i) a claim in respect of certain shared services provided by Walter US

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<sup>1</sup> The Walter UK Group consists of Energybuild Group, Energybuild Holdings Limited, Energybuild Limited, Energybuild Mining Limited, Energybuild Opencast Limited, and Mineral Extraction and Handling Limited, of all of which are directly or indirectly owned by the New Walter Canada Group.

to the Old Walter Canada Group (the “**Shared Services Claim**”); and (ii) a claim in relation to accrued but unpaid interest owing in respect of a promissory note among Walter Energy, Inc. and Walter Energy Canada dated April 1, 2011 and related documents, which claim was compromised pursuant to an order of the Court pronounced December 21, 2016 and pursuant to a proposal made by Walter Canada under the *Bankruptcy and Insolvency Act* and approved by the Court on December 21, 2016 (the “**Hybrid Debt Claim**”).

13. Under the Term Sheet, Warrior’s Shared Services Claim will be an Allowed Claim in the amount of CDN\$9,892,193.32, and the Hybrid Debt Claim will be an Allowed Claim that shall be further compromised such that it is equal to the amount of the Available Net Proceeds (as described below). Further, in the Term Sheet, Warrior expressly consents to the use of the Available Net Proceeds in the manner described below.

**B. Settlement of the 1974 Plan’s Claim, the Appeal and Related Cost Awards**

14. The 1974 Plan has been asserting a Claim throughout the CCAA Proceedings (the “**1974 Plan Claim**”) pursuant to certain “controlled group” provisions of the US Employee Retirement Income Security Act of 1974 (“**ERISA**”). The Term Sheet provides that in consideration of the 1974 Plan abandoning its appeal (the “**Appeal**”) from the Order made by this Honourable Court on May 1, 2017 ruling that the 1974 Plan did not have a valid Claim (the “**May 1 Order**”), the New Walter Canada Group will pay the first CDN\$13 million of Available Net Proceeds to the 1974 Plan and Warrior shall receive the remainder (if any) of Available Net Proceeds (after the payment of certain other amounts described below) in respect of the Hybrid Debt Claim.

15. Further, in the Term Sheet the New Walter Canada Group agrees that, in consideration of the abandonment of the Appeal by the 1974 Plan, the New Walter Canada Group will (i) not pursue costs against the 1974 Plan, including costs in regard to the January 12, 2017 decision, the May 1 Order, the application for leave to appeal the May 1 Order or the Appeal; and (ii) pay the costs of the United Steelworkers Local 1-424 fixed at CDN\$75,000, from the estate (the “**USW Amount**”).

16. However, the 1974 Plan’s agreement to abandon the Appeal is contingent upon payment of CDN\$13 million to the 1974 Plan. The 1974 Plan will adjourn the Appeal (so that the Unresolved Restructuring Claims Process can continue) and will abandon the Appeal if it is determined by the New

Walter Canada Group and the Monitor, following solicitation of Unresolved Restructuring Claims in the Unresolved Restructuring Claims Process. The payment of the CDN\$13 million will only be paid to the 1974 Plan provided there is sufficient funds to pay this amount after deducting (i) all payments and taking all reserves required to administer and wind down the estate as contemplated, (ii) payment of the USW Amount and (iii) payment in full of all Allowed Claims, including the Shared Services Claim but excluding the Hybrid Debt Claim (the “**Available Net Proceeds**”). The Appeal is to be abandoned following payment to the 1974 Plan of CDN\$13 million.

17. In the event that additional Claims are filed and become Allowed Claims such that the New Walter Canada Group and the Monitor determine and notify the 1974 Plan in writing that the amount of the Available Net Proceeds is insufficient to pay CDN\$13 million to the 1974 Plan, then the Term Sheet provides that (i) the 1974 Plan may bring the Appeal at that time; and (ii) the New Walter Canada Group and the Monitor may seek costs against the 1974 Plan, including in regard to the January 12, 2017 decision, the May 1 Order, the application for leave to appeal the May 1 Order, or the Appeal.

18. Under the Term Sheet, the 1974 Plan Claim shall not become an Allowed Claim unless the 1974 Plan brings forward the Appeal in the manner permitted by the Term Sheet and a final order is issued declaring that the 1974 Plan Claim is an Allowed Claim in respect of the New Walter Canada Group.

19. The Term Sheet also provides that the director of each of the corporations composing New Walter Canada (who was also the director of the entities composing Old Walter Canada) shall be paid an aggregate amount of US\$250,000 from the Available Net Proceeds in consideration for his commitment to Walter Canada and New Walter Canada throughout the CCAA Proceedings. I believe this amount is fair and reasonable given the commitment made by the director and the risks that he has undertaken in the fulfillment of his duties.

### **C. Plan**

20. Upon the completion of the Unresolved Restructuring Claims Process or such earlier date as the New Walter Canada Group and the Monitor may decide (after consultation with Warrior), the New Walter Canada Group intends to bring forward a motion seeking Court approval for a Plan that contains the

principal terms set out in the Term Sheet. However, the New Walter Canada Group will bring this motion only if the New Walter Canada Group and the Monitor are satisfied that sufficient funds are available to address all remaining matters in the CCAA Proceedings and the orderly wind-down or other process for the Walter UK Group.

21. The Terms that will be included in the proposed Plan are set out in the Term Sheet and include, among others, the following:

- (a) It is anticipated that Warrior, as the sole Claimant with a Claim that is to be compromised under a plan of compromise and arrangement (the "**Plan**"), shall be the sole Claimant entitled to vote on the Plan.
- (b) The Plan will provide for the payment in full in cash of all Claims that become Allowed Claims from time to time other than the Hybrid Debt Claim, provided that the New Walter Canada Group and the Monitor determine:
  - (i) that the New Walter Canada Group has an amount sufficient to pay in full in cash all Allowed Claims incorporated by reference in Schedule "A" of the Term Sheet and the full amount of all Claims that become Allowed Claims after the date of the Term Sheet;
  - (ii) if there is an interim distribution, that the New Walter Canada Group has an amount sufficient to pay in full in cash any Claim that is the subject of an unresolved Notice of Dispute (each a "**Disputed Claim**") if all such Disputed Claims were to become Allowed Claims; and
  - (iii) that the New Walter Canada Group has retained an amount estimated by the New Walter Canada Group and the Monitor, in their sole discretion, to be sufficient to address professional fees and other costs necessary for the effective administration of all remaining matters in connection with these CCAA



proceedings, and to address the orderly wind-down or other process acceptable to the New Walter Canada Group for the Walter UK Group.

22. Further, the Term Sheet provides that the 1974 Plan will support the New Walter Canada Group in obtaining Court approval and implementation of the Plan and that it will not take any step or any action (or omit to take any step or action) that is inconsistent with obtaining the Court's approval of the Plan or with the New Walter Canada Group implementing the Plan.

**D. Release of Claims against the Walter UK Group**

23. In order to facilitate the sale of the Walter UK Group, any entity included within that Group or any of their respective assets (an "**EB Sale**"), the Term Sheet provides for the following releases:

- (a) The Term Sheet provides that the 1974 Plan fully and finally compromises, resolves, releases and settles the claim asserted by the 1974 Plan against the Walter UK Group under the "controlled group" provisions of ERISA (the "**1974 Plan UK Claim**"), and any other claim it may have against the Walter UK Group in respect of (i) any matter relating to the 1974 Plan's dealings with Walter US and the Old Walter Canada Group, and (ii) any matter relating to the 1974 Plan's dealings with any applicable Walter UK entity that relates to the period prior to the date of any EB Sale. Further, the Term Sheet provides that the 1974 Plan agrees to enter into an agreement with any Walter UK Group entity on or prior to any EB Sale as evidence of such release.
- (b) The Term Sheet provides that Warrior fully and finally compromises, resolves, releases and settles the claim based on certain intercompany receivables owing to Walter US by Energybuild Group (the "**Warrior UK Claim**") as well as any other claim it may have against the Walter UK Group in respect of (i) any matter relating to Warrior's dealings with Walter US and the Old Walter Canada Group, and (ii) any matter relating to Warrior's dealings with any applicable Walter UK Group entity that relates to the period prior to the date of any EB Sale. Further, the Term Sheet provides that Warrior agrees to enter into an

agreement with any Walter UK Group entity on or prior to any EB Sale as evidence of such release.

24. The releases noted above shall be provided irrespective of whether there is at least Available Net Proceeds of CDN\$13 million available for payment to the 1974 Plan or the Appeal is abandoned.

25. The Term Sheet provides that the proceeds from any EB Sale shall be applied as follows:

- (a) First, to repay any amounts advanced to or for the benefit of the Walter UK Group on a secured basis by any member of the New Walter Canada Group pursuant to any order of the Court made in these CCAA proceedings.
- (b) Second, to wind up any Walter UK Group entity that is not the subject of an EB Sale in a cost effective and tax efficient manner that protects the Walter UK Group's directors and officers from liability to the fullest extent possible, at the discretion of the New Walter Canada Group.
- (c) Third, if any amounts remain after the payments contemplated in paragraph (a) and (b) above, such amounts shall be distributed to Warrior in respect of the Warrior UK Claim, up to the maximum amount of £4,666,779.00.
- (d) Fourth, if any amounts remain after the payment contemplated in paragraph (c) above, such amounts shall be distributed to Cambrian on account of its equity interest in Energybuild Group.

26. In my view and in the view of the New Walter Canada Group, the Term Sheet and the Settlement contemplated therein is a good faith means to resolve the disputes between the New Walter Canada Group, Warrior and the 1974 Plan in these Proceedings, and is in the best interests of the New Walter Canada Group and its stakeholders.

27. I understand that the Monitor supports the Settlement and the distribution set out in the Term Sheet, and that it supports the New Walter Canada Group's motion seeking Court approval for the Term Sheet.

### III. APPROVAL OF FURTHER ADVANCES TO THE WALTER UK GROUP

28. Pursuant to the authorization granted by the Orders of this Honourable Court made December 21, 2016, and May 30, 2017, Cambrian loaned £600,000 to the Energybuild Group, on a secured basis, to provide working capital to Energybuild while efforts were made to sell the Walter UK Group or its assets. All the members of the Walter UK Group have guaranteed the loan and have granted security for those guarantees.
29. As described in my eighth affidavit sworn on December 20, 2016 in these proceedings (the "**Eighth Aziz Affidavit**"), Energybuild is the operating company that owns and operates the Aberpergym underground coal mine located at the Neath Valley in Wales. The mine is currently in care and maintenance.
30. The New Walter Canada Group and the directors of the Walter UK Group have been analyzing Energybuild's business and seeking opportunities to sell Energybuild and its affiliates or their assets. As described in the Eighth Aziz Affidavit, an interested party has come forward regarding a potential sale of Energybuild and certain of its affiliates. The interested party remains interested in acquiring these assets, but has requested that certain conditions be satisfied in respect of claims that may be made against Energybuild and any of its affiliates that may be acquired.
31. The New Walter Canada Group and the Walter UK Group have engaged in discussions with the relevant persons in respect of their claims in an effort to satisfy the interested party's requests. The Settlement Term Sheet addresses the principal conditions precedent that relate to the sale of Energybuild and certain of its affiliates. Further time is needed to negotiate the terms of a sale with the interested party and to address certain outstanding issues in an effort to achieve a resolution that is in the best interests of the New Walter Canada Group, the Walter UK Group and their respective stakeholders.
32. The New Walter Canada Group has been provided with cash flow forecasts for Energybuild that indicate a cash need of approximately £300,000 through to the end of the proposed extended Stay Period. As such, the New Walter Canada Group is seeking this Honourable Court's authorization

to advance up to an additional £300,000 (for an aggregate maximum of £900,000) on a secured basis to the Walter UK Group to fund Energybuild Ltd.'s working capital needs while negotiations regarding a potential sale continue.

33. 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. STAY EXTENSION**

34. 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.

35. The New Walter Canada Group is requesting an extension of the Stay Period until and including December 15, 2017. This extension is being requested to allow the New Walter Canada Group to complete the Unresolved Restructuring Claims Process, address the claim of Kevin James for certain royalty payments and any remaining claims not yet fully addressed under the Claims Process, sell Energybuild (if possible), and to develop and bring before the court for approval a plan of compromise and arrangement to implement the Settlement Term Sheet and addresses the distribution of the proceeds and the settlement of the 1974 Plan Claim.

36. 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.

- 37. The New Walter Canada Group has been proceeding in good faith and with due diligence in these proceedings, as outlined above.
- 38. 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.
- 39. It is in the best interests of the New Walter Canada Group and all its stakeholders that the Stay Period be extended to December 15, 2017 to enable the New Walter Canada Group to complete the Unresolved Restructuring Claims Process, address the claim of Mr. James for certain royalty payments and any remaining claims not yet fully addressed under the Claims Process, sell Energybuild (if possible), and to develop and bring before the court for approval a plan of compromise and arrangement that addresses the distribution of the proceeds and the settlement of the 1974 Plan Claim.

SWORN BEFORE ME at Toronto, in  
 the Province of Ontario, on October  
 3, 2017

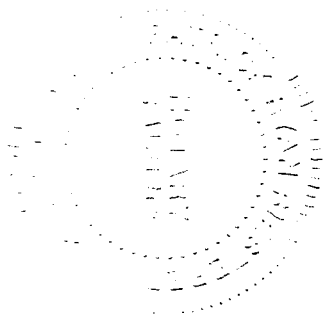
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 Commissioner for Taking Affidavits  
 and Notary Public in the Province of  
 Ontario

*PATRICK RIESTERE*

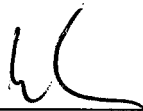
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*William E. Aziz*

**WILLIAM E. AZIZ**

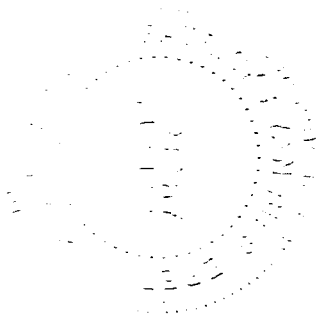


This is Exhibit "A" referred to in Affidavit #15 of **William E. Aziz** sworn October 3, 2017 at Toronto, Ontario.



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



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

SETTLEMENT TERM SHEET RE PLAN OF COMPROMISE AND ARRANGEMENT  
SUMMARY OF PROCESS AND PRINCIPAL TERMS

**WHEREAS:**

- A. Walter Energy, Inc. (“**WEI**”), its subsidiary Jim Walter Resources, Inc. (“**JWR**”) and their US affiliates (collectively “**Walter US**”) filed for protection under Chapter 11 of the US Bankruptcy Code on July 15, 2015 under the jurisdiction of the United States Bankruptcy Court for the Northern District of Alabama, Southern Division (the “**US Bankruptcy Court**”).
- B. Walter Energy Canada Holdings, Inc. (“**WECH**”), Walter Canadian Coal Partnership and their Canadian affiliates (collectively “**Walter Canada**”) applied for and were granted protection under the *Companies' Creditors Arrangement Act* (the “**CCAA**”) pursuant to an Initial Order of the Supreme Court of British Columbia (the “**Court**”) pronounced December 7, 2015 (as amended and restated from time to time, the “**Initial Order**”). Pursuant to the Initial Order, KPMG Inc. was appointed as Monitor (the “**Monitor**”) in the CCAA proceedings bearing Court File No. S-1510120 (the “**CCAA Proceedings**”).
- C. WEI owned, directly or indirectly, the entities that comprise Walter Canada.
- D. Walter Canada owned, directly or indirectly, Energybuild Group Limited (“**Group**”), Energybuild Holdings Limited (“**Holdings**”), Energybuild Limited, Energybuild Mining Limited, Energybuild Opencast Limited, and Mineral Extraction and Handling Limited (collectively with Group and Holdings, “**Energybuild**”).
- E. Walter US entered into an amended and restated asset purchase agreement with Warrior Met Coal, LLC (“**Warrior**”) dated as of March 31, 2016 (the “**Warrior APA**”). The sale of assets to Warrior and the Warrior APA were approved by order of the US Bankruptcy Court dated January 8, 2016 (the “**US Sale Approval Order**”).
- F. Pursuant to the Warrior APA, Walter US sold its assets and undertakings to Warrior, including (i) (a) certain intercompany receivables owing to Walter US by Walter Canada, including a claim in respect of certain shared services provided by Walter US to Walter Canada (the “**Shared Services Claim**”) and (b) a claim in relation to that certain secured promissory note among WEI and WECH dated April 1, 2011 (the “**Promissory Note**”) and related documents

(the “**Hybrid Debt Claim**” and, collectively with the Shared Services Claim and any other claim Warrior has against Walter Canada, the “**Warrior Canada Claim**”); and (ii) certain intercompany receivables owing to Walter US by Group (the “**Warrior UK Claim**” and, collectively with the Warrior Canada Claim, the “**Warrior Claim**”).

- G. On March 31, 2016, the transaction contemplated by the Warrior APA closed. Pursuant to an order of the US Bankruptcy Court dated December 28, 2015, JWR terminated its collective bargaining agreement with the United Mine Workers of America and ceased to have any obligation to participate in or make any contributions to the associated United Mine Workers of America 1974 Pension Plan and Trust (the “**1974 Plan**”).
- H. The 1974 Plan has asserted a claim against Walter Canada throughout the CCAA Proceedings (the “**1974 Plan Claim**”), and has alleged that it has a claim against Energybuild (the “**1974 Plan UK Claim**”), in each case pursuant to certain “controlled group” provisions of the US Employee Retirement Income Security Act of 1974 (“**ERISA**”).
- I. Walter Canada obtained from the Court an order pronounced August 16, 2016 and styled “Claims Process Order” (as amended and restated from time to time, including on August 15, 2017, the “**Claims Process Order**”) which established a Claims Process in respect of Walter Canada, including a Claims Bar Date, a Restructuring Claims Bar Date and related matters, and included a specific process for the determination of the validity of the 1974 Plan Claim.
- J. All Claims against Walter Canada and all remaining assets of Walter Canada were transferred to one or more 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., or Cambrian Energybuild Holdings ULC (collectively “**New Walter Canada**”) pursuant to an order of the Court pronounced December 21, 2016 (the “**CCAA Continuity and Vesting Order**”) and pursuant to a proposal made by Walter Canada under the *Bankruptcy and Insolvency Act* and approved by the Court on December 21, 2016 (the “**BIA Proposal**”).
- K. Pursuant to the CCAA Continuity and Vesting Order and the BIA Proposal, the Hybrid Debt Claim was compromised and reduced to the amount of accrued but unpaid interest owing by WECH in respect of the Promissory Note for the period from the issuance of the Promissory Note and ending on the Proposal Commencement Date (as defined in the BIA Proposal) up to the maximum amount by which the value of the assets transferred to New Walter Canada under the BIA Proposal exceeded the amount of all claims that are deemed to be claims against New Walter Canada under the BIA Proposal, excluding, for the purposes of such calculation, the 1974 Plan Claim. Further, the determination of the validity of the Hybrid Debt Claim remained subject to the terms of the Claims Process Order.
- L. On May 1, 2017, the Court ruled that the 1974 Plan did not have a valid Claim against Walter Canada or New Walter Canada (the “**May 1 Order**”).
- M. The British Columbia Court of Appeal granted the 1974 Plan leave to appeal the May 1 Order and an appeal of the May 1 Order (the “**Appeal**”) was scheduled to be heard on August 16, 2017.
- N. New Walter Canada, the 1974 Plan and Warrior (the “**Parties**”) have engaged in arms-length negotiations with the assistance of counsel with experience in complex insolvency law and



pensions law matters and these negotiations have resulted in a full and final settlement of all outstanding issues among the Parties, including the Shared Services Claim, the Hybrid Debt Claim, the Warrior UK Claim, the 1974 Plan Claim, the 1974 Plan UK Claim, the May 1 Order and the Appeal, as reflected in this Term Sheet.

- O. This Term Sheet sets out the terms on which the Parties, subject to the terms and conditions below and without any admission or concession as to the merits of any claim or defence by any of the Parties, agree to (i) fully and finally compromise, resolve, release and settle the 1974 Plan Claim (ii) fully and finally compromise, resolve, release, settle and allow the Warrior Canada Claim; (iii) address the Appeal with prejudice and without costs; (iv) permit the sale of Energybuild, any entity that composes Energybuild or any of their respective assets and (v) fully and finally compromise, resolve, release and settle the 1974 Plan UK Claim and the Warrior UK Claim (collectively, the “**Settlement**”).
- P. New Walter Canada wishes to make a distribution to Claimants with Allowed Claims.
- Q. It is the intention of the Parties that the Settlement shall form the basis of a plan of compromise or arrangement to be approved and implemented in the CCAA Proceedings substantially on the terms set out herein (the “**Plan**”).
- R. The Monitor supports the Settlement and the distributions set out herein as the best possible result in the circumstances for New Walter Canada and its Claimants, including the 1974 Plan.

**NOW THEREFORE**, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

## **1. Defined Terms**

Capitalized terms used but not defined herein have the meanings given in the Claims Process Order.

## **2. The Settlement**

The Parties agree as follows:

- (a) Warrior’s Shared Services Claim for CDN\$9,892,193.32 shall be an Allowed Claim.
- (b) Warrior’s Hybrid Debt Claim shall be an Allowed Claim and shall be valued in accordance with the terms of the BIA Proposal and the Settlement. In summary and subject to the terms of the BIA Proposal and the Settlement, the Hybrid Debt Claim shall be further compromised such that it is equal to the amount of the Available Net Proceeds (as defined below).
- (c) In consideration of the 1974 Plan abandoning the Appeal pursuant to paragraph (e) of this Section, New Walter Canada, or the Monitor on its behalf, shall pay the first CDN\$13 million of Available Net Proceeds to the 1974 Plan and Warrior shall receive the remainder (if any) of Available Net Proceeds (less the payment contemplated under paragraph of (i) this Section) payable by New Walter Canada,

or the Monitor on its behalf, in respect of the Hybrid Debt Claim. Warrior expressly consents to such use of the Available Net Proceeds.

- (d) New Walter Canada and the Monitor shall (i) complete the Unresolved Restructuring Claims Process to determine if there are any Unresolved Restructuring Claims (as defined therein); and (ii) continue to address all the outstanding Claims, including any Unresolved Restructuring Claims received in respect of the Unresolved Restructuring Claims Process. New Walter Canada agrees to provide Warrior and the 1974 Plan with regular updates on the progress of the Unresolved Restructuring Claims Process. All Claims that are or become Allowed Claims will be paid from the cash held by the Monitor on behalf of New Walter Canada.
- (e) The 1974 Plan will adjourn the Appeal (so that the Unresolved Restructuring Claims Process can proceed) and will abandon the Appeal (at the 1974 Plan's sole cost and expense) if it is determined by New Walter Canada and the Monitor following solicitation of Unresolved Restructuring Claims in the Unresolved Restructuring Claims Process that there will be sufficient funds, after deducting: (i) all payments and taking all reserves required to administer and wind down the estate as contemplated hereby, including under paragraph 6 hereof, and (ii) payment in full of all Allowed Claims, including the CDN\$9,892,193.32 Shared Services Claim and payment of the USW Amount but excluding the Hybrid Debt Claim, (the "Available Net Proceeds") to pay CDN\$13 million to the 1974 Plan pursuant to, in accordance with the terms of and at the time contemplated in the Settlement. The Appeal will be abandoned following the payment to the 1974 Plan of CDN\$13 million. In the event that additional Claims are filed and become Allowed Claims such that New Walter Canada and the Monitor determine and notify the 1974 Plan in writing that the amount of the Available Net Proceeds is insufficient to pay CDN\$13 million to the 1974 Plan, then (i) the 1974 Plan may bring the Appeal at that time; and (ii) New Walter Canada and the Monitor may seek costs against the 1974 Plan, including in regard to the January 12, 2017 decision, the May 1 Order, the application for leave to appeal the May 1 Order or the Appeal.
- (f) New Walter Canada agrees, in consideration for the 1974 Plan abandoning the Appeal pursuant to paragraph (e) of this Section: (i) not to pursue costs against the 1974 Plan, including costs in regard to the January 12, 2017 decision, the May 1 Order, the application for leave to appeal the May 1 Order or the Appeal; and (ii) to pay the costs of the United Steelworkers Local 1-424 ("USW"), fixed at CDN\$75,000, from the estate (the "**USW Amount**").
- (g) The 1974 Plan agrees that it will not challenge the validity or allowance of the Warrior Claim (including the Shared Services Claim and the Hybrid Debt Claim) irrespective of whether there is at least Available Net Proceeds of CDN\$13 million available for distribution to the 1974 Plan.
- (h) In no circumstance will there be an interim distribution until New Walter Canada and the Monitor are satisfied that the solicitation and review of Unresolved Restructuring Claims in the Unresolved Restructuring Claims Process is complete to New Walter Canada's and the Monitor's satisfaction. New Walter Canada and

the Monitor are at liberty (but are not required) to seek an order from the Court approving an interim or final distribution to Claimants once the foregoing conditions are satisfied on notice to the 1974 Plan, *provided, however*, that if the recovery on the Hybrid Debt Claim is less than CDN\$13 million and the 1974 Plan takes action to resume the Appeal, the 1974 Plan may take whatever steps it thinks appropriate to challenge any such distribution.

- (i) The director of each of the corporations composing New Walter Canada shall be paid an aggregate amount of US\$250,000 from the Available Net Proceeds in consideration for his commitment to Walter Canada and New Walter Canada throughout the CCAA Proceedings.

### **3. Status of Claims**

Attached hereto as Schedule "A" is New Walter Canada's and the Monitor's preliminary analysis of the results of the Claims Process as of August 15, 2017. Schedule "A" represents New Walter Canada's and the Monitor's current understanding of the Claims made against Walter Canada and New Walter Canada prior to commencement of the Unresolved Restructuring Claim Process, but no representation or warranty of any kind is given regarding Schedule "A", including regarding the accuracy or completeness thereof. The Parties recognize that the Unresolved Restructuring Claims Process has not been completed and may result in the filing of additional Claims that are not listed on Schedule "A".

### **4. Plan**

Upon the completion of the Unresolved Restructuring Claims Process or such earlier date as New Walter Canada and the Monitor may decide (after consultation with Warrior), New Walter Canada intends to bring forward a motion seeking approval by the Court of a Plan that contains the principal terms set out herein, provided that New Walter Canada and the Monitor are satisfied that sufficient funds are available to address all remaining matters in the CCAA Proceedings and the orderly wind-down or other process for Energybuild. New Walter Canada shall consult with Warrior on the applicable terms of the Plan and shall provide a draft of the Plan to Warrior for comment prior to filing same.

The Plan will contain customary provisions in respect of all distributions made thereunder, including in respect of any tax matters.

### **5. Voting on Plan**

It is anticipated that Warrior, as the sole Claimant with a Claim that is to be compromised under the Plan, shall be the sole Claimant entitled to vote on the Plan.

Warrior represents and warrants that it is the sole legal and beneficial owner of (i) the Shared Services Claim, (ii) the Hybrid Debt Claim and (iii) the Warrior UK Claim. Warrior agrees, provided that the Plan is substantially in the form contemplated by this Term Sheet, that it (i) shall vote its entire Claim in favour of the Plan, (ii) shall support New Walter Canada in obtaining Court approval of the Plan and implementing the Plan, and (iii) shall not take any step or any action (or omit to take any step or action) that is inconsistent with obtaining the Court's approval of the Plan or with New Walter Canada implementing the Plan. Warrior agrees that it shall not sell, assign or

encumber all or any part of its Claim to any person until such time as such person signs an agreement in form and substance satisfactory to New Walter Canada setting out such person's agreement to vote any Claim it acquires in favour of the Plan and to support the approval and implementation of the Plan, in each case as contemplated herein.

#### **6. Treatment of Allowed Claims and Maintenance of Reserves**

The Plan will provide for the payment in full in cash of all Claims that become Allowed Claims from time to time other than the Hybrid Debt Claim, *provided* that New Walter Canada and the Monitor have determined that:

- (a) New Walter Canada has an amount sufficient to pay in full in cash all Allowed Claims incorporated by reference in Schedule "A" and the full amount of all Claims that become Allowed Claims after the date hereof;
- (b) If New Walter Canada and the Monitor elect to make an interim distribution, New Walter Canada has an amount sufficient to pay in full in cash any Claim that is the subject of an unresolved Notice of Dispute (each a "**Disputed Claim**") if all such Disputed Claims were to become Allowed Claims; and
- (c) New Walter Canada shall retain an amount estimated by New Walter Canada and the Monitor, in their sole discretion, to be sufficient:
  - (i) to address professional fees and other costs necessary for the effective administration of all remaining matters in connection with the CCAA Proceedings (including addressing any Disputed Claims and the purchase of any reasonable director and officer insurance and "run off" coverage); and
  - (ii) to address the orderly wind-down or other process acceptable to New Walter Canada for Energybuild.

#### **7. Treatment of 1974 Plan Claim**

- (a) The 1974 Plan Claim shall not become an Allowed Claim unless the 1974 Plan brings forward the Appeal as permitted by Section 2(e) and a final order is issued declaring that the 1974 Plan Claim is an Allowed Claim in respect of New Walter Canada.
- (b) This Term Sheet may be raised by New Walter Canada or the Monitor as a full bar to the 1974 Plan Claim in any circumstances where the 1974 Plan seeks to assert a Claim and the conditions set out in Section 2(e) are not satisfied.
- (c) Notwithstanding the foregoing, Warrior hereby expressly consents to New Walter Canada, or the Monitor on its behalf, paying to the 1974 Plan the first CDN\$13 million of Available Net Proceeds to the 1974 Plan as consideration for the 1974 Plan abandoning the Appeal, which shall be distributed no earlier than the day on which the other distributions to be made under the Plan are made.

- (d) The 1974 Plan agrees that (i) it shall support New Walter Canada in obtaining Court approval of the Plan and implementing the Plan, and (ii) shall not take any step or any action (or omit to take any step or action) that is inconsistent with obtaining the Court's approval of the Plan or with New Walter Canada implementing the Plan. The 1974 Plan agrees that it shall not sell, assign or encumber all or any part of its Claim to any person until such time as such person signs an agreement in form and substance satisfactory to New Walter Canada setting out such person's agreement to support the approval and implementation of the Plan, in each case as contemplated herein.

## **8. Energybuild**

To facilitate the sale of Energybuild, any entity that composes Energybuild or any of their respective assets (an "**EB Sale**") for the benefit of New Walter Canada, Energybuild and their respective stakeholders, the Parties agree as follows (irrespective of whether there is at least Available Net Proceeds of CDN\$13 million available for distribution to the 1974 Plan or the Appeal is brought):

- (a) The 1974 Plan (x) hereby fully and finally compromises, resolves, releases and settles the 1974 Plan UK Claim and any other claim it may have against Energybuild in respect of (i) any matter relating to its dealings with Walter US and Walter Canada, and (ii) any matter relating to its dealings with any applicable Energybuild entity that relates to the period prior to the date of any EB Sale; and (y) agrees to enter into an agreement with any Energybuild entity on or prior to any EB Sale as evidence of such release, such agreement to be in form and substance satisfactory to New Walter Canada, the applicable Energybuild entity and the purchaser of such Energybuild entity or its assets; and
- (b) Warrior (x) hereby fully and finally compromises, resolves, releases and settles the Warrior UK Claim and any other claim it may have against Energybuild in respect of (i) any matter relating to its dealings with Walter US and Walter Canada, and (ii) any matter relating to its dealings with any applicable Energybuild entity that relates to the period prior to the date of any EB Sale; and (y) agrees to enter into an agreement with any Energybuild entity on or prior to any EB Sale as evidence of such release, such agreement to be in form and substance satisfactory to Warrior, New Walter Canada, the applicable Energybuild entity and the purchaser of such Energybuild entity or its assets, provided that the payments to Warrior (if any) contemplated below are made.

The proceeds of any EB Sale shall be applied as follows:

- (i) First, to repay any amounts advanced to or for the benefit of Energybuild, on a secured basis by any member of New Walter Canada pursuant to any order of the Court made in the CCAA Proceedings, including any order made after the date hereof;
- (ii) Second, to wind-up any Energybuild entity that is not the subject of an EB Sale in a cost effective and tax efficient manner that protects Energybuild's directors and officers from liability to the fullest extent possible, at the

discretion of New Walter Canada, including the purchase of any reasonable director and officer insurance and “run off” coverage;

- (iii) Third, if any amounts remain after the payment contemplated in paragraph (i) and (ii) of this Section, such amounts shall be distributed to Warrior in respect of the Warrior UK Claim, up to the maximum amount of £4,666,779.00; and
- (iv) Fourth, if any amounts remain after the payment contemplated in paragraph (iii) of this Section, such amounts shall be distributed to Cambrian Energybuild Holdings ULC on account of its equity interest in Group.

## 9. Releases

The Plan and the order approving same shall include customary releases in favour of the Monitor, the present and former directors and officers of Walter Canada and New Walter Canada, the CRO, the Financial Advisor and each of their respective legal counsel.

In addition, on payment of CDN\$13 million to the 1974 Plan, the 1974 Plan, on its own behalf and on behalf of all of its beneficiaries and their heirs, guardians, administrators, executors, trustees, estate trustees, successors and assigns, shall release and discharge and shall be deemed to release and discharge Warrior, each entity that composes Walter Canada, each entity that composes New Walter Canada, each entity that composes Energybuild, the Monitor and all of their respective present and former affiliates, partners, shareholders, subsidiaries, successor and predecessor companies and all of their present and former officers, directors, employees, representatives, legal counsel, financial advisors and agents (including the CRO) and the heirs, guardians, administrators, executors, trustees, estate trustees, successors and assigns of each (hereinafter collectively referred to as the “**Releasees**”) from any and all actions, causes of action, claims, liabilities, losses of any kind, injuries, suits, debts, contracts, obligations, representations, promises, damages, judgments, expenses and demands whatsoever, in law or in equity, whether normal, special, consequential, punitive or otherwise, on all counts howsoever arising and in all jurisdictions, which were made or could have been made by the 1974 Plan in respect of the withdrawal of JWR from participation in the 1974 Plan (i) against the Releasees and (ii) against any other person, partnership, corporation or other entity of any kind that might claim contribution or indemnity or any other relief of a monetary, declaratory or injunctive nature from any one or more of the Releasees in connection with the foregoing.

## 10. Miscellaneous

- (a) Each of the Parties acknowledges and declares that (i) it is a sophisticated party with sufficient knowledge and experience to properly evaluate the terms and conditions of this Term Sheet; (ii) it has conducted its own analysis and made its own decision, in the exercise of its independent judgment, to enter into this Term Sheet and has not relied on an analysis or decision of any of the other Parties in making that decision; (iii) it has had an adequate opportunity to read and consider the Settlement and this Term Sheet and to obtain such independent legal advice in regard to the Settlement and this Term Sheet as it considers advisable; (iv) it fully understand the nature and effect of the Settlement and this Term Sheet, including the Release set out herein; (v) it fully understand that the consideration for the

Settlement and this Term Sheet has been accepted; and (vi) the Settlement and this Term Sheet has been duly executed voluntarily by it and the execution of this Term Sheet is within its corporate, trust, partnership, limited liability company or similar power, as applicable.

- (b) This Term Sheet shall be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein.
- (c) The division of this Term Sheet into sections and the insertion of headings are for convenience or reference only and shall not affect the construction or interpretation of this Term Sheet.
- (d) The terms of this Term Sheet constitute the entire agreement between the Parties relating to the subject matter hereof and supersedes any prior agreement.
- (e) This Term Sheet may be executed in any number of counterparts and may be delivered by means of facsimile or electronic transmission in portable document format, each of which shall be deemed to be an original, but all of which together will constitute one and the same instrument.
- (f) The recitals to this Term Sheet are true and form part of the Term Sheet and the Settlement.
- (g) The Parties waive any right to trial by jury in any proceeding arising out of or relating to this Term Sheet or any of the transactions contemplated by this Term Sheet, present or future, and whether sounding in contract, tort or otherwise. Any Party may file a copy of this provision with any court as written evidence of the knowing, voluntary and bargained for agreement between the Parties irrevocably to waive trial by jury, and that any proceeding whatsoever between them relating to this Term Sheet or any of the transactions contemplated by this Term Sheet shall instead be tried by a judge or judges sitting without a jury.
- (h) If any term or other provision of this Term Sheet is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Term Sheet shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Term Sheet so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the terms of this Term Sheet remain as originally contemplated to the fullest extent possible.

***[Remainder of page intentionally left blank]***

DATED \_\_\_\_\_, 2017

**NEW WALTER ENERGY CANADA HOLDINGS, INC.**

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

**NEW WALTER CANADIAN COAL CORP.**

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

**NEW WOLVERINE COAL CORP.**

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

**NEW BRULE COAL CORP.**

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

**NEW WILLOW CREEK COAL CORP.**

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

**CAMBRIAN ENERGYBUILD HOLDINGS ULC**

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

**WARRIOR MET COAL, LLC**

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

**UNITED MINE WORKERS OF AMERICA 1974 PENSION PLAN AND TRUST**

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



Draft & Privileged

**Schedule "A"**

**[See attached]**

NO. S-1510120  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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

AND

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

AND

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

PETITIONERS

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**AFFIDAVIT #15 OF WILLIAM E. AZIZ**

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**OSLER HOSKIN & HARCOURT LLP**

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Vancouver, BC V6E 2E9

Tel. No. 416.862.4924  
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Client Matter No. 1164807