



Registration of a Charge

Company name: **ENERGYBUILD MINING LIMITED**

Company number: **04934085**



X60N2Q00

Received for Electronic Filing: **20/02/2017**

Details of Charge

Date of creation: **06/02/2017**

Charge code: **0493 4085 0001**

Persons entitled: **CAMBRIAN ENERGYBUILD HOLDINGS ULC**

Brief description: **FIXED CHARGES OVER ALL LAND AND INTELLECTUAL PROPERTY OWNED BY THE COMPANY AT ANY TIME.**

Contains fixed charge(s).

Contains floating charge(s) .

Contains negative pledge.

Authentication of Form

This form was authorised by: **a person with an interest in the registration of the charge.**

Authentication of Instrument

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION**

**FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL
INSTRUMENT.**

Certified by:

SARAH DUIGNAN



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 4934085

Charge code: 0493 4085 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 6th February 2017 and created by ENERGYBUILD MINING LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 20th February 2017 .

Given at Companies House, Cardiff on 21st February 2017

The above information was communicated by electronic means and authenticated
by the Registrar of Companies under section 1115 of the Companies Act 2006



Companies House



**THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES**

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Dated: 6 February, 2017
(1) ENERGYBUILD MINING LIMITED
(2) CAMBRIAN ENERGYBUILD HOLDINGS ULC

Debenture

DRAFT: 01
Ref: grayda
Date: 23 December 2016
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We certify this document as a true copy of the original

Eversheds Sutherland (International) LLP
Date: 15/02/17
EVERSHEDS SUTHERLAND (INTERNATIONAL) LLP

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23 December 2016 grayda

THIS DEBENTURE is dated

6 February

2016/7

BETWEEN:

- (1) ENERGYBUILD MINING LIMITED an English company registered with company number 04934085 (the "Borrower"); and
- (2) CAMBRIAN ENERGYBUILD HOLDINGS ULC a company registered in Canada (the "Lender")

OPERATIVE CLAUSES

1 INTRODUCTION

- 1.1 The Lender has agreed to lend to Energybuild the sum of £110,000 on the terms of the Loan Agreement. The Borrower has provided a guarantee to the Lender guaranteeing the obligations of Energybuild to the Lender. This Debenture has been given by the Borrower as security for its obligations to the Lender as guarantor under the Loan Agreement.

- 1.2 For the sake of convenience, some words and phrases in this Debenture have been given special meanings. These are as follows:

"Charged Property"	at any time, all property which is at that time the subject of any mortgage or charge created under this Debenture
"Energybuild"	means Energybuild Group Limited, the borrower under the Loan Agreement
"Enforcement Events"	are the events and circumstances listed in clause 7.2
"Floating Charge Property"	at any time, all property which is at that time the subject of the floating charge created under this Debenture
"Land"	any estate or interest in real property and any related rights
"Loan"	a loan in the sum of £110,00 from the Lender to Energybuild
"Loan Agreement"	an agreement between Energybuild and the Lender whereby the Lender made the Loan available to Energybuild, executed at the same time as this Debenture.
"Secured Obligations"	all sums owed by Energybuild to the Lender including but not limited to the sums due under the Loan Agreement

- 1.3 There are some other explanatory provisions in **clause 8.7**.

2 CREATING THE SECURITY

2.1 Mortgages and charges

The Borrower covenants to pay on demand the Secured Obligations. The Borrower creates the following mortgages and charges in favour of the Lender in order to secure the payment of the Secured Obligations:

- 2.1.1 first fixed charges of:

- 2.1.1.1 all present and future interests of the Borrower in or over freehold or leasehold land;
- 2.1.1.2 the Borrower's plant and machinery (not including any computers or their peripherals or any other office equipment);
- 2.1.1.3 the Borrower's goodwill;
- 2.1.1.4 the Borrower's rights and interest in intellectual property of any kind (including all related property and materials in any medium);
- 2.1.1.5 the Borrower's uncalled share capital;
- 2.1.1.6 the Borrower's rights and interest in shares and other securities; and
- 2.1.1.7 the Borrower's rights and interest in contracts (including contracts of insurance);
- 2.1.2 a floating charge of all the Borrower's property and undertaking other than that which is effectively mortgaged or charged under any other provision of this Debenture.

2.2 Full title guarantee

- 2.2.1 Each mortgage and charge created under this Debenture is made with full title guarantee. Therefore, the Law of Property (Miscellaneous Provisions) Act 1994 applies. This means that the Borrower is deemed to give certain covenants in relation to itself and the Charged Property;
- 2.2.2 The covenants set out in sections 2 to 5 of the Law of Property (Miscellaneous Provisions) Act 1994 shall extend to bind the Borrower only if, in any case, the relevant covenant imposes upon the Borrower a burden, liability or obligation that would not otherwise arise under this Debenture.

3. PROVISIONS RELATING TO THE SECURITY

3.1 Present and future property

In each case, the fixed and floating charges created under this Debenture apply to both present and future property of the relevant type.

3.2 Where there are limitations on the creation of security

- 3.2.1 This **clause 3.2.1** applies where, on the date of this Debenture, there is property which is subject to a term prohibiting the Borrower from creating a charge (or, in the case of Land, a mortgage) over it in accordance with this Debenture:
 - 3.2.1.1 the Borrower represents that it has notified the Lender of the existence of all such property and has given the Lender all the information it requires with regard to it;
 - 3.2.1.2 the Borrower does not create such a charge (or mortgage) over the relevant property on the date of this Debenture and will not do so.
- 3.2.2 This **clause 3.2.2** applies where, on the date of this Debenture, there is property which is subject to a term permitting the Borrower to create a charge (or, in the case of Land, a mortgage) over it in accordance with this Debenture only with the consent of another person.

- 3.2.2.1 The Borrower represents that it has notified the Lender of the existence of all such property and has given the Lender all the information it requires with regard to it.
- 3.2.2.2 The Borrower does not create such a charge (or mortgage) over the relevant property on the date of this Debenture and will not do so except in accordance with **clause 3.2.2.5**.
- 3.2.2.3 The Borrower must use its best endeavours to obtain the relevant person's consent.
- 3.2.2.4 The Borrower must notify the Lender as soon as it has obtained that consent.
- 3.2.2.5 If, at any time after it has obtained that consent, the Lender requests the Borrower to create such a charge (or mortgage) over the relevant property, the Borrower must do so on terms acceptable to the Lender (and at its own expense).
- 3.2.3 This **clause 3.2.3** applies where the Borrower intends to acquire property which is (or will be) subject to a term prohibiting the Borrower from creating a charge (or, in the case of Land, a mortgage) over it in accordance with this Debenture.
 - 3.2.3.1 The Borrower must notify the Lender of its intention and give the Lender all the information it requires with regard to the relevant property and the proposed acquisition.
 - 3.2.3.2 The Borrower may acquire the relevant property only if the Lender consents.
 - 3.2.3.3 The Borrower does not create such a charge (or mortgage) over the relevant property on the date of this Debenture and will not do so.
- 3.2.4 This **clause 3.2.4** applies where the Borrower intends to acquire property which is (or will be) subject to a term permitting the Borrower to create a charge (or, in the case of Land, a mortgage) over it in accordance with this Debenture only with the consent of another person.
 - 3.2.4.1 The Borrower must notify the Lender of its intention and give the Lender all the information it requires with regard to the relevant property and the proposed acquisition.
 - 3.2.4.2 The Borrower may acquire the relevant property only if the Lender consents.
 - 3.2.4.3 The Borrower does not create such a charge (or mortgage) over the relevant property on the date of this Debenture and will not do so except in accordance with **clause 3.2.4.4(c)**.
 - 3.2.4.4 If the Borrower does acquire the relevant property:
 - (a) it must use its best endeavours to obtain the relevant person's consent;
 - (b) it must notify the Lender as soon as it has obtained that consent; and
 - (c) if, at any time after it has obtained that consent, the Lender requests the Borrower to create such a charge (or mortgage)

over the relevant property the Borrower must do so on terms acceptable to the Lender (and at its own expense).

3.3 **Contracts**

In the case of a contract, the Borrower charges to the Lender under this Debenture all payments received under the contract even if, for any reason, it does not create an effective charge of its rights against the other parties to the contract.

3.4 **Independent security and Lender's Discretion**

3.4.1 The mortgages and charges created under this Debenture and the rights of the Lender under this Debenture are independent of any other security or any other right which the Lender has at any time in respect of any Debts.

3.4.2 The Lender may decide:

3.4.2.1 whether and, if so, when and how:

(a) to exercise its rights under this Debenture; and

(b) to exercise any other rights it might have in respect of any Debts; and

3.4.2.2 when and how to apply any payments received by it under this Debenture or any other payments in respect of any Debts;

and the Borrower has no right to control or restrict the Lender's exercise of this discretion. In particular the Borrower may not insist that the Lender seeks payment from any other person, exercises any other right it might have or takes any other step before exercising its rights under this Debenture.

3.5 **Continuing Security**

The mortgages and charges created under this Debenture constitute continuing security. This means that they secure the full amount of the Debts at any time even if, at some other time:

3.5.1 the amount of the Debts has been less than the amount at the relevant time; or

3.5.2 there have been no Debts outstanding.

3.6 **Further advances**

The mortgages and charges created under this Debenture together secure any further advances made by the Lender.

3.7 **Crystallisation of floating charge (by notice)**

3.7.1 **Clauses 3.7.2 and 3.7.3** specify cases in which the Lender is entitled to crystallise the floating charge created under this Debenture (converting it into a fixed charge or a number of fixed charges). Crystallisation will occur when the Lender gives notice to this effect to the Borrower.

3.7.2 The first case is where the Lender believes that crystallisation is necessary in order to avoid or mitigate any circumstances which could:

3.7.2.1 reduce the value of all or any part of the Floating Charge Property;

3.7.2.2 have an adverse effect on all or any part of the Floating Charge Property; or

3.7.2.3 jeopardise the Lender's position.

3.7.3 The second case is where there is an Enforcement Event other than one which results in automatic crystallisation (see **clause 3.8**);

3.7.4 If, at any time, the Lender crystallises the floating charge in relation to just part of the relevant Floating Charge Property, that will not prevent its exercising its powers under this **clause 3.7** again.

3.8 Crystallisation of floating charge (automatic)

Clauses 3.8.1 to 3.8.3 specify cases in which the floating charge created under this Debenture will automatically crystallise (without the Lender having to give notice to the Borrower). There are other circumstances in which, by operation of law, a floating charge will crystallise.

3.8.1 The first case is where there is an Enforcement Event under **clause 7.2.1** or **7.2.2** which is caused by the Borrower's failure to comply with any of the following restrictions in relation to Floating Charge Property:

3.8.1.1 **clause 4.2** (Prohibition on disposal of property);

3.8.1.2 **clause 4.3** (Prohibition on creation of further security interests);

3.8.1.3 **clause 4.4** (Prohibition on cancellation of rights);

3.8.1.4 **clause 4.5** (General prohibition); or

3.8.1.5 **clause 4.6.4** (Dealing with bank accounts and receivables).

If the Enforcement Event relates to just part of the Floating Charge Property, then crystallisation will affect only that part; the rest of the Floating Charge Property will be unaffected.

3.8.2 The second case is where there is an Enforcement Event under **clause 7.2.6**. The floating charge will crystallise over all of the Floating Charge Property.

3.8.3 The third case is where there is an Enforcement Event under **clause 7.2.7**. If the Enforcement Event relates to just part of the Floating Charge Property, then crystallisation will affect only that part; the rest of the Floating Charge Property will be unaffected.

3.8.4 In each case, the floating charge will crystallise as soon as the relevant Enforcement Event occurs.

3.9 Release of security

3.9.1 The Borrower may give notice to the Lender requesting the release of the Charged Property from the mortgages and charges created by this Debenture. The Lender must do whatever is reasonably necessary to comply with such a request, but only if the Lender is satisfied at the time that:

3.9.1.1 all the Debts then due for payment have been paid;

3.9.1.2 there are no other Debts which have not yet become due to be paid;

3.9.1.3 there are no other liabilities owed to the Lender by the Borrower;

- 3.9.1.4 there is no risk that, as a consequence of any insolvency proceedings (or analogous proceedings) or for any other reason, any payment previously made to the Lender in respect of any Debts will be required to be repaid or will be void, set aside or otherwise affected; and
- 3.9.1.5 the Lender is not obliged to enter into any arrangement under which the Borrower might incur further liabilities to the Lender.
- 3.9.2 A release of security under **clause 3.9.1** will not be effective until the Borrower has paid all the Lender's costs in connection with the release.
- 3.9.3 If the Lender does release any security under **clause 3.9.1**, that will not mean that the Lender has waived any right it might then have, or any remedy it might then be entitled to, in respect of any past breach of this Debenture.
- 3.9.4 The mortgages and charges created under this Debenture will not be discharged in any way other than in accordance with **clause 3.9.1**.
- 3.9.5 **Clause 3.9.6** applies where:
 - 3.9.5.1 there has been a release of security under **clause 3.9.1**; and
 - 3.9.5.2 as a consequence of any insolvency proceedings (or analogous proceedings) or for any other reason:
 - (a) any payment made to the Lender in respect of any Debts is required to be repaid; or
 - (b) any such payment is void, is set aside or is otherwise affected.
- 3.9.6 The mortgages and charges created under this Debenture continue in effect as if:
 - 3.9.6.1 there has been no such release; and
 - 3.9.6.2 the relevant payment had not been made.

4. **PROVISIONS RELATING TO THE BORROWER AND THE CHARGED PROPERTY**

4.1 **Representations and warranties**

- 4.1.1 The Borrower makes the following representations and warranties:
 - 4.1.1.1 It is duly incorporated in England.
 - 4.1.1.2 It has the power to own its assets and to carry on business as it is being conducted.
 - 4.1.1.3 The obligations expressed to be assumed by it in this Debenture are legal, valid, binding and enforceable obligations (subject to the principle that equitable remedies are discretionary).
 - 4.1.1.4 Entering into this Debenture and performing its obligations do not cause a conflict with:
 - (a) any law or regulation applicable to it;
 - (b) its constitutional documents; or

- (c) any agreement or instrument binding upon it or any of its assets.
- 4.1.1.5 It has the power and authority to enter into this Debenture and to perform its obligations.
- 4.1.1.6 It is the legal and beneficial owner of all the Charged Property (except in relation to any shares or other securities held on its behalf by a nominee, in which case it is the beneficial owner of those shares or other securities).
- 4.1.1.7 The Charged Property is subject to no security or other interest,
- 4.1.1.8 There are no covenants, conditions, restrictions or other things affecting any part of the Charged Property which could reduce its value or otherwise have an adverse effect on it or jeopardise the Lender's position, except:
 - (a) any which has been notified to the Lender as required by **clause 3.2**; and
 - (b) any which has been created or is permitted under this Debenture.
- 4.1.1.9 There is no breach of any law, regulation, covenant or condition and there are no disputes or other events or circumstances outstanding, any of which could:
 - (a) reduce the value of all or any part of the Charged Property;
 - (b) have an adverse effect on all or any part of the Charged Property; or
 - (c) jeopardise the Lender's position.
- 4.1.2 These representations and warranties are deemed to be repeated every day. The Borrower must notify the Lender immediately if any of them is not true or if it appears likely that any of them will be untrue in future.

4.2 **Prohibition on disposal of property**

- 4.2.1 The Borrower must not dispose of all or any part of the Charged Property or create any right or interest in relation to it (or attempt to do any of those things), whether by way of sale, lease, licence or otherwise. However, there are the following exceptions to this prohibition.
 - 4.2.1.1 There is an exception where such a disposal or the creation of such a right or interest is required or permitted by this Debenture.
 - 4.2.1.2 There is an exception where the Lender gives its prior consent.
 - 4.2.1.3 There are exceptions in the following circumstances for property which is Floating Charge Property at the time of the disposal:
 - (a) where a disposal is made in the ordinary course of the Borrower's day-to-day business and on normal commercial terms; and
 - (b) where property is disposed of because it is broken or no longer required (whether or not it is replaced),

the first of these exceptions in this clause does not permit factoring or any other disposal of the Borrower's book debts.

- 4.2.2 The prohibition in **clause 4.2.1** overrides section 99 of the Law of Property Act 1925, which contains provisions about the making of leases by mortgagors.

4.3 Prohibition on creation of further security interests

Apart from the mortgages and charges created under this Debenture, the Borrower must not create any security or similar interest in respect of the Charged Property (or attempt to do so) and it must not permit any such interest to exist. However, there are the following exceptions to this prohibition.

- 4.3.1 There is an exception where such an interest is required or permitted by this Debenture.
- 4.3.2 There is an exception where the Lender gives its prior consent.
- 4.3.3 There is an exception where such an interest arises in the ordinary course of the Borrower's business, either by operation of law or by virtue of a retention-of-title clause, and is subsequently discharged in the ordinary course of the Borrower's business.

4.4 Prohibition on cancellation of rights

- 4.4.1 The Borrower must not cancel, waive or vary its rights (or allow them to lapse) in respect of all or any part of the Charged Property and it must not permit any other person to do so. However, there are the following exceptions to this prohibition.

- 4.4.1.1 There is an exception where such action is required or permitted by this Debenture.
- 4.4.1.2 There is an exception where the Lender gives its prior consent.
- 4.4.1.3 There is an exception for property which is Floating Charge Property, where the relevant event occurs in the ordinary course of the Borrower's day-to-day business.

- 4.4.2 The prohibition in **clause 4.4.1** overrides section 100 of the Law of Property Act 1925, which contains provisions about mortgagors' acceptance of the surrender of leases.

4.5 General prohibition

- 4.5.1 As well as complying with the specific prohibitions and restrictions in other clauses, the Borrower must not do anything that could:

- 4.5.1.1 reduce the value of all or any part of the Charged Property;
- 4.5.1.2 have an adverse effect on all or any part of the Charged Property; or
- 4.5.1.3 jeopardise the Lender's position,

and it must not permit any other person to do so.

- 4.5.2 However, there are the following exceptions to the prohibition in **clause 4.5.1**.

4.5.2.1 There is an exception where the action is required or permitted by this Debenture.

4.5.2.2 There is an exception where the Lender gives its prior consent.

4.6 Dealing with bank accounts and receivables

4.6.1 In this **clause 4.6**, the word "receivables" is used to refer to the Borrower's book debts and other debts due to it (other than in respect of credit balances on bank accounts) and its rights and interest in guarantees and other security relating to those debts.

4.6.2 Unless **clause 4.6.3** applies, the Borrower:

4.6.2.1 may operate its bank accounts in the ordinary course of its day-to-day business;

4.6.2.2 must realise and (if applicable) enforce payment in respect of its receivables in the ordinary course of its day-to-day business; and

4.6.2.3 may apply the proceeds of its receivables in the ordinary course of its day-to-day business.

4.6.3 This **clause 4.6.3** applies if the floating charge is crystallised in respect of the Borrower's bank accounts or its receivables (**clauses 3.7** and **3.8** deal with crystallisation). With effect from the date of crystallisation, the Borrower:

4.6.3.1 must realise and (if applicable) enforce payment in respect of its receivables only as agent of the Lender;

4.6.3.2 must credit all money received by it in respect of its receivables to a bank account specified by the Lender for this purpose (or arrange for debtors to make payment directly to such account); and

4.6.3.3 must not debit any money to that or any other bank account (except with the Lender's prior consent).

4.6.4 Both before and after crystallisation, the Borrower must not deal with the receivables (or attempt to do so) in any way other than as provided by this **clause 4.6**. The Borrower covenants that it will, upon request by the Lender take such action in relation to claims against third parties which the Lender may reasonably require.

4.7 Shares and securities – voting and payments

4.7.1 Until an Enforcement Event occurs, only the Borrower may exercise the voting rights and other rights in respect of the shares and other securities charged under this Debenture. It must not do so in a way which could:

4.7.1.1 reduce the value of the shares or securities;

4.7.1.2 have an adverse effect on the shares or securities; or

4.7.1.3 jeopardise the Lender's position.

4.7.2 Until an Enforcement Event occurs, only the Borrower is entitled to receive payments made in respect of the shares and other securities charged under this Debenture.

4.7.3 Once an Enforcement Event occurs, only the Lender will have these rights.

4.8 Maintaining the Charged Property

- 4.8.1 The Borrower must keep all its buildings, fixtures, plant and machinery and all its computers and peripherals and other office equipment in a good state of repair and condition.
- 4.8.2 Unless the Lender gives its consent, the Borrower must not demolish any of its buildings or make any alterations to them or do anything constituting a development for the purposes of section 55 of the Town and Country Planning Act.
- 4.8.3 The Borrower must do whatever is necessary to preserve, maintain and renew its rights and interest in intellectual property.
- 4.8.4 If the Borrower fails to comply with this **clause 4.8**, the Lender or any receiver may arrange for the appropriate measures to be taken to put right the Borrower's failure.

4.9 Insuring

- 4.9.1 At all times, the Borrower must insure against all those risks in respect of which a prudent company carrying on a business similar to the Borrower's would normally maintain insurance. In each case, the following conditions must be met.
 - 4.9.1.1 The insurer must be acceptable to the Lender.
 - 4.9.1.2 The terms of the insurance must be acceptable to the Lender.
 - 4.9.1.3 At all times there must be a level of cover which is at least equal to the full replacement or reinstatement value of the relevant property plus adequate provision to cover associated costs and losses (and to cover any other amounts required by the Lender to be covered).
 - 4.9.1.4 The policy must be in the joint names of the Borrower and the Lender, unless the Lender consents to simply having its interest noted on the policy.
- 4.9.2 The Borrower must pay all insurance premiums promptly.
- 4.9.3 The Borrower must provide the Lender, on request, with a copy of each of the Borrower's insurance policies and evidence that the premiums have been paid.
- 4.9.4 The Borrower must hold on trust for the Lender all money received by virtue of any insurance policies. The Borrower must apply that money in accordance with the Lender's instructions (either in making good the relevant loss or damage or in full or partial payment of the Debts). This **clause 4.9.4** does not apply where the money paid under a policy is paid in respect of a liability owed to another person.
- 4.9.5 This **clause 4.9.5** applies where the Borrower is the tenant of leasehold Land and the lease requires the landlord (and not the Borrower) to insure that Land. For so long as the landlord complies with its insuring obligations under the lease, the Borrower will be deemed to have complied with its obligations in relation to that Land under **clause 4.9.1**.
- 4.9.6 If the Borrower fails to comply with this **clause 4.9**, the Lender (or any receiver) may arrange appropriate insurance on such terms as it (or he) thinks fit.

- 4.9.7 Sections 108 and 109(7) of the Law of Property Act 1925 specify restrictions in relation to the powers of mortgagees and receivers to effect insurance. Those restrictions do not apply.

4.10 Other requirements

- 4.10.1 The Borrower must comply with all statutory, contractual and other conditions and requirements affecting it or the Charged Property. If there are non-binding codes of practice or guidance notes (or similar things) or industry practices affecting those engaged in the same type of business as the Borrower and which are generally accepted and applied, then the Borrower must also comply with those.
- 4.10.2 If the Borrower fails to comply with this **clause 4.10**, the Lender or any receiver may arrange for the appropriate measures to be taken to put right the Borrower's failure.

5. PROTECTING THE LENDER'S POSITION

5.1 Power of attorney and delegation

- 5.1.1 The Borrower appoints the Lender as its attorney to do whatever the Borrower is (or may be) required to do under this Debenture. The Lender, in its capacity as attorney, may act independently of each other attorney appointed by the Borrower and need not act jointly with them. The Borrower must ratify any action taken by the Lender in its capacity as attorney.
- 5.1.2 The power of attorney in **clause 5.1.1** is irrevocable and given by way of security. Therefore, the Powers of Attorney Act applies. This means that the Borrower cannot revoke the power of attorney without the Lender's consent and that it will not be revoked by the Borrower's winding-up or dissolution.
- 5.1.3 The Lender may delegate to any other person the exercise of its rights and powers in connection with this Debenture, including its rights and powers as the Borrower's attorney.

5.2 Indemnity

The Borrower will indemnify the Lender against all losses, liabilities, costs (including legal fees), damages and expenses that the Lender does or will incur or suffer, all claims or proceedings made, brought or threatened against the Lender by any person and all losses, liabilities, costs (on a full indemnity basis), damages and expenses the Lender does or will incur or suffer as a result of defending or settling any such actual or threatened claim or proceeding, in each case arising out of or in connection with this Debenture.

5.3 Accounts and set-off

- 5.3.1 This **clause 5.3.1** applies if, at any time, the Lender becomes aware of the creation in favour of a third party of any security interest affecting the Charged Property or if the mortgages and charges created under this Debenture cease to constitute continuing security (see **clause 3.5**) for any reason. The Lender may open in its books a new account for the Borrower. Even if it does not open a new account, then all payments by the Borrower to the Lender after that time will be treated as being credited to such a new account and not as being paid in reduction of the Debts due at the relevant time.
- 5.3.2 The Lender may, at any time, credit to a suspense account any money received by it under this Debenture pending its application towards paying the Debts.

5.3.3 The Lender may, at any time, set off any liability owed by the Lender to the Borrower against any amount due in respect of the Debts. The Lender must notify the Borrower if it does so (unless an Enforcement Event has occurred). If any amount is in a different currency from the amount against which it is to be set off, the Lender may convert either amount (or both):

5.3.3.1 at any time it thinks appropriate; and

5.3.3.2 using the middle exchange rate on the London foreign exchange market as at close of business on the relevant day.

5.4 Delivery of documents

5.4.1 The Borrower must deposit with the Lender all documents of title, certificates, evidence of ownership, policy documents and other materials comprising or relating to the Charged Property (or such of them as the Lender requires). This requirement applies to the delivery or transfer of information which exists in electronic form as well as to the deposit of paper documents. The Lender is entitled to retain all such documents, materials and information until the mortgages and charges created under this Debenture are released. Section 96 of the Law of Property Act 1925 gives a mortgagor certain rights to inspect and copy documents of title held by a mortgagee.

5.4.2 In respect of all certificated shares forming part of the Charged Property, the Borrower must deliver to the Lender appropriate, un-dated instruments of transfer executed by the Borrower.

5.5 Land Registry applications

5.5.1 In respect of the Land mortgaged under **clause 2.1.1** the Borrower must apply to the Land Registry for the entry of a restriction in the following terms:

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated [DATE] in favour of [LENDER] referred to in the charges register or its conveyancer"

5.5.2 The Borrower must also make such an application in relation to Land acquired by it in future which is (or is required to be) registered at the Land Registry.

5.5.3 In each case, the Borrower must:

5.5.3.1 submit the relevant application no later than the date of submission of the application for registration of the mortgage of the relevant Land; and

5.5.3.2 pay the expenses incurred in connection with the application.

5.5.4 The Lender, in its discretion, may make any of the applications referred to in **clauses 5.5.1** and **5.5.2** in place of the Borrower. In such a case, the Borrower:

5.5.4.1 consents to the entry of the relevant restriction; and

5.5.4.2 must pay the expenses incurred in connection with the application.

5.5.5 The Borrower (at its own expense) must do whatever the Lender requests in connection with:

5.5.5.1 any application by the Lender to have this Debenture designated an exempt information document under rule 136 of the Land Registration Rules 2003; and

5.5.5.2 any person's application under rule 137 of the Land Registration Rules 2003 for disclosure of this Debenture following its designation as an exempt information document.

5.5.6 The Borrower shall notify the Lender in writing:

5.5.6.1 before making any application to have this Debenture designated an exempt information document under rule 136 of the Land Registration Rules 2003;

5.5.6.2 as soon as it receives notice of any person's application under rule 137 of the Land Registration Rules 2003 for disclosure of this Debenture following its designation as an exempt information document; and

5.5.6.3 before making any application under rule 138 of the Land Registration Rules 2003 for removal of any such designation.

5.6 Other obligations of the Borrower

5.6.1 The Borrower (at its own expense) must do whatever the Lender or any receiver requests:

5.6.1.1 to render effective and valid any mortgage, charge, right or power intended to be created under this Debenture but which is or may be ineffective or invalid;

5.6.1.2 to perfect, protect or improve the mortgages and charges created under this Debenture or to facilitate their enforcement or realisation;

5.6.1.3 to protect or improve the Lender's position under this Debenture; or

5.6.1.4 in connection with the Lender's (or any receiver's) exercise of any of its (or his) rights or powers under this Debenture.

5.6.2 The Borrower must promptly notify the Lender if it acquires any Land or any other significant asset (unless it has already notified the Lender about it in accordance with **clause 3.2**).

5.6.3 This **clause 5.6.3** applies where the Borrower acquires leasehold Land. The Borrower must use its best endeavours to ensure that the landlord agrees:

5.6.3.1 to notify the Lender if any rights of forfeiture under the lease become exercisable because of a breach of its terms by the Borrower; and

5.6.3.2 not to exercise its rights of forfeiture until the Lender has had an opportunity to remedy the Borrower's breach.

5.6.4 The Borrower must permit any authorised representatives of the Lender at all reasonable times to enter upon any part of the Borrower's Land to carry out any inspection (including an inspection of books of account and other books and documents), survey or valuation or to ascertain whether there has been

any breach of this Debenture. The Lender or its representatives must give the Borrower two business days' notice, unless the Lender believes that it is necessary to enter sooner than that.

- 5.6.5 the Borrower must promptly notify the Lender about each notice, demand, order or other communication received by the Borrower in relation to itself, its business or any part of the Charged Property, unless it is immaterial as regards the mortgages and charges created under this Debenture and as regards the Lender's position under this Debenture.

5.7 Lender's calculations

The Lender's calculation of the amount payable by the Borrower under this Debenture at any time will be conclusive (unless it has made an obvious mistake).

6. PROVISIONS RELATING TO PAYMENTS

6.1 The Debts

The Borrower must, on demand, pay the Debts when they are due.

6.2 Default interest

If the Borrower fails to pay on its due date any amount payable by it under this Debenture, it must pay interest on that amount. Interest will be calculated and paid in accordance with the terms of the Loan Agreement.

6.3 No withholding or set-off

- 6.3.1 The Borrower must not make any withholding on account of tax from any payment due to the Lender or any receiver under this Debenture, unless it is required by law to do so. If it is required by law to do so, it must increase the amount of the relevant payment so that, after the withholding, the payee receives the appropriate amount. It must notify the Lender if these circumstances arise.

- 6.3.2 The Borrower must not exercise any right of set-off or counterclaim it might have in respect of any payment due to the Lender or to any receiver under this Debenture.

7. PROVISIONS RELATING TO ENFORCEMENT

7.1 When the security is enforceable

- 7.1.1 The mortgages and charges created under this Debenture will become enforceable at any time once an Enforcement Event has occurred (**clause 7.2** lists the Enforcement Events). The Lender may then enforce all or any part of those mortgages and charges in whatever manner it thinks appropriate.

- 7.1.2 Section 101 of the Law of Property Act 1925 confers various powers on a mortgagee in relation to mortgaged property (including a power to sell it). For the purposes of this Debenture, the following provisions will not apply:

7.1.2.1 the conditions specified in section 101 of the Law of Property Act 1925 as to when such powers arise;

7.1.2.2 the additional conditions specified in section 103 of the Law of Property Act 1925 which must be satisfied before the statutory power of sale can be exercised; and

- 7.1.2.3 the condition specified in section 109(1) of the Law of Property Act 1925 as to when a receiver may be appointed.

7.2 Enforcement Events

Each of the following events or circumstances is an Enforcement Event.

- 7.2.1 There is an Enforcement Event if the Borrower fails to do something that it is required to do under this Debenture. In this case, the Enforcement Event occurs when the thing is required to be done.
- 7.2.2 There is an Enforcement Event if the Borrower takes any step in connection with anything which is prohibited under this Debenture (or permits any other person to take such a step). In this case, the Enforcement Event occurs when the first step is taken.
- 7.2.3 There is an Enforcement Event if any representation or statement made (or deemed to be made) by the Borrower under this Debenture is incorrect or misleading in any respect when made (or deemed to be made). In this case, the Enforcement Event occurs when the representation or statement is made (or deemed to be made).
- 7.2.4 In this **clause 7.2.4**, the phrase "finance debts" means liabilities incurred by the Borrower in connection with the financing of its business (but not debts owed to trade creditors which are incurred in the day-to-day operation of the Borrower's business).
- 7.2.4.1 There is an Enforcement Event if any finance debt is not paid when due (or within any originally applicable grace period, if there is one). In this case, the Enforcement Event occurs on the payment's due date (or when the grace period expires).
- 7.2.4.2 There is an Enforcement Event if any finance debt is declared to be (or otherwise becomes) due and payable before its specified maturity as a result of an event of default. In this case, the Enforcement Event occurs when the finance debt is declared to be (or otherwise becomes) due and payable.
- 7.2.4.3 There is an Enforcement Event if any creditor of the Borrower cancels or suspends a commitment in respect of any finance debt as a result of an event of default. In this case, the Enforcement Event occurs when the commitment is cancelled or suspended.
- 7.2.4.4 There is an Enforcement Event if any creditor of the Borrower becomes entitled to declare any finance debt due and payable before its specified maturity as a result of an event of default. In this case, the Enforcement Event occurs when the creditor becomes entitled to do that.
- 7.2.5 There is an Enforcement Event if:
- 7.2.5.1 the Borrower is unable (or admits that it is unable) to pay its debts as they fall due; or
- 7.2.5.2 the value of the assets of the Borrower is less than its liabilities (taking into account contingent and prospective liabilities).
- In this case, the Enforcement Event occurs when the relevant circumstances first exist.
- 7.2.6 There is an Enforcement Event if any person takes any step in connection with any of the following:

- 7.2.6.1 a suspension of payments by the Borrower, a moratorium of any indebtedness of the Borrower or a re-scheduling of any of the Borrower's debts;
- 7.2.6.2 a composition, assignment or arrangement with any creditor of the Borrower;
- 7.2.6.3 a re-organisation (by way of voluntary arrangement, scheme of arrangement or otherwise) by the Borrower;
- 7.2.6.4 the appointment of a liquidator, receiver, administrative receiver, administrator or other similar officer in respect of the Borrower or any of its assets;
- 7.2.6.5 the dissolution of the Borrower; or
- 7.2.6.6 enforcement of any security over any assets of the Borrower.

In this case, the Enforcement Event occurs when the first step is taken.

- 7.2.7 There is an Enforcement Event if any person takes any step in connection with expropriation, attachment, sequestration, distress or execution affecting any asset of the Borrower.

In this case, the Enforcement Event occurs when the first step is taken.

- 7.2.8 There is an Enforcement Event if it is unlawful for the Borrower to perform any of its obligations under this Debenture or any other obligations owed to the Lender. In this case, the Enforcement Event occurs when these circumstances first exist.
- 7.2.9 There is an Enforcement Event if the Borrower repudiates this Debenture or the Lender believes that it intends to do so. In this case, the Enforcement Event occurs when these circumstances first exist.
- 7.2.10 There is an Enforcement Event if the Borrower requests the Lender to appoint an administrator of the Borrower or to appoint a receiver in respect of the Borrower or the Charged Property. In this case, the Enforcement Event occurs when the Lender receives the request.

7.3 Appointment of administrator

Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created under this Debenture. This means that, at any time after an Enforcement Event has occurred, the Lender may appoint an administrator of the Borrower under the Insolvency Act 1986.

7.4 Appointment of receiver

At any time after an Enforcement Event has occurred the Lender may:

- 7.4.1 appoint any number of receivers in respect of the Charged Property;
- 7.4.2 appoint alternative or additional receivers in respect of the Charged Property; and
- 7.4.3 remove from office any receiver.

7.5 General provisions relating to receivers

- 7.5.1 Only the Lender may fix the terms of each receiver's appointment. Section 109(6) of the Law of Property Act 1925 restricts the amount of a receiver's remuneration but that section does not apply to this Debenture.
- 7.5.2 If, at any time, there are two or more receivers in office, each individually may exercise all the powers conferred on a receiver under this Debenture (unless the Lender specifies that they must act jointly).
- 7.5.3 Each receiver will be the Borrower's agent. The Borrower must pay to each receiver his remuneration. Only the Borrower will be responsible for each receiver's acts and defaults. The Lender will have no liability in respect of the acts or defaults of any receiver or otherwise in relation to the appointment of any receiver (except as may be agreed between the Lender and any receiver).
- 7.5.4 The Borrower must indemnify each receiver on demand in respect of all expenses, losses and liabilities incurred by him in connection with this Debenture.
- 7.5.5 The Borrower appoints each receiver as its attorney to do whatever the Borrower is (or may be) required to do under this Debenture. Each receiver, in his capacity as attorney, may act independently of each other attorney appointed by the Borrower and need not act jointly with them. The Borrower must ratify any action taken by a receiver in his capacity as an attorney.
- 7.5.6 The power of attorney in **clause 7.5.5** is irrevocable and given by way of security. Therefore, the Powers of Attorney Act applies. This means that the Borrower cannot revoke the power of attorney without the receiver's consent and that it will not be revoked by the Borrower's winding-up or dissolution.
- 7.5.7 Each receiver may delegate to any other person the exercise of his rights and powers in connection with this Debenture, including his rights and powers as the Borrower's attorney.

7.6 Powers of receivers

In connection with the enforcement of the mortgages and charges created by this Debenture, each receiver may do whatever he considers appropriate in relation to the Borrower and its business and the Charged Property. In this respect, each receiver has all the powers conferred on receivers by the Law of Property Act 1925 (even if he is not appointed under the Law of Property Act 1925) and all the powers conferred on administrative receivers by the Insolvency Act 1986 (even though he is not an administrative receiver).

7.7 Application of money

- 7.7.1 Subject to section 176A of the Insolvency Act 1986 (which, in certain circumstances requires part of a company's property to be made available for satisfaction of unsecured debts) all proceeds of enforcement of the mortgages and charges created under this Debenture must be applied in or towards discharging the following liabilities in the order listed:
- 7.7.1.1 claims ranking in priority with regard to the Charged Property;
 - 7.7.1.2 the expenses, losses and liabilities incurred by each receiver in connection with this Debenture;
 - 7.7.1.3 each receiver's remuneration;
 - 7.7.1.4 the expenses, losses and liabilities incurred by the Lender in connection with this Debenture;
 - 7.7.1.5 the Debts (in whatever order the Lender wishes); and

7.7.1.6 claims of any person entitled to the surplus.

7.7.2 Sections 105, 107(2) and 109(8) of the Law of Property Act 1925 provide for the application of proceeds of enforcement of security in certain circumstances but those sections do not apply to this Debenture.

7.7.3 Any distribution by an administrator appointed by the Lender under **clause 7.3** will be made in accordance with the requirements of the Insolvency Act 1986.

7.8 Miscellaneous provisions relating to enforcement

7.8.1 Any right or power exercisable by a receiver appointed for the purposes of this Debenture may be exercised by the Lender at any time after an Enforcement Event has occurred, whether or not it has appointed a receiver.

7.8.2 Sections 99 and 100 of the Law of Property Act 1925 contain provisions as to the grant and surrender of leases. To the extent that those sections would otherwise restrict the Lender's (or any receiver's) exercise of its (or his) powers or rights in respect of the Charged Property, they do not apply.

7.8.3 After an Enforcement Event has occurred, the Lender or any receiver may sever any fixture from the property to which it is attached and dispose of it separately.

7.8.4 If the Lender (or any receiver) enters into possession of any part of the Charged Property, it (or he) will not be liable to account as mortgagee in possession.

7.8.5 The Lender and each receiver will not be liable to each other (except as may be agreed between them), to the Borrower or to any other person for:

7.8.5.1 any expense, loss or liability relating to the enforcement of any mortgages or charges created under this Debenture or to the realisation of any Charged Property; or

7.8.5.2 any expense, loss or liability arising in any other way in connection with this Debenture.

However, this exclusion of liability does not apply if the expense, loss or liability arises from the gross negligence, fraud or wilful misconduct of the Lender or (as applicable) the relevant receiver.

7.8.6 Any person dealing with the Lender or any receiver (or the agents or delegates of any of them) may assume that:

7.8.6.1 the Debts have become payable;

7.8.6.2 a valid demand has been served upon the Borrower;

7.8.6.3 an Enforcement Event has occurred;

7.8.6.4 any power being exercised has arisen and become exercisable and is being properly exercised; and

7.8.6.5 any money received by the Lender or any receiver will be applied in accordance with law and with the terms of this Debenture.

8. PROVISIONS RELATING TO THIS DEBENTURE

8.1.1 Notices

Any notice required to be given by this Debenture is ineffective if given orally and must be made by letter which is delivered personally, by fax or by e-mail or other electronic means in permanent written form at the addresses given in **clause 8.1.2** or such alternative address notified in writing. Such notice will only be effective when actually received by the recipient;

The contact details for this purpose are as follows:

8.1.2 Lender

William E. Aziz
Chief Restructuring Officer
Walter Energy Canada Holdings, Inc.
32 Shorewood Place
Oakville, Ontario L6K 3Y4
CANADA
Email: baziz@bluetreeadvisors.com

Borrower

Aberpergwm Colliery Engine Cottage Site, Glynneath, Neath, West Glamorgan,
SA11 5AJ FAO Dan Maling/Dan Stickel

Email danmaling@me.com/cedarhillangus@frontier.com

8.2 Partial invalidity

If any provision of this Debenture is illegal, invalid or unenforceable in any respect under the law of any jurisdiction, this does not affect:

- 8.2.1 the legality, validity or enforceability of the other provisions of this Debenture; or
- 8.2.2 the legality, validity or enforceability of the affected provision under the law of any other jurisdiction.

8.3 Rights and remedies

- 8.3.1 If the Lender (or a receiver) fails to exercise any right or remedy under this Debenture or delays its exercise of any right or remedy, this does not mean that it (or he) waives that right or remedy.
- 8.3.2 If the Lender (or a receiver) exercises a right or remedy once, this does not mean that it (or he) cannot do so again.
- 8.3.3 If the Lender (or a receiver) partly exercises a right or remedy, this does not mean that it (or he) cannot exercise that right or remedy again.
- 8.3.4 The rights and remedies provided in this Debenture are in addition to (not instead of) rights or remedies under the law.

8.4 Assignment

The Lender may at any time assign or otherwise deal with its rights under this Debenture. The Borrower may not assign, novate or otherwise deal with any rights, interests or obligations under this agreement

8.5 Governing law

This Debenture is governed by English law.

8.6 Jurisdiction

This Agreement and any non-contractual obligations arising out of or in connection with it will be governed by English law.

8.7 Other general provisions

These provisions apply throughout this Debenture.

8.7.1 Each reference to the Borrower or the Lender includes the relevant person's successors-in-title.

8.7.2 The word "person" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not it has separate legal personality).

8.7.3 The word "receiver" means a receiver, or a receiver and manager (but not an administrative receiver).

8.7.4 The legislation referred to in this Debenture is the Contracts (Rights of Third Parties) Act 1999, the Insolvency Act 1986, the Land Registration Rules 2003, the Law of Property Act 1925, the Law of Property (Miscellaneous Provisions) Act 1994, the Powers of Attorney Act 1971 and the Town and Country Planning Act 1990. Each reference to a provision of any statute or statutory instrument means, at any time, the relevant provision as in force at that time (even if it has been amended or re-enacted since the date of this Debenture).

8.7.5 Where there is a list of things introduced by the word "including" or followed by the phrase "or otherwise", the intention is to state examples and not to be exhaustive (and the same applies where other, similar words or phrases are used).

8.7.6 Each heading in this Debenture is for convenience only. It does not affect the meaning of the words which follow it.

8.7.7 Wherever this Debenture states that the Borrower must not take a particular step without the Lender's consent, the Lender has discretion whether to give its consent and can impose conditions on any such consent it gives.

8.7.8 Each receiver, though not party to this Debenture, is entitled to exercise the powers and to enforce the rights conferred on it. Any other person who is not party to this Debenture has no right under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce or to enjoy the benefit of any term of this Debenture.

8.7.9 It is not necessary for the Borrower and Lender to seek the consent of any other person before rescinding or varying this Debenture (unless a receiver is in office, in which case his consent will be required).

8.8 Ownership of this Debenture

This Debenture is the Lender's property.

EXECUTED as a DEED
by Energybuild Mining Limited acting by

SECRET

Witness Signature:

Witness Name: Chelsea Loris

Witness Address:

Witness Occupatio

EXECUTED as a **DEED** by Cambrian Energybuild Holdings ULC acting by

Director

Witness signature:

Witness Name:

Witness Address:

Witness Occupation:

man_002\6920945\1
23 December 2016 grayda

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Dated: 6 February 2017

- (1) ENERGYBUILD MINING LIMITED
(2) CAMBRIAN ENERGYBUILD HOLDINGS ULC
-

Debenture

We certify this document as a true copy of the original

Eversheds Sutherland (International) LLP

Date: 15/02/17
EVERSHEDS SUTHERLAND (INTERNATIONAL) LLP

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THIS DEBENTURE is dated

6 February

2016

BETWEEN:

- (1) ENERGYBUILD MINING LIMITED an English company registered with company number 04934085 (the "Borrower"); and
- (2) CAMBRIAN ENERGYBUILD HOLDINGS ULC a company registered in Canada (the "Lender")

OPERATIVE CLAUSES

1 INTRODUCTION

- 1.1 The Lender has agreed to lend to Energybuild the sum of £110,000 on the terms of the Loan Agreement. The Borrower has provided a guarantee to the Lender guaranteeing the obligations of Energybuild to the Lender. This Debenture has been given by the Borrower as security for its obligations to the Lender as guarantor under the Loan Agreement.
- 1.2 For the sake of convenience, some words and phrases in this Debenture have been given special meanings. These are as follows:

"Charged Property"	at any time, all property which is at that time the subject of any mortgage or charge created under this Debenture
"Energybuild"	means Energybuild Group Limited, the borrower under the Loan Agreement
"Enforcement Events"	are the events and circumstances listed in clause 7.2
"Floating Charge Property"	at any time, all property which is at that time the subject of the floating charge created under this Debenture
"Land"	any estate or interest in real property and any related rights
"Loan"	a loan in the sum of £110,00 from the Lender to Energybuild
"Loan Agreement"	an agreement between Energybuild and the Lender whereby the Lender made the Loan available to Energybuild, executed at the same time as this Debenture.
"Secured Obligations"	all sums owed by Energybuild to the Lender including but not limited to the sums due under the Loan Agreement

- 1.3 There are some other explanatory provisions in **clause 8.7**.

2. CREATING THE SECURITY

2.1 Mortgages and charges

The Borrower covenants to pay on demand the Secured Obligations. The Borrower creates the following mortgages and charges in favour of the Lender in order to secure the payment of the Secured Obligations:

- 2.1.1 first fixed charges of:

- 2.1.1.1 all present and future interests of the Borrower in or over freehold or leasehold land;
- 2.1.1.2 the Borrower's plant and machinery (not including any computers or their peripherals or any other office equipment);
- 2.1.1.3 the Borrower's goodwill;
- 2.1.1.4 the Borrower's rights and interest in intellectual property of any kind (including all related property and materials in any medium);
- 2.1.1.5 the Borrower's uncalled share capital;
- 2.1.1.6 the Borrower's rights and interest in shares and other securities; and
- 2.1.1.7 the Borrower's rights and interest in contracts (including contracts of insurance);
- 2.1.2 a floating charge of all the Borrower's property and undertaking other than that which is effectively mortgaged or charged under any other provision of this Debenture.

2.2 Full title guarantee

- 2.2.1 Each mortgage and charge created under this Debenture is made with full title guarantee. Therefore, the Law of Property (Miscellaneous Provisions) Act 1994 applies. This means that the Borrower is deemed to give certain covenants in relation to itself and the Charged Property;
- 2.2.2 The covenants set out in sections 2 to 5 of the Law of Property (Miscellaneous Provisions) Act 1994 shall extend to bind the Borrower only if, in any case, the relevant covenant imposes upon the Borrower a burden, liability or obligation that would not otherwise arise under this Debenture.

3. PROVISIONS RELATING TO THE SECURITY

3.1 Present and future property

In each case, the fixed and floating charges created under this Debenture apply to both present and future property of the relevant type.

3.2 Where there are limitations on the creation of security

- 3.2.1 This **clause 3.2.1** applies where, on the date of this Debenture, there is property which is subject to a term prohibiting the Borrower from creating a charge (or, in the case of Land, a mortgage) over it in accordance with this Debenture:
 - 3.2.1.1 the Borrower represents that it has notified the Lender of the existence of all such property and has given the Lender all the information it requires with regard to it;
 - 3.2.1.2 the Borrower does not create such a charge (or mortgage) over the relevant property on the date of this Debenture and will not do so.
- 3.2.2 This **clause 3.2.2** applies where, on the date of this Debenture, there is property which is subject to a term permitting the Borrower to create a charge (or, in the case of Land, a mortgage) over it in accordance with this Debenture only with the consent of another person.

- 3.2.2.1 The Borrower represents that it has notified the Lender of the existence of all such property and has given the Lender all the information it requires with regard to it.
- 3.2.2.2 The Borrower does not create such a charge (or mortgage) over the relevant property on the date of this Debenture and will not do so except in accordance with **clause 3.2.2.5**.
- 3.2.2.3 The Borrower must use its best endeavours to obtain the relevant person's consent.
- 3.2.2.4 The Borrower must notify the Lender as soon as it has obtained that consent.
- 3.2.2.5 If, at any time after it has obtained that consent, the Lender requests the Borrower to create such a charge (or mortgage) over the relevant property, the Borrower must do so on terms acceptable to the Lender (and at its own expense).
- 3.2.3 This **clause 3.2.3** applies where the Borrower intends to acquire property which is (or will be) subject to a term prohibiting the Borrower from creating a charge (or, in the case of Land, a mortgage) over it in accordance with this Debenture.
 - 3.2.3.1 The Borrower must notify the Lender of its intention and give the Lender all the information it requires with regard to the relevant property and the proposed acquisition.
 - 3.2.3.2 The Borrower may acquire the relevant property only if the Lender consents.
 - 3.2.3.3 The Borrower does not create such a charge (or mortgage) over the relevant property on the date of this Debenture and will not do so.
- 3.2.4 This **clause 3.2.4** applies where the Borrower intends to acquire property which is (or will be) subject to a term permitting the Borrower to create a charge (or, in the case of Land, a mortgage) over it in accordance with this Debenture only with the consent of another person.
 - 3.2.4.1 The Borrower must notify the Lender of its intention and give the Lender all the information it requires with regard to the relevant property and the proposed acquisition.
 - 3.2.4.2 The Borrower may acquire the relevant property only if the Lender consents.
 - 3.2.4.3 The Borrower does not create such a charge (or mortgage) over the relevant property on the date of this Debenture and will not do so except in accordance with **clause 3.2.4.4(c)**.
 - 3.2.4.4 If the Borrower does acquire the relevant property:
 - (a) it must use its best endeavours to obtain the relevant person's consent;
 - (b) it must notify the Lender as soon as it has obtained that consent; and
 - (c) if, at any time after it has obtained that consent, the Lender requests the Borrower to create such a charge (or mortgage)

over the relevant property the Borrower must do so on terms acceptable to the Lender (and at its own expense).

3.3 **Contracts**

In the case of a contract, the Borrower charges to the Lender under this Debenture all payments received under the contract even if, for any reason, it does not create an effective charge of its rights against the other parties to the contract.

3.4 **Independent security and Lender's Discretion**

3.4.1 The mortgages and charges created under this Debenture and the rights of the Lender under this Debenture are independent of any other security or any other right which the Lender has at any time in respect of any Debts.

3.4.2 The Lender may decide:

3.4.2.1 whether and, if so, when and how:

(a) to exercise its rights under this Debenture; and

(b) to exercise any other rights it might have in respect of any Debts; and

3.4.2.2 when and how to apply any payments received by it under this Debenture or any other payments in respect of any Debts;

and the Borrower has no right to control or restrict the Lender's exercise of this discretion. In particular the Borrower may not insist that the Lender seeks payment from any other person, exercises any other right it might have or takes any other step before exercising its rights under this Debenture.

3.5 **Continuing Security**

The mortgages and charges created under this Debenture constitute continuing security. This means that they secure the full amount of the Debts at any time even if, at some other time:

3.5.1 the amount of the Debts has been less than the amount at the relevant time; or

3.5.2 there have been no Debts outstanding.

3.6 **Further advances**

The mortgages and charges created under this Debenture together secure any further advances made by the Lender.

3.7 **Crystallisation of floating charge (by notice)**

3.7.1 **Clauses 3.7.2 and 3.7.3** specify cases in which the Lender is entitled to crystallise the floating charge created under this Debenture (converting it into a fixed charge or a number of fixed charges). Crystallisation will occur when the Lender gives notice to this effect to the Borrower.

3.7.2 The first case is where the Lender believes that crystallisation is necessary in order to avoid or mitigate any circumstances which could:

3.7.2.1 reduce the value of all or any part of the Floating Charge Property;

3.7.2.2 have an adverse effect on all or any part of the Floating Charge Property; or

3.7.2.3 jeopardise the Lender's position.

3.7.3 The second case is where there is an Enforcement Event other than one which results in automatic crystallisation (see **clause 3.8**);

3.7.4 If, at any time, the Lender crystallises the floating charge in relation to just part of the relevant Floating Charge Property, that will not prevent its exercising its powers under this **clause 3.7** again.

3.8 Crystallisation of floating charge (automatic)

Clauses 3.8.1 to 3.8.3 specify cases in which the floating charge created under this Debenture will automatically crystallise (without the Lender having to give notice to the Borrower). There are other circumstances in which, by operation of law, a floating charge will crystallise.

3.8.1 The first case is where there is an Enforcement Event under **clause 7.2.1** or **7.2.2** which is caused by the Borrower's failure to comply with any of the following restrictions in relation to Floating Charge Property:

3.8.1.1 **clause 4.2** (Prohibition on disposal of property);

3.8.1.2 **clause 4.3** (Prohibition on creation of further security interests);

3.8.1.3 **clause 4.4** (Prohibition on cancellation of rights);

3.8.1.4 **clause 4.5** (General prohibition); or

3.8.1.5 **clause 4.6.4** (Dealing with bank accounts and receivables).

If the Enforcement Event relates to just part of the Floating Charge Property, then crystallisation will affect only that part; the rest of the Floating Charge Property will be unaffected.

3.8.2 The second case is where there is an Enforcement Event under **clause 7.2.6**. The floating charge will crystallise over all of the Floating Charge Property.

3.8.3 The third case is where there is an Enforcement Event under **clause 7.2.7**. If the Enforcement Event relates to just part of the Floating Charge Property, then crystallisation will affect only that part; the rest of the Floating Charge Property will be unaffected.

3.8.4 In each case, the floating charge will crystallise as soon as the relevant Enforcement Event occurs.

3.9 Release of security

3.9.1 The Borrower may give notice to the Lender requesting the release of the Charged Property from the mortgages and charges created by this Debenture. The Lender must do whatever is reasonably necessary to comply with such a request, but only if the Lender is satisfied at the time that:

3.9.1.1 all the Debts then due for payment have been paid;

3.9.1.2 there are no other Debts which have not yet become due to be paid;

3.9.1.3 there are no other liabilities owed to the Lender by the Borrower;

- 3.9.1.4 there is no risk that, as a consequence of any insolvency proceedings (or analogous proceedings) or for any other reason, any payment previously made to the Lender in respect of any Debts will be required to be repaid or will be void, set aside or otherwise affected; and
 - 3.9.1.5 the Lender is not obliged to enter into any arrangement under which the Borrower might incur further liabilities to the Lender.
- 3.9.2 A release of security under **clause 3.9.1** will not be effective until the Borrower has paid all the Lender's costs in connection with the release.
- 3.9.3 If the Lender does release any security under **clause 3.9.1**, that will not mean that the Lender has waived any right it might then have, or any remedy it might then be entitled to, in respect of any past breach of this Debenture.
- 3.9.4 The mortgages and charges created under this Debenture will not be discharged in any way other than in accordance with **clause 3.9.1**.
- 3.9.5 **Clause 3.9.6** applies where:
 - 3.9.5.1 there has been a release of security under **clause 3.9.1**; and
 - 3.9.5.2 as a consequence of any insolvency proceedings (or analogous proceedings) or for any other reason:
 - (a) any payment made to the Lender in respect of any Debts is required to be repaid; or
 - (b) any such payment is void, is set aside or is otherwise affected.
- 3.9.6 The mortgages and charges created under this Debenture continue in effect as if:
 - 3.9.6.1 there has been no such release; and
 - 3.9.6.2 the relevant payment had not been made.

4. PROVISIONS RELATING TO THE BORROWER AND THE CHARGED PROPERTY

4.1 Representations and warranties

- 4.1.1 The Borrower makes the following representations and warranties:
 - 4.1.1.1 It is duly incorporated in England.
 - 4.1.1.2 It has the power to own its assets and to carry on business as it is being conducted.
 - 4.1.1.3 The obligations expressed to be assumed by it in this Debenture are legal, valid, binding and enforceable obligations (subject to the principle that equitable remedies are discretionary).
 - 4.1.1.4 Entering into this Debenture and performing its obligations do not cause a conflict with:
 - (a) any law or regulation applicable to it;
 - (b) its constitutional documents; or

- (c) any agreement or instrument binding upon it or any of its assets.
- 4.1.1.5 It has the power and authority to enter into this Debenture and to perform its obligations.
- 4.1.1.6 It is the legal and beneficial owner of all the Charged Property (except in relation to any shares or other securities held on its behalf by a nominee, in which case it is the beneficial owner of those shares or other securities).
- 4.1.1.7 The Charged Property is subject to no security or other interest,
- 4.1.1.8 There are no covenants, conditions, restrictions or other things affecting any part of the Charged Property which could reduce its value or otherwise have an adverse effect on it or jeopardise the Lender's position, except:
 - (a) any which has been notified to the Lender as required by **clause 3.2**; and
 - (b) any which has been created or is permitted under this Debenture.
- 4.1.1.9 There is no breach of any law, regulation, covenant or condition and there are no disputes or other events or circumstances outstanding, any of which could:
 - (a) reduce the value of all or any part of the Charged Property;
 - (b) have an adverse effect on all or any part of the Charged Property; or
 - (c) jeopardise the Lender's position.
- 4.1.2 These representations and warranties are deemed to be repeated every day. The Borrower must notify the Lender immediately if any of them is not true or if it appears likely that any of them will be untrue in future.

4.2 Prohibition on disposal of property

- 4.2.1 The Borrower must not dispose of all or any part of the Charged Property or create any right or interest in relation to it (or attempt to do any of those things), whether by way of sale, lease, licence or otherwise. However, there are the following exceptions to this prohibition.
 - 4.2.1.1 There is an exception where such a disposal or the creation of such a right or interest is required or permitted by this Debenture.
 - 4.2.1.2 There is an exception where the Lender gives its prior consent.
 - 4.2.1.3 There are exceptions in the following circumstances for property which is Floating Charge Property at the time of the disposal:
 - (a) where a disposal is made in the ordinary course of the Borrower's day-to-day business and on normal commercial terms; and
 - (b) where property is disposed of because it is broken or no longer required (whether or not it is replaced),

the first of these exceptions in this clause does not permit factoring or any other disposal of the Borrower's book debts.

- 4.2.2 The prohibition in **clause 4.2.1** overrides section 99 of the Law of Property Act 1925, which contains provisions about the making of leases by mortgagors.

4.3 **Prohibition on creation of further security interests**

Apart from the mortgages and charges created under this Debenture, the Borrower must not create any security or similar interest in respect of the Charged Property (or attempt to do so) and it must not permit any such interest to exist. However, there are the following exceptions to this prohibition.

- 4.3.1 There is an exception where such an interest is required or permitted by this Debenture.
- 4.3.2 There is an exception where the Lender gives its prior consent.
- 4.3.3 There is an exception where such an interest arises in the ordinary course of the Borrower's business, either by operation of law or by virtue of a retention-of-title clause, and is subsequently discharged in the ordinary course of the Borrower's business.

4.4 **Prohibition on cancellation of rights**

- 4.4.1 The Borrower must not cancel, waive or vary its rights (or allow them to lapse) in respect of all or any part of the Charged Property and it must not permit any other person to do so. However, there are the following exceptions to this prohibition.
- 4.4.1.1 There is an exception where such action is required or permitted by this Debenture.
- 4.4.1.2 There is an exception where the Lender gives its prior consent.
- 4.4.1.3 There is an exception for property which is Floating Charge Property, where the relevant event occurs in the ordinary course of the Borrower's day-to-day business.
- 4.4.2 The prohibition in **clause 4.4.1** overrides section 100 of the Law of Property Act 1925, which contains provisions about mortgagors' acceptance of the surrender of leases.

4.5 **General prohibition**

- 4.5.1 As well as complying with the specific prohibitions and restrictions in other clauses, the Borrower must not do anything that could:
- 4.5.1.1 reduce the value of all or any part of the Charged Property;
- 4.5.1.2 have an adverse effect on all or any part of the Charged Property; or
- 4.5.1.3 jeopardise the Lender's position,
- and it must not permit any other person to do so.
- 4.5.2 However, there are the following exceptions to the prohibition in **clause 4.5.1**.

4.5.2.1 There is an exception where the action is required or permitted by this Debenture.

4.5.2.2 There is an exception where the Lender gives its prior consent.

4.6 Dealing with bank accounts and receivables

4.6.1 In this **clause 4.6**, the word "receivables" is used to refer to the Borrower's book debts and other debts due to it (other than in respect of credit balances on bank accounts) and its rights and interest in guarantees and other security relating to those debts.

4.6.2 Unless **clause 4.6.3** applies, the Borrower:

4.6.2.1 may operate its bank accounts in the ordinary course of its day-to-day business;

4.6.2.2 must realise and (if applicable) enforce payment in respect of its receivables in the ordinary course of its day-to-day business; and

4.6.2.3 may apply the proceeds of its receivables in the ordinary course of its day-to-day business.

4.6.3 This **clause 4.6.3** applies if the floating charge is crystallised in respect of the Borrower's bank accounts or its receivables (**clauses 3.7** and **3.8** deal with crystallisation). With effect from the date of crystallisation, the Borrower:

4.6.3.1 must realise and (if applicable) enforce payment in respect of its receivables only as agent of the Lender;

4.6.3.2 must credit all money received by it in respect of its receivables to a bank account specified by the Lender for this purpose (or arrange for debtors to make payment directly to such account); and

4.6.3.3 must not debit any money to that or any other bank account (except with the Lender's prior consent).

4.6.4 Both before and after crystallisation, the Borrower must not deal with the receivables (or attempt to do so) in any way other than as provided by this **clause 4.6**. The Borrower covenants that it will, upon request by the Lender take such action in relation to claims against third parties which the Lender may reasonably require.

4.7 Shares and securities – voting and payments

4.7.1 Until an Enforcement Event occurs, only the Borrower may exercise the voting rights and other rights in respect of the shares and other securities charged under this Debenture. It must not do so in a way which could:

4.7.1.1 reduce the value of the shares or securities;

4.7.1.2 have an adverse effect on the shares or securities; or

4.7.1.3 jeopardise the Lender's position.

4.7.2 Until an Enforcement Event occurs, only the Borrower is entitled to receive payments made in respect of the shares and other securities charged under this Debenture.

4.7.3 Once an Enforcement Event occurs, only the Lender will have these rights.

4.8 Maintaining the Charged Property

- 4.8.1 The Borrower must keep all its buildings, fixtures, plant and machinery and all its computers and peripherals and other office equipment in a good state of repair and condition.
- 4.8.2 Unless the Lender gives its consent, the Borrower must not demolish any of its buildings or make any alterations to them or do anything constituting a development for the purposes of section 55 of the Town and Country Planning Act.
- 4.8.3 The Borrower must do whatever is necessary to preserve, maintain and renew its rights and interest in intellectual property.
- 4.8.4 If the Borrower fails to comply with this **clause 4.8**, the Lender or any receiver may arrange for the appropriate measures to be taken to put right the Borrower's failure.

4.9 Insuring

- 4.9.1 At all times, the Borrower must insure against all those risks in respect of which a prudent company carrying on a business similar to the Borrower's would normally maintain insurance. In each case, the following conditions must be met.
 - 4.9.1.1 The insurer must be acceptable to the Lender.
 - 4.9.1.2 The terms of the insurance must be acceptable to the Lender.
 - 4.9.1.3 At all times there must be a level of cover which is at least equal to the full replacement or reinstatement value of the relevant property plus adequate provision to cover associated costs and losses (and to cover any other amounts required by the Lender to be covered).
 - 4.9.1.4 The policy must be in the joint names of the Borrower and the Lender, unless the Lender consents to simply having its interest noted on the policy.
- 4.9.2 The Borrower must pay all insurance premiums promptly.
- 4.9.3 The Borrower must provide the Lender, on request, with a copy of each of the Borrower's insurance policies and evidence that the premiums have been paid.
- 4.9.4 The Borrower must hold on trust for the Lender all money received by virtue of any insurance policies. The Borrower must apply that money in accordance with the Lender's instructions (either in making good the relevant loss or damage or in full or partial payment of the Debts). This **clause 4.9.4** does not apply where the money paid under a policy is paid in respect of a liability owed to another person.
- 4.9.5 This **clause 4.9.5** applies where the Borrower is the tenant of leasehold Land and the lease requires the landlord (and not the Borrower) to insure that Land. For so long as the landlord complies with its insuring obligations under the lease, the Borrower will be deemed to have complied with its obligations in relation to that Land under **clause 4.9.1**.
- 4.9.6 If the Borrower fails to comply with this **clause 4.9**, the Lender (or any receiver) may arrange appropriate insurance on such terms as it (or he) thinks fit.

- 4.9.7 Sections 108 and 109(7) of the Law of Property Act 1925 specify restrictions in relation to the powers of mortgagees and receivers to effect insurance. Those restrictions do not apply.

4.10 Other requirements

- 4.10.1 The Borrower must comply with all statutory, contractual and other conditions and requirements affecting it or the Charged Property. If there are non-binding codes of practice or guidance notes (or similar things) or industry practices affecting those engaged in the same type of business as the Borrower and which are generally accepted and applied, then the Borrower must also comply with those.
- 4.10.2 If the Borrower fails to comply with this **clause 4.10**, the Lender or any receiver may arrange for the appropriate measures to be taken to put right the Borrower's failure.

5. PROTECTING THE LENDER'S POSITION

5.1 Power of attorney and delegation

- 5.1.1 The Borrower appoints the Lender as its attorney to do whatever the Borrower is (or may be) required to do under this Debenture. The Lender, in its capacity as attorney, may act independently of each other attorney appointed by the Borrower and need not act jointly with them. The Borrower must ratify any action taken by the Lender in its capacity as attorney.
- 5.1.2 The power of attorney in **clause 5.1.1** is irrevocable and given by way of security. Therefore, the Powers of Attorney Act applies. This means that the Borrower cannot revoke the power of attorney without the Lender's consent and that it will not be revoked by the Borrower's winding-up or dissolution.
- 5.1.3 The Lender may delegate to any other person the exercise of its rights and powers in connection with this Debenture, including its rights and powers as the Borrower's attorney.

5.2 Indemnity

The Borrower will indemnify the Lender against all losses, liabilities, costs (including legal fees), damages and expenses that the Lender does or will incur or suffer, all claims or proceedings made, brought or threatened against the Lender by any person and all losses, liabilities, costs (on a full indemnity basis), damages and expenses the Lender does or will incur or suffer as a result of defending or settling any such actual or threatened claim or proceeding, in each case arising out of or in connection with this Debenture.

5.3 Accounts and set-off

- 5.3.1 This **clause 5.3.1** applies if, at any time, the Lender becomes aware of the creation in favour of a third party of any security interest affecting the Charged Property or if the mortgages and charges created under this Debenture cease to constitute continuing security (see **clause 3.5**) for any reason. The Lender may open in its books a new account for the Borrower. Even if it does not open a new account, then all payments by the Borrower to the Lender after that time will be treated as being credited to such a new account and not as being paid in reduction of the Debts due at the relevant time.
- 5.3.2 The Lender may, at any time, credit to a suspense account any money received by it under this Debenture pending its application towards paying the Debts.

5.3.3 The Lender may, at any time, set off any liability owed by the Lender to the Borrower against any amount due in respect of the Debts. The Lender must notify the Borrower if it does so (unless an Enforcement Event has occurred). If any amount is in a different currency from the amount against which it is to be set off, the Lender may convert either amount (or both):

5.3.3.1 at any time it thinks appropriate; and

5.3.3.2 using the middle exchange rate on the London foreign exchange market as at close of business on the relevant day.

5.4 Delivery of documents

5.4.1 The Borrower must deposit with the Lender all documents of title, certificates, evidence of ownership, policy documents and other materials comprising or relating to the Charged Property (or such of them as the Lender requires). This requirement applies to the delivery or transfer of information which exists in electronic form as well as to the deposit of paper documents. The Lender is entitled to retain all such documents, materials and information until the mortgages and charges created under this Debenture are released. Section 96 of the Law of Property Act 1925 gives a mortgagor certain rights to inspect and copy documents of title held by a mortgagee.

5.4.2 In respect of all certificated shares forming part of the Charged Property, the Borrower must deliver to the Lender appropriate, un-dated instruments of transfer executed by the Borrower.

5.5 Land Registry applications

5.5.1 In respect of the Land mortgaged under **clause 2.1.1** the Borrower must apply to the Land Registry for the entry of a restriction in the following terms:

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated [DATE] in favour of [LENDER] referred to in the charges register or its conveyancer"

5.5.2 The Borrower must also make such an application in relation to Land acquired by it in future which is (or is required to be) registered at the Land Registry.

5.5.3 In each case, the Borrower must:

5.5.3.1 submit the relevant application no later than the date of submission of the application for registration of the mortgage of the relevant Land; and

5.5.3.2 pay the expenses incurred in connection with the application.

5.5.4 The Lender, in its discretion, may make any of the applications referred to in **clauses 5.5.1** and **5.5.2** in place of the Borrower. In such a case, the Borrower:

5.5.4.1 consents to the entry of the relevant restriction; and

5.5.4.2 must pay the expenses incurred in connection with the application.

5.5.5 The Borrower (at its own expense) must do whatever the Lender requests in connection with:

5.5.5.1 any application by the Lender to have this Debenture designated an exempt information document under rule 136 of the Land Registration Rules 2003; and

5.5.5.2 any person's application under rule 137 of the Land Registration Rules 2003 for disclosure of this Debenture following its designation as an exempt information document.

5.5.6 The Borrower shall notify the Lender in writing:

5.5.6.1 before making any application to have this Debenture designated an exempt information document under rule 136 of the Land Registration Rules 2003;

5.5.6.2 as soon as it receives notice of any person's application under rule 137 of the Land Registration Rules 2003 for disclosure of this Debenture following its designation as an exempt information document; and

5.5.6.3 before making any application under rule 138 of the Land Registration Rules 2003 for removal of any such designation.

5.6 Other obligations of the Borrower

5.6.1 The Borrower (at its own expense) must do whatever the Lender or any receiver requests:

5.6.1.1 to render effective and valid any mortgage, charge, right or power intended to be created under this Debenture but which is or may be ineffective or invalid;

5.6.1.2 to perfect, protect or improve the mortgages and charges created under this Debenture or to facilitate their enforcement or realisation;

5.6.1.3 to protect or improve the Lender's position under this Debenture; or

5.6.1.4 in connection with the Lender's (or any receiver's) exercise of any of its (or his) rights or powers under this Debenture.

5.6.2 The Borrower must promptly notify the Lender if it acquires any Land or any other significant asset (unless it has already notified the Lender about it in accordance with **clause 3.2**).

5.6.3 This **clause 5.6.3** applies where the Borrower acquires leasehold Land. The Borrower must use its best endeavours to ensure that the landlord agrees:

5.6.3.1 to notify the Lender if any rights of forfeiture under the lease become exercisable because of a breach of its terms by the Borrower; and

5.6.3.2 not to exercise its rights of forfeiture until the Lender has had an opportunity to remedy the Borrower's breach.

5.6.4 The Borrower must permit any authorised representatives of the Lender at all reasonable times to enter upon any part of the Borrower's Land to carry out any inspection (including an inspection of books of account and other books and documents), survey or valuation or to ascertain whether there has been

any breach of this Debenture. The Lender or its representatives must give the Borrower two business days' notice, unless the Lender believes that it is necessary to enter sooner than that.

- 5.6.5 the Borrower must promptly notify the Lender about each notice, demand, order or other communication received by the Borrower in relation to itself, its business or any part of the Charged Property, unless it is immaterial as regards the mortgages and charges created under this Debenture and as regards the Lender's position under this Debenture.

5.7 Lender's calculations

The Lender's calculation of the amount payable by the Borrower under this Debenture at any time will be conclusive (unless it has made an obvious mistake).

6. PROVISIONS RELATING TO PAYMENTS

6.1 The Debts

The Borrower must, on demand, pay the Debts when they are due.

6.2 Default interest

If the Borrower fails to pay on its due date any amount payable by it under this Debenture, it must pay interest on that amount. Interest will be calculated and paid in accordance with the terms of the Loan Agreement

6.3 No withholding or set-off

- 6.3.1 The Borrower must not make any withholding on account of tax from any payment due to the Lender or any receiver under this Debenture, unless it is required by law to do so. If it is required by law to do so, it must increase the amount of the relevant payment so that, after the withholding, the payee receives the appropriate amount. It must notify the Lender if these circumstances arise.
- 6.3.2 The Borrower must not exercise any right of set-off or counterclaim it might have in respect of any payment due to the Lender or to any receiver under this Debenture.

7. PROVISIONS RELATING TO ENFORCEMENT

7.1 When the security is enforceable

- 7.1.1 The mortgages and charges created under this Debenture will become enforceable at any time once an Enforcement Event has occurred (**clause 7.2** lists the Enforcement Events). The Lender may then enforce all or any part of those mortgages and charges in whatever manner it thinks appropriate.
- 7.1.2 Section 101 of the Law of Property Act 1925 confers various powers on a mortgagee in relation to mortgaged property (including a power to sell it). For the purposes of this Debenture, the following provisions will not apply:
- 7.1.2.1 the conditions specified in section 101 of the Law of Property Act 1925 as to when such powers arise;
- 7.1.2.2 the additional conditions specified in section 103 of the Law of Property Act 1925 which must be satisfied before the statutory power of sale can be exercised; and

- 7.1.2.3 the condition specified in section 109(1) of the Law of Property Act 1925 as to when a receiver may be appointed.

7.2 Enforcement Events

Each of the following events or circumstances is an Enforcement Event.

- 7.2.1 There is an Enforcement Event if the Borrower fails to do something that it is required to do under this Debenture. In this case, the Enforcement Event occurs when the thing is required to be done.
- 7.2.2 There is an Enforcement Event if the Borrower takes any step in connection with anything which is prohibited under this Debenture (or permits any other person to take such a step). In this case, the Enforcement Event occurs when the first step is taken.
- 7.2.3 There is an Enforcement Event if any representation or statement made (or deemed to be made) by the Borrower under this Debenture is incorrect or misleading in any respect when made (or deemed to be made). In this case, the Enforcement Event occurs when the representation or statement is made (or deemed to be made).
- 7.2.4 In this **clause 7.2.4**, the phrase "finance debts" means liabilities incurred by the Borrower in connection with the financing of its business (but not debts owed to trade creditors which are incurred in the day-to-day operation of the Borrower's business).
- 7.2.4.1 There is an Enforcement Event if any finance debt is not paid when due (or within any originally applicable grace period, if there is one). In this case, the Enforcement Event occurs on the payment's due date (or when the grace period expires).
- 7.2.4.2 There is an Enforcement Event if any finance debt is declared to be (or otherwise becomes) due and payable before its specified maturity as a result of an event of default. In this case, the Enforcement Event occurs when the finance debt is declared to be (or otherwise becomes) due and payable.
- 7.2.4.3 There is an Enforcement Event if any creditor of the Borrower cancels or suspends a commitment in respect of any finance debt as a result of an event of default. In this case, the Enforcement Event occurs when the commitment is cancelled or suspended.
- 7.2.4.4 There is an Enforcement Event if any creditor of the Borrower becomes entitled to declare any finance debt due and payable before its specified maturity as a result of an event of default. In this case, the Enforcement Event occurs when the creditor becomes entitled to do that.
- 7.2.5 There is an Enforcement Event if:
- 7.2.5.1 the Borrower is unable (or admits that it is unable) to pay its debts as they fall due; or
- 7.2.5.2 the value of the assets of the Borrower is less than its liabilities (taking into account contingent and prospective liabilities).
- In this case, the Enforcement Event occurs when the relevant circumstances first exist.
- 7.2.6 There is an Enforcement Event if any person takes any step in connection with any of the following:

- 7.2.6.1 a suspension of payments by the Borrower, a moratorium of any indebtedness of the Borrower or a re-scheduling of any of the Borrower's debts;
- 7.2.6.2 a composition, assignment or arrangement with any creditor of the Borrower;
- 7.2.6.3 a re-organisation (by way of voluntary arrangement, scheme of arrangement or otherwise) by the Borrower;
- 7.2.6.4 the appointment of a liquidator, receiver, administrative receiver, administrator or other similar officer in respect of the Borrower or any of its assets;
- 7.2.6.5 the dissolution of the Borrower; or
- 7.2.6.6 enforcement of any security over any assets of the Borrower.

In this case, the Enforcement Event occurs when the first step is taken.

- 7.2.7 There is an Enforcement Event if any person takes any step in connection with expropriation, attachment, sequestration, distress or execution affecting any asset of the Borrower.

In this case, the Enforcement Event occurs when the first step is taken.

- 7.2.8 There is an Enforcement Event if it is unlawful for the Borrower to perform any of its obligations under this Debenture or any other obligations owed to the Lender. In this case, the Enforcement Event occurs when these circumstances first exist.
- 7.2.9 There is an Enforcement Event if the Borrower repudiates this Debenture or the Lender believes that it intends to do so. In this case, the Enforcement Event occurs when these circumstances first exist.
- 7.2.10 There is an Enforcement Event if the Borrower requests the Lender to appoint an administrator of the Borrower or to appoint a receiver in respect of the Borrower or the Charged Property. In this case, the Enforcement Event occurs when the Lender receives the request.

7.3 Appointment of administrator

Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created under this Debenture. This means that, at any time after an Enforcement Event has occurred, the Lender may appoint an administrator of the Borrower under the Insolvency Act 1986.

7.4 Appointment of receiver

At any time after an Enforcement Event has occurred the Lender may:

- 7.4.1 appoint any number of receivers in respect of the Charged Property;
- 7.4.2 appoint alternative or additional receivers in respect of the Charged Property; and
- 7.4.3 remove from office any receiver.

7.5 General provisions relating to receivers

- 7.5.1 Only the Lender may fix the terms of each receiver's appointment. Section 109(6) of the Law of Property Act 1925 restricts the amount of a receiver's remuneration but that section does not apply to this Debenture.
- 7.5.2 If, at any time, there are two or more receivers in office, each individually may exercise all the powers conferred on a receiver under this Debenture (unless the Lender specifies that they must act jointly).
- 7.5.3 Each receiver will be the Borrower's agent. The Borrower must pay to each receiver his remuneration. Only the Borrower will be responsible for each receiver's acts and defaults. The Lender will have no liability in respect of the acts or defaults of any receiver or otherwise in relation to the appointment of any receiver (except as may be agreed between the Lender and any receiver).
- 7.5.4 The Borrower must indemnify each receiver on demand in respect of all expenses, losses and liabilities incurred by him in connection with this Debenture.
- 7.5.5 The Borrower appoints each receiver as its attorney to do whatever the Borrower is (or may be) required to do under this Debenture. Each receiver, in his capacity as attorney, may act independently of each other attorney appointed by the Borrower and need not act jointly with them. The Borrower must ratify any action taken by a receiver in his capacity as an attorney.
- 7.5.6 The power of attorney in **clause 7.5.5** is irrevocable and given by way of security. Therefore, the Powers of Attorney Act applies. This means that the Borrower cannot revoke the power of attorney without the receiver's consent and that it will not be revoked by the Borrower's winding-up or dissolution.
- 7.5.7 Each receiver may delegate to any other person the exercise of his rights and powers in connection with this Debenture, including his rights and powers as the Borrower's attorney.

7.6 Powers of receivers

In connection with the enforcement of the mortgages and charges created by this Debenture, each receiver may do whatever he considers appropriate in relation to the Borrower and its business and the Charged Property. In this respect, each receiver has all the powers conferred on receivers by the Law of Property Act 1925 (even if he is not appointed under the Law of Property Act 1925) and all the powers conferred on administrative receivers by the Insolvency Act 1986 (even though he is not an administrative receiver).

7.7 Application of money

- 7.7.1 Subject to section 176A of the Insolvency Act 1986 (which, in certain circumstances requires part of a company's property to be made available for satisfaction of unsecured debts) all proceeds of enforcement of the mortgages and charges created under this Debenture must be applied in or towards discharging the following liabilities in the order listed:
 - 7.7.1.1 claims ranking in priority with regard to the Charged Property;
 - 7.7.1.2 the expenses, losses and liabilities incurred by each receiver in connection with this Debenture;
 - 7.7.1.3 each receiver's remuneration;
 - 7.7.1.4 the expenses, losses and liabilities incurred by the Lender in connection with this Debenture;
 - 7.7.1.5 the Debts (in whatever order the Lender wishes); and

7.7.1.6 claims of any person entitled to the surplus.

7.7.2 Sections 105, 107(2) and 109(8) of the Law of Property Act 1925 provide for the application of proceeds of enforcement of security in certain circumstances but those sections do not apply to this Debenture.

7.7.3 Any distribution by an administrator appointed by the Lender under **clause 7.3** will be made in accordance with the requirements of the Insolvency Act 1986.

7.8 Miscellaneous provisions relating to enforcement

7.8.1 Any right or power exercisable by a receiver appointed for the purposes of this Debenture may be exercised by the Lender at any time after an Enforcement Event has occurred, whether or not it has appointed a receiver.

7.8.2 Sections 99 and 100 of the Law of Property Act 1925 contain provisions as to the grant and surrender of leases. To the extent that those sections would otherwise restrict the Lender's (or any receiver's) exercise of its (or his) powers or rights in respect of the Charged Property, they do not apply.

7.8.3 After an Enforcement Event has occurred, the Lender or any receiver may sever any fixture from the property to which it is attached and dispose of it separately.

7.8.4 If the Lender (or any receiver) enters into possession of any part of the Charged Property, it (or he) will not be liable to account as mortgagee in possession.

7.8.5 The Lender and each receiver will not be liable to each other (except as may be agreed between them), to the Borrower or to any other person for:

7.8.5.1 any expense, loss or liability relating to the enforcement of any mortgages or charges created under this Debenture or to the realisation of any Charged Property; or

7.8.5.2 any expense, loss or liability arising in any other way in connection with this Debenture.

However, this exclusion of liability does not apply if the expense, loss or liability arises from the gross negligence, fraud or wilful misconduct of the Lender or (as applicable) the relevant receiver.

7.8.6 Any person dealing with the Lender or any receiver (or the agents or delegates of any of them) may assume that:

7.8.6.1 the Debts have become payable;

7.8.6.2 a valid demand has been served upon the Borrower;

7.8.6.3 an Enforcement Event has occurred;

7.8.6.4 any power being exercised has arisen and become exercisable and is being properly exercised; and

7.8.6.5 any money received by the Lender or any receiver will be applied in accordance with law and with the terms of this Debenture.

8. PROVISIONS RELATING TO THIS DEBENTURE

8.1.1 Notices

Any notice required to be given by this Debenture is ineffective if given orally and must be made by letter which is delivered personally, by fax or by e-mail or other electronic means in permanent written form at the addresses given in **clause 8.1.2** or such alternative address notified in writing. Such notice will only be effective when actually received by the recipient;

The contact details for this purpose are as follows:

8.1.2 Lender

William E. Aziz
Chief Restructuring Officer
Walter Energy Canada Holdings, Inc.
32 Shorewood Place
Oakville, Ontario L6K 3Y4
CANADA
Email: baziz@bluetreeadvisors.com

Borrower

Aberpergwm Colliery Engine Cottage Site, Glynneath, Neath, West Glamorgan,
SA11 5AJ FAO Dan Maling/Dan Stickel

Email danmaling@me.com/cedarhillangus@frontier.com

8.2 Partial invalidity

If any provision of this Debenture is illegal, invalid or unenforceable in any respect under the law of any jurisdiction, this does not affect:

- 8.2.1 the legality, validity or enforceability of the other provisions of this Debenture;
or
- 8.2.2 the legality, validity or enforceability of the affected provision under the law of any other jurisdiction.

8.3 Rights and remedies

- 8.3.1 If the Lender (or a receiver) fails to exercise any right or remedy under this Debenture or delays its exercise of any right or remedy, this does not mean that it (or he) waives that right or remedy.
- 8.3.2 If the Lender (or a receiver) exercises a right or remedy once, this does not mean that it (or he) cannot do so again.
- 8.3.3 If the Lender (or a receiver) partly exercises a right or remedy, this does not mean that it (or he) cannot exercise that right or remedy again.
- 8.3.4 The rights and remedies provided in this Debenture are in addition to (not instead of) rights or remedies under the law.

8.4 Assignment

The Lender may at any time assign or otherwise deal with its rights under this Debenture. The Borrower may not assign, novate or otherwise deal with any rights, interests or obligations under this agreement

8.5 Governing law

This Debenture is governed by English law.

8.6 Jurisdiction

This Agreement and any non-contractual obligations arising out of or in connection with it will be governed by English law.

8.7 Other general provisions

These provisions apply throughout this Debenture.

8.7.1 Each reference to the Borrower or the Lender includes the relevant person's successors-in-title.

8.7.2 The word "person" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not it has separate legal personality).

8.7.3 The word "receiver" means a receiver, or a receiver and manager (but not an administrative receiver).

8.7.4 The legislation referred to in this Debenture is the Contracts (Rights of Third Parties) Act 1999, the Insolvency Act 1986, the Land Registration Rules 2003, the Law of Property Act 1925, the Law of Property (Miscellaneous Provisions) Act 1994, the Powers of Attorney Act 1971 and the Town and Country Planning Act 1990. Each reference to a provision of any statute or statutory instrument means, at any time, the relevant provision as in force at that time (even if it has been amended or re-enacted since the date of this Debenture).

8.7.5 Where there is a list of things introduced by the word "including" or followed by the phrase "or otherwise", the intention is to state examples and not to be exhaustive (and the same applies where other, similar words or phrases are used).

8.7.6 Each heading in this Debenture is for convenience only. It does not affect the meaning of the words which follow it.

8.7.7 Wherever this Debenture states that the Borrower must not take a particular step without the Lender's consent, the Lender has discretion whether to give its consent and can impose conditions on any such consent it gives.

8.7.8 Each receiver, though not party to this Debenture, is entitled to exercise the powers and to enforce the rights conferred on it. Any other person who is not party to this Debenture has no right under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce or to enjoy the benefit of any term of this Debenture.

8.7.9 It is not necessary for the Borrower and Lender to seek the consent of any other person before rescinding or varying this Debenture (unless a receiver is in office, in which case his consent will be required).

8.8 Ownership of this Debenture

This Debenture is the Lender's property.

THIS DOCUMENT is executed as a deed and delivered on the date stated at the beginning of this Deed.

EXECUTED as a **DEED**
by Energybuild Mining Limited acting by

)
)
)

Director

in the presence of:

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:

EXECUTED as a **DEED** by Cambrian
Energybuild Holdings ULC acting by

)
)
)

[Redacted Signature]

WILLIAM E. AZIZ

~~Director~~

Chief Restructuring Officer

Witness signature:

[Redacted Signature]

Witness Name:

Petruck Resistor

Witness Address:

Witness Occupation:

[Redacted Address and Occupation]