

No. S1910538
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

**IN THE MATTER OF THE RECEIVERSHIP OF
QUINSAM COAL CORPORATION
PURSUANT TO SECTION 243 (1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED
AND
SECTION 39 OF THE
LAW AND EQUITY ACT, R.S.B.C. 1996 c. 253 AS AMENDED**

Receiver's First Report to Court

November 17, 2021

**IN THE MATTER OF THE RECEIVERSHIP OF
QUINSAM COAL CORPORATION**

Receiver's First Report to Court

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I. PURPOSE OF REPORT

1. The purpose of this report is to provide the Court with:
 - i. Background information on the receivership;
 - ii. A summary of the receivership to date;
 - iii. A summary of the results of the Sale Process;
 - iv. Identify ongoing issues with the Mine and Middle Point;
 - v. A summary of the Receiver's receipts and disbursements to date;
 - vi. A request to approve the Receiver's activities and fees incurred to date;
 - vii. A request to approve the Receiver's legal counsels' activities and fees incurred to date; and
 - viii. A request that the Court authorize the Receiver's borrowings in the amount of \$2.35 million to fund ongoing care and maintenance together with a Receiver's Borrowing Charge (defined herein).

II. BACKGROUND

2. Quinsam Coal Corporation (the "**Company**" or "**Quinsam**"), is a private Company incorporated in British Columbia. The Company operated an underground thermal coal mine (the "**Mine**") and a barge loading terminal ("**Middle Point**") located near Campbell River, British Columbia.
3. The primary operations of Quinsam consist of the mining, processing and shipment of thermal coal for sale to domestic and international markets.
4. The Mine has been in operation intermittently under the Company or its various predecessors since 1988 for approximately 33 years. The Mine consists of multiple underground portals and tunnels, water management and treatment infrastructure, tailings

storage facilities, processing and administrative buildings, roads, powerlines and various other infrastructure.

5. Quinsam was acquired in 2017 by ENCECo Inc. (“**Enceco**”) and Orinoco Natural Resources, LLC (“**Orinoco**”), two companies based in the USA. Enceco and Orinoco both held a 50% interest in Quinsam.
6. During 2018, Quinsam began to experience operational issues including project cost overruns, lower than anticipated grades of coal and equipment breakdowns. The combination of increased production costs due to these operational issues and depressed market prices resulted in liquidity issues for the Company. Some of the working capital deficiencies were funded by Enceco on a secured basis.
7. The Company determined that a large capital investment would be required to upgrade machinery and equipment and fund working capital to operate at a profit. The shareholders were not willing to inject further capital into the business and the Company was unable to raise additional working capital from other sources.
8. Quinsam ceased active mining operations in June 2019.
9. On July 3, 2019, the Company made an assignment into bankruptcy and PricewaterhouseCoopers Inc. (“**PwC**”) was appointed trustee of the bankrupt estate of the Company (in such capacity, the “**Trustee**”) and, upon assignment, took possession and control of the Mine and Middle Point.
10. Additional details of the bankruptcy proceedings are included in the Trustee’s Preliminary Report to Creditors dated July 22, 2019 attached as **Appendix A**.
11. On or about July 28, 2019, the Trustee served notice to Her Majesty the Queen in right of the Province of British Columbia, as represented by the Minister of Energy, Mines and Petroleum Resources (the “**Province**”) that the bankrupt estate had insufficient funding to complete the administration of the estate and would abandon the Mine on July 31, 2019.
12. On July 31, 2019, the Trustee abandoned the Mine. The Trustee did not abandon Middle Point at that time.

13. On August 1, 2019, the Province engaged The Bowra Group Inc. as a contractor (the “**Contractor**”) on an emergency basis to secure the Mine in order to protect public health and safety, land and the environment.
14. On September 20, 2019, an application was made by the Province to the Supreme Court of British Columbia (the “**Court**”) to appoint The Bowra Group Inc. as the Receiver and Manager of the Company (in such capacity, the “**Receiver**”). The terms of this Order were then finalized amongst the stakeholders and it was entered on September 26, 2019 (the “**Receivership Order**”). A copy of the Receivership Order is attached as **Appendix B**.
15. Following the outcome of the hearing on September 20, 2019, the Trustee abandoned its interest in Middle Point.
16. Upon its appointment, the Receiver took control of the Mine and Middle Point.
17. On December 20, 2019, upon application by the Receiver, the Court granted an Order (the “**Sales Procedure Order**”) outlining the sale process for the assets of the Company (the “**Sales Process**”). A copy of the Sales Procedure Order is attached as **Appendix C**.
18. As at the date of this report the Receiver has declared the end of the Sales Process.
19. This is the Receiver’s First Report to Court.

III. SUMMARY OF THE RECEIVERSHIP TO DATE

20. Since its appointment, the Receiver has managed the care and maintenance of the Mine and Middle Point.
21. To date Receiver has, *inter alia*:
 - i. Completed the sale of the Company’s existing coal inventory;
 - ii. Conducted a sales process; and
 - iii. Administered ongoing care and maintenance of the Mine and Middle Point.

COMPLETION OF THE SALE OF THE COAL INVENTORY

Javelin Sales Agreement

22. On June 28, 2019, five days prior to the Company making an assignment in bankruptcy, the Company entered into an agreement with Javelin Global Commodities (UK) Ltd. (“**Javelin**”) to sell all of the Company’s existing coal inventory (the “**Javelin Sales Agreement**”). Javelin historically acted as the marketing agent for the Company with respect to sales.
23. At the date of bankruptcy, Quinsam’s existing coal inventory was approximately 34,500 metric tons. The coal was located at:
 - i. The Mine (20,000 metric tons including 2,000 unprocessed metric tons);
 - ii. Middle Point (12,500 metric tons); and
 - iii. Texada Island Terminal (2,000 metric tons).
24. The terms of the Javelin Sales Agreement were:
 - i. Javelin advanced USD \$1.0 million to the Company (the “**Advance**”) in return for taking title to the existing coal inventory and arranging a sale to a third party;
 - ii. The Advance was to be repaid from the proceeds of the sale to a third party at a set rate;
 - iii. Javelin was to collect all funds from the sale, deduct the repayment of the Advance, applicable commissions, and allowable expenses; and
 - iv. Remit the remainder (the “**Net Coal Proceeds**”) to the Company and Enceco.
25. The Advance was paid to the Company prior to the bankruptcy. The Company used the funds to pay for the bankruptcy proceedings, working capital, tax arrears, priority payables and repayment of debt to Enceco. All payments are outlined in the Trustee’s Preliminary Report to Creditors.
26. Under the terms of the Javelin Sales Agreement, the Company was required to deliver coal to a third party. Once the coal was processed, the coal was shipped on trucks to Middle Point and loaded onto barges. The processing, trucking and loading costs were to be paid by the Company.

27. A term of the Receivership Order negotiated between the Province and Enceco, required the Receiver to complete the obligations under the Javelin Sales Agreement.
28. The Receivership Order also granted a first charge against the Net Coal Proceeds in the initial amount USD \$495,000 (the "**Receiver's Charge**") for those costs and expenses attributable to coal delivery, along with payment of certain priority payables including the obligations under the *Wage Earner Protection Program Act* ("**WEPPA**") and unpaid Company pension amounts. The Receiver's Charge can be increased with agreement in writing by Enceco, the Province, the Receiver and Javelin, or further order of the Court.

Middle Point Fire

29. Middle Point is a leased facility located on the foreshore in Campbell River that was purpose built to store coal and allow for the loading of coal onto barges.
30. Approximately 12,500 metric tons of coal were stored in a coal storage dome at Middle Point at the date of the bankruptcy.
31. Coal temperature will naturally increase when stored in a stockpile for extended periods. The coal stockpile needed to be monitored and managed to ensure that the rise in coal temperatures did not increase to dangerous levels resulting in spontaneous combustion.
32. The Trustee retained key former staff of Quinsam to conduct care and maintenance both at the Mine and Middle Point.
33. On July 31, 2019, the Trustee terminated all employees when the Mine was abandoned and could no longer monitor the coal stockpiles at the Mine and Middle Point.
34. On August 1, 2019, the Contractor was able to take control of the coal stockpile at the Mine, however it did not have authority to access and monitor the coal at Middle Point which remained under the care and direction of the Trustee.
35. From August 1, 2019 to September 20, 2019, the Province sent correspondence to the Trustee to ensure compliance with monitoring and management of the coal stockpile at Middle Point.
36. On or about September 17, 2019, the coal stockpile at Middle Point reached an elevated temperature and began smoldering. For a period of two days from September 19 to

September 20, 2019, the Trustee attempted to manage the coal stockpile and reduce the temperature.

37. The Middle Point stockpile remained at an elevated temperature when the Middle Point facility was abandoned by the Trustee on September 20, 2019.
38. The Middle Point landlord took the position that the Middle Point lease was terminated when the Trustee abandoned the Middle Point facility on September 20, 2019. However, given the urgency created by smoking coal on site (and the eventual fire), the landlord allowed the Receiver to access Middle Point to monitor the coal stockpile and try to reduce the coal temperatures while negotiating a license agreement.
39. On September 24, 2019, the remaining coal stockpile located in the coal dome combusted. The Receiver worked with the Province, the City of Campbell River Fire Department and the landlord to manage the coal fire at Middle Point which was extinguished on September 30, 2019.

Delivery of the Coal Inventory

40. After the fire at Middle Point was extinguished, the Receiver completed its obligations to ship the coal pursuant to the Javelin Sales Agreement.
41. The Receiver processed the remaining coal at the Mine during October and November 2019. The Receiver negotiated and arranged for the shipment of the remaining coal at the Mine to Middle Point to load onto barges from December 2019 to February 2020.
42. In total, 35,617 metric tons of coal was loaded onto five barges.
43. Total gross proceeds realized on the sale of the coal was \$3.06 million excluding applicable carbon taxes. The repayment of the Advance, commissions and allowable expenses including holdback for potential legal fees of Javelin totalled \$1.63 million. Net Coal Proceeds in the amount of \$1.43 million were remitted to the Receiver.
44. In October 2021, with the consent of Enceco, Javelin and the Province, the Receiver used USD \$495,000 of the Net Coal Proceeds to fund aspects of the receivership pursuant to the Receiver's Charge.

45. The costs to deliver the coal and to settle priority payables, in accordance with the Receivership Order, exceed the Receivership Charge by approximately \$360,000 due to increased costs associated with occupancy of Middle Point and the fire. These costs have been paid by the Province. To date, no application has been made to increase the Receiver's Charge or allocate these increased costs to other parties.
46. The remaining Net Coal Proceeds are subject to a priority dispute between the Province and Enceco which at the date of this report has not been resolved.
47. The Receiver currently holds \$802,676 of Net Coal Proceeds pending the resolution of the dispute or further direction of the Court (the "**Coal Proceeds Balance**").

SALES PROCESS

48. The Receiver conducted the Sales Process as set out in Sales Procedure Order for three months from January 1, 2020 to April 1, 2020.
49. As part of the Sales Process the Receiver:
 - i. prepared sales and marketing materials including teaser letters, non-disclosure agreements and online and print advertisements;
 - ii. prepared a model Asset Purchase Agreement;
 - iii. negotiated an option to lease with the Middle Point landlord;
 - iv. prepared a data room;
 - v. advertised nationally in the Globe & Mail and the Northern Miner, five online mining websites/newsletter/magazines, and the Receiver's website; and
 - vi. directly contacted thirty eight targeted mining companies, investors, and twelve mining associations regarding the Sales Process.
50. Thirty two parties requested teasers and three parties signed Non-Disclosure Agreements to access the data room.

51. Except for a conditional offer submitted by Sovereign Mining Inc. (“**Sovereign**”), an American corporation based in West Virginia, no offers were submitted by the sales process deadline date of April 1, 2020.

ONGOING CARE AND MAINTENANCE OF THE MINE SITE AND MIDDLE POINT

52. The Receiver has managed the care and maintenance of the Mine and Middle Point for approximately two years.
53. Underground coal mining presents specific risks for public health and safety, land and the environment. Key risks associated with the Mine are as follows:
- i. Water management;
 - ii. Gas management;
 - iii. Coal storage; and
 - iv. Care and maintenance requirements.

Water Management

54. The Mine has a complex water management system which includes flooded underground tunnels, mine tailing storage and water management facilities.
55. The purpose of the water management system is to manage mine impacted water to ensure it is released into the environment at approved discharge points and ensure water coverage over potential acid generating mine tailings stored in the tailing storage facilities.
56. Water is required to be continuously pumped through twenty pumps located throughout the Mine. Water levels are monitored daily to ensure unauthorized discharges are avoided or minimized and managed.

Gas Management

57. Methane gas buildup is associated with underground coal mining.
58. Methane gas, which naturally occurs in coal seams, can concentrate in underground tunnels and cause explosions. To mitigate the risk of explosion, the underground gas composition

is monitored daily, underground tunnels are continuously ventilated, and specialized vehicles and equipment are used underground.

Coal Storage

59. The temperature of coal will naturally increase if stored in a stockpile for extended periods of time and can combust.
60. To mitigate the risk of combustion the temperature of the coal is monitored daily, spread and moved using heavy equipment.

Care and Maintenance Requirements

61. Environmental and mining permits and their respective regulations require:
 - i. Ongoing environmental sampling of the lakes, rivers and waterways affected by the Mine and the associated reporting;
 - ii. Ongoing monitoring and inspection of the designated dam facilities at the Mine and the associated reporting; and
 - iii. Ongoing responses, communication and compliance with regard to periodic inspections and orders issued by regulatory authorities.
62. The Receiver continues to maintain a core staff of ten full time employees at the Mine consisting of certified underground mine managers, environmental technicians, geotechnical technician, operations coordinator and first aid/security staff.
63. An electrician and mechanic are also retained on an as needed basis. The Receiver may draw additional staff as required based on operational requirements with up to twenty staff employed to facilitate tailing storage, coal loading, and coal processing.
64. The Mine is unionized with non-management represented by the United Steelworkers of Canada Union (“**USW**”). The Contractor negotiated an agreement with the USW regarding terms of employment of USW staff when the Contractor assumed oversight of the Mine.
65. The Mine infrastructure is thirty three years old and requires essential maintenance and repairs. The Receiver engages contractors as required to maintain and repair key

infrastructure including roads, power lines and vehicles and mechanical equipment on an ongoing basis.

66. Care and maintenance at Middle Point consists of the management of the coal stock pile (when the coal was stored prior to shipment). In addition, ongoing maintenance of infrastructure and periodic sampling is required for compliance with applicable permits and regulations.
67. The Receiver has liaised with the Province since its appointment including weekly reporting, conference calls and additional reporting and correspondence as required based on operational issues encountered by the Receiver.
68. The Receiver anticipates that care and maintenance will be required until the long term future of the Mine has been determined due to the risk to public health and safety, land and the environment.

IV. RESULTS OF THE SALES PROCESS

69. The Sales Process set out in the Sales Procedure Order produced one conditional offer from Sovereign by the deadline of April 1, 2020.
70. Potential purchasers showed limited interest in purchasing the assets of Quinsam to operate the Mine as a going concern primarily due to:
 - i. issues with thermal coal's environmental impact;
 - ii. the future regulatory and political concerns with operating a thermal coal mine;
 - iii. assuming reclamation liabilities (which were last estimated at \$12.4 million); and
 - iv. concerns with low remaining permitted reserves and uncertain future exploration targets for long term operation.
71. The Receiver has maintained ongoing discussions with Sovereign since their conditional offer was submitted.

Sovereign Mining Inc.

72. Sovereign was introduced to Quinsam by Enceco. Representatives of Sovereign conducted a site visit of the Mine in October 2019. Since its appointment, the Receiver has held informal discussions with Sovereign regarding their interest in purchasing the assets of Quinsam.
73. Sovereign submitted an offer for consideration as a stalking horse bid, prior to the establishment of a formal sales procedure in October 2019, which was rejected by the Receiver. Sovereign's stalking horse bid was not suitable as it contained numerous conditions.
74. Subsequently, a standard sales procedure was established and presented to the Court resulting in the Sales Procedure Order issued on December 19, 2019. Sovereign was invited to participate in the Sales Process.
75. The Receiver held discussions with Sovereign over a period of two years regarding its offer to purchase the Mine.
76. Sovereign made the following progress regarding their offer:
 - i. negotiated a collective bargaining agreement with the USW for staffing a restart;
 - ii. held preliminary discussions with the affected First Nations regarding support for a restart; and
 - iii. developed a framework for payment of reclamation security with the Province.
77. In November 2020, the sudden death of the proposed joint venture partner of Sovereign required it to seek alternative sources of financing.
78. On March 15, 2021, Sovereign submitted a revised offer with Enceco providing financing for the proposed purchase (the "**Revised Offer**"). There were a number of conditions with the Revised Offer including, *inter alia*, as a condition of financing Enceco required a number of concessions from the Province. One such concession was a release of Enceco and its directors of any potential liability during Enceco's prior involvement in the Mine.
79. The Revised Offer was rejected and discussions have ended on the terms of Revised Offer.

80. The Receiver believes that the assets of Quinsam were sufficiently exposed to the market in the Sales Process and limited interest was shown by potential purchasers. The Receiver does not have reason to believe that market conditions have changed to justify further marketing. Due to environmental, regulatory and political concerns associated with thermal coal mining it is unlikely that another prospective purchaser will come forward to operate the Mine as a going concern in the near term, if ever.

V. ONGOING ISSUES WITH THE MINE AND MIDDLE POINT

Determination of the Future of the Mine

81. The Sales Process did not result in any acceptable offers. The Receiver does not believe another marketing campaign will produce any suitable purchasers based on the limited interest to date. In addition, the Province does not support another sales process.
82. The Province is currently considering long terms options for the Mine including possible reclamation.
83. Due to risks associated to public health and safety, land and the environment, the Mine will need to remain in care and maintenance until the long term future of the Mine is decided.

Priority Dispute

84. Enceco and the Province are currently involved in a dispute over priority to the Net Coal Proceeds and personal property at the Mine site. In summary, Enceco is claiming priority pursuant to its General Security Agreement and the Province is claiming priority pursuant to regulations under the *Mines Act*.
85. The dispute was heard in the Supreme Court of British Columbia in November 2019 with a decision being issued in April 2020 by Mr. Justice Giaschi (the “**Giaschi Decision**”). The Giaschi Decision *inter alia* determined that the coal inventory was not an asset of the estate and accordingly the Province’s claim of security under the *Mines Act* did not need to be addressed by the Court.
86. The Province appealed the decision and is also seeking clarification of some aspects of the Giaschi Decision.

87. No appeal date was set and the Province delayed the appeal hearing while discussions with Sovereign were ongoing.
88. Discussions with Sovereign have now ended and we understand that the Province and Enceco are attempting to resolve the priority dispute, or alternately, to reset the appeal and proceed with the clarification of the Giaschi Decision generally.
89. The Receiver is not a party to the dispute and does not take a formal position on the priority. However, the Net Coal Proceeds appear to the Receiver to be a part of the estate given the Receivership Order required the Receiver to take possession and control of the coal inventory and complete the sale of the coal inventory. Further, the Receiver's Charge is over the Net Coal Proceeds.
90. We note that the resolution to the priority dispute may impact the ongoing care and maintenance activities as certain specialized equipment, claimed by Enceco under its security, is required by the Receiver to properly perform its duties.
91. The equipment in question is specialized for safe use underground and the Receiver anticipates that the replacement of the equipment may take three months or longer to source internationally. This is a safety and cost concern to the estate.

VI. RECEIVER'S RECEIPTS AND DISBURSEMENTS

92. Attached as **Appendix D** is the Receiver's detailed interim statement of receipts and disbursements for the period September 20, 2019 to October 31, 2021.
93. A summarized version of this appendix is tabled below:

	\$000's
Receipts	
Advances from Province	7,096
Carbon taxes collected	2,532
Release of Receiver's Charge	630
GST refunds and miscellaneous receipts	223
Transfer of pre-receivership funding	38
	<u>10,519</u>
Disbursements	
Carbon taxes remitted	2,532
Payroll	2,513
Receiver's fees and disbursements	1,217
Utilities	1,206
Contractor costs	696
Legal fees and disbursements	376
Insurance and fuel	403
Environmental testing and safety equipment	324
GST and PST paid	252
Other miscellaneous disbursements	216
Occupancy rent	207
Pre-receivership contractor costs	166
Marketing and appraisals	60
	<u>10,168</u>
Excess of receipts over disbursements	<u>351</u>
Payment of priority claims	
Payment of WEPP priority	128
Payment of unpaid pension contributions	60
	<u>188</u>
Funds in Receiver's account	<u>163</u>

94. The Province has funded all the costs of the receivership and advanced \$7.10 million to the Receiver to date, not including an initial advance made to the Contractor of \$185,989 (of which \$38,257 was transferred to the Receiver). Advances from the Province to date have been made pursuant to their security under the *Mines Act* using the reclamation security

held by the Province. The Receiver understands the full amount of the reclamation security has now been applied to ongoing care and maintenance costs.

95. Other sources of funding have been obtained from the Receiver's Charge and through GST refunds.

VII. PROFESSIONAL FEES

Summary of Receiver's Account

96. On a monthly basis, the Receiver has rendered accounts to the Province.
97. For the period September 20, 2019 to October 31, 2021, a summary of the Receiver's fees and disbursements were as follows:

	\$
Fees	1,171,244
Disbursements	45,379
GST	60,831
Total	<u>1,277,454</u>

98. A summary of the Receiver's fees and invoices are attached as **Appendix E**.
99. Further particulars of the Receiver's invoices referenced above are exhibited in Affidavit #2 of Gordon Brown sworn on November 17, 2021.

Receiver's Staffing and Hours

100. Mario Mainella had primary responsibility for the work carried out by the Receiver. When appropriate, this work was delegated to other staff within The Bowra Group Inc. A summary of the time spent on this assignment by members of the staff within The Bowra Group Inc. for the period September 20, 2019 to October 31, 2021 is summarized below:

Name	Title	Hours	Average Hourly Rate (\$)
Mario Mainella	President	434.45	562
Gordon Brown	Vice President	1,535.35	403
Kevin Koo	Senior Associate	901.40	253
Andrew Pappel	Senior Associate	0.25	250
Michael Busch	Associate	241.25	178
Sofie Parker	Insolvency Administrator	71.90	185
Estate Administration		190.75	123
		3,375.35	347 *

**Average Hourly Rate*

101. In the Receiver's opinion, the time and disbursements incurred in the course of its duties are:

- i. fair and reasonable in a receivership of the nature described herein; and,
- ii. comparable to receivership assignments of similar scale and complexity.

102. The hourly rates charged by the Receiver are:

- i. consistent with the hourly rates billed by the Receiver on other engagements; and,
- ii. consistent with other insolvency firms of comparable size engaged on similar receivership matters to the Receiver's knowledge.

103. The Receiver requests that the Court approve the Receiver's fees and disbursements incurred to date.

Legal Fees

104. The Receiver engaged Gowling WLG (Canada) LLP ("**Gowling**") as its legal counsel for the period September 16, 2019 to July 31, 2020. The total legal fees, disbursements and taxes of Gowling were as follows:

Gowling	\$'s
Fees	224,322
Disbursements	1,361
GST	11,271
PST	15,728
Total	<u>252,682</u>

105. The Receiver engaged DLA Piper (Canada) LLP (“**DLA**”) as its legal counsel during the period August 17, 2020 to October 31, 2021. The total legal fees, disbursements and taxes of DLA were as follows:

DLA	\$'s
Fees	148,322
Disbursements	2,123
GST	7,494
PST	10,383
Total	<u>168,322</u>

106. Further particulars of Gowling’s and DLA’s fees and disbursements are outlined in the fee affidavit of Colin Brousson sworn on November 17, 2021.

107. A summary of Gowling’s and DLA’s legal fees, disbursements, and taxes by invoice is attached as **Appendix F** and **Appendix G**, respectively.

108. The Receiver has reviewed the invoices rendered to it by Gowling and DLA and believes them to be reasonable and proper. The legal services provided were necessary for the Receiver to fulfill its obligations in the proceeding.

109. The Receiver requests that the Court summarily approve the legal fees of Gowling and DLA incurred to date.

VIII. RECEIVER'S BORROWINGS

110. The Receivership Order did not provide an amount nor determine the priority of any amounts borrowed by the Receiver for the administration of the estate (the "**Receiver's Borrowings**"). However, the Receivership Order does provide a mechanism for the Receiver to make application for Receiver's Borrowings, including seeking a priority charge over Company assets in support of these borrowings.
111. The ongoing requirements for care and maintenance requires additional funding for the Receiver to be able to continue to perform its duties. The Receiver has prepared the estimated funding requirements of \$2.35 million for continued care and maintenance of the Mine and Middle Point the five month period from November 1, 2021 to March 31, 2022 which is attached as **Appendix H**.
112. The Receiver is requesting the Court authorize Receiver's Borrowings for \$2.35 million to fund care and maintenance until March 31, 2022.
113. The Receiver estimates that a sale of the assets of the Company at a future date will be insufficient to repay the Receiver's Borrowings in full.
114. The Receiver supports Receiver's Borrowings be a charge (the "**Receiver's Borrowing Charge**") which would have priority over all the assets of the Company, including the Net Coal Balance now held by the Receiver, but ranking behind the Receiver's Charge concerning the Net Coal Proceeds already utilized in funding the receivership.

IX. CONCLUSION AND RECOMMENDATION

Conclusion

115. The Receiver requires urgent funding for ongoing care and maintenance of the Mine.
116. The ongoing care and maintenance of the Mine is required for the protection of the public health and safety, land and the environment.

117. To date in the receivership proceedings the Receiver has:

- completed the Company's obligations to deliver coal pursuant to the Javelin Sales Agreement realizing gross proceeds of \$3.06 million and the Receiver holds the remaining Coal Proceeds Balance of \$802,676;
- completed the Sales Process pursuant to the Sales Procedure Order; and
- managed the ongoing care and maintenance of the Mine and Middle Point for approximately two years.

118. The Sales Process did not identify any suitable purchasers for the Mine as a going concern.

119. The Receiver believes it is unlikely that a purchaser will be found given the various environmental, political and regulatory issues with thermal coal mining.

120. The priority dispute between the Province and Enceco over the equipment may impact the ongoing care and maintenance at the Mine as the equipment is required by the Receiver to properly perform its duties. The removal of the equipment would become a public safety and cost concern to the estate.

Recommendation

121. The Receiver respectfully requests that the Court authorize the:

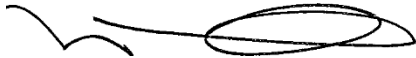
- Receiver's Borrowings in the amount of \$2.35 million to fund ongoing care and maintenance to March 31, 2022;
- Receiver's Borrowing Charge for the same amount;
- Approval of the Receiver's activities and fees incurred to date; and,
- Approval of the Receiver's legal counsels' activities and fees incurred to date.

122. All of which is respectfully submitted this 17th day of November, 2021.

The Bowra Group Inc.

In its capacity as Receiver and Manager of Quinsam Coal Corporation

Per:

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Mario Mainella, CPA, CA, CIRP

Per:

A handwritten signature in black ink, featuring a large, stylized 'G' followed by a horizontal line and a long, sweeping stroke that curves upwards and to the right.

Gordon Brown, CPA, CA, CIRP

APPENDIX A

Trustee's Preliminary Report to Creditors dated July 22, 2019



District of: British Columbia
Division No.: 02 - Victoria
Court No.: 11-2530184
Estate No.: 11-2530184

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN THE MATTER OF THE BANKRUPTCY OF
QUINSAM COAL CORPORATION

TRUSTEE'S PRELIMINARY REPORT TO CREDITORS

This report has been prepared by PricewaterhouseCoopers Inc. in its capacity as Trustee based on information available as at July 22, 2019.

BACKGROUND

Quinsam Coal Corporation (the "Company" or "Quinsam") has been operating in the coal mining industry since 1988. In January 2016 the Company went into care and maintenance due to a weak market demand for thermal coal. This continued until 2017 when the Company was acquired by ENCECo Inc. ("**Enceco**") and Orinoco Natural Resources LLC, and under the new ownership, operations were restarted.

Coal operations began in the two main mines of Quinsam, seven-south ("7-S") and two-north ("2-N") using continuous miners and the room-and-pillar technique. From October 2017 until August 2018 coal yields were relatively high at 20,000 to 35,000 metric tons ("MT") a month. Quinsam was able to produce a large yield of coal from 2-N in the short period of October 2017 to January 2018 from pillaring out; the technique of mining & collapsing the pillars of untouched coal and moving out towards the entrance of the area / mine. Quinsam also relied upon coal from areas two (2) and three (3) of 7-S, however these areas began to deplete by October 2018.

In anticipation of the depleting coal supply, Quinsam invested heavily in the development of a super-section; an area where two continuous miners can operate together at the staffing costs of one machine. This super-section was to be developed in area five (5) of 7-S, however to access area 5 Quinsam needed to dig a tunnel through a large area of rock. The project began in July 2018 and was anticipated to finish by October 2018 for a total cost of \$500k, however due to unforeseen issues the project ended up costing roughly \$1.4m and wasn't finished until the end of January 2019.

Throughout this time Quinsam also faced equipment and machinery issues. Out of the Company's three continuous miners only one would work on a given day. Large costs were sunk into the maintenance and repairs of these miners which continued to breakdown and Quinsam lacked the capital to purchase new miners. This resulted in high production costs, averaging \$122 per MT compared to forecasts of \$54 per MT since staff were brought in to man two continuous miners as breakdowns were unpredictable.



Depleting coal reserves resulted in coal yields drastically dropping to 5,000 - 10,000 MT a month during the period of November 2018 - January 2019. This coupled with equipment issues and delayed access to the super-section led to significant working capital issues for Quinsam.

Once access to the super-section was completed it was discovered that the area was too narrow for two continuous miners and a large portion of the coal was of low quality. Access to higher quality coal was in high-sloped areas, which was much harder to mine than anticipated. Significant additional capital was necessary to upgrade equipment and further develop the area.

As a result, by June 12, 2019 Quinsam was experiencing significant liquidity issues and ceased operations at the mine. As no further funding was made available by the shareholders, Quinsam made an assignment into bankruptcy on July 3, 2019 pursuant to section 49 of the *Bankruptcy and Insolvency Act* (the "BIA"). PricewaterhouseCoopers Inc. was appointed the Trustee ("PwC" or the "Trustee").

CONSERVATORY AND PROTECTIVE MEASURES

PwC, in its capacity as Trustee, took possession and control of Quinsam's assets following its appointment as follows:

- Notified the Company's bank of the bankruptcy and seized all funds on deposit;
- Reviewed and assess the accounts receivable to determine whether any collection action was necessary;
- Attended the Company's mine site near Campbell River and engaged certain former employees and arranged for the ongoing care and maintenance activities to be undertaken of the mine site; and,
- Attempted to arrange for insurance over the Company's assets. No property insurance has been arranged to date as the former insurer is requiring the payment of nearly \$67,000 in outstanding insurance premiums relating to previously lapsed policies before it is prepared to place a new policy. An alternate insurer has been contacted and they have requested an appraisal of the property to be insured. Given that all of the assets of the Company are subject to the security of held by Enceco, the trustee commenced discussions with Enceco to determine whether Enceco wished to have insurance put in place. These discussions are ongoing.

PRELIMINARY EVALUATION OF QUINSAM'S ASSETS

The assets of Quinsam as shown on the Statement of Affairs are as follows:

	Book value	Estimated recovery value
Deposits in financial institutions	\$ 224,142	\$ 224,142
Accounts receivable	577,404	577,404
Inventory	800,000	200,000
Prepaid expenses	82,870	-
Plant & equipment	1,422,868	1,000,000
Mineral Properties	2,584,467	-
Reclamation bond	7,389,797	7,389,797
Total	\$ 13,081,548	\$ 9,391,343
<u>Deposits in financial institutions</u>		



Quinsam maintained bank accounts at the Bank of Montreal. Upon appointment, the trustee seized these funds and realized \$205,243 CAD & \$1,011 USD which were placed into the estate trust account. The trustee is using these monies to fund the initial costs of the estate including the costs of maintaining the mine even though these funds are subject to various statutory secured claims (pursuant to S.81.3 and 81.5 of the BIA) and the security held by Enceco. Enceco has released its security interest on the cash as described in the Javelin Agreement (discussed below).

Accounts Receivable

The accounts receivable balance of \$577,404 includes \$118,904 of GST input tax credits and other assorted receivables, plus a trade receivable of \$458,500 owing from Javelin Global Commodities (UK) Ltd. ("Javelin").

The receivables of \$118,904 is not expected to generate any value for creditors.

Javelin acted as the exclusive marketing agent for Quinsam during its operations and was responsible for selling all the coal produced by Quinsam. On June 28, 2019, Quinsam sold all of the coal that had been mined to Javelin (the "**Javelin Agreement**"). The coal sold was located in three locations: Texada Island Terminal (2,000 metric tons), Middlepoint Barge Terminal (12,500 metric tons) and the mine site (20,000 metric tons).

The key terms of the Javelin Agreement are as follows:

- Javelin acquired all the coal effective June 28, 2019.
- Javelin provided a payment of US\$ 1 million to the Company which was disbursed as follows:

	<u>\$'s in CAD*</u>	
Province of BC - For carbon taxes	\$	485,249
CRA - For source deductions		77,492
Enceco - For payroll advances		172,748
Enceco - For indebtedness		286,605
PwC - For trustee services		100,000
Quinsam - For operations		186,606
Total	\$	1,308,700

**Based on Bank of Canada daily rate as at June 28, 2019*

- Additional payments will be made for the coal as deliveries are made as follows, assuming a sales price of \$85 CAD per metric ton:

	<u>\$'s in CAD</u>	
Base selling price	\$	85.00
Advance payment, on first \$1.0m USD		(49.08)
Selling fee (4%)		(3.40)
		32.52
Enceco repayment (50%)		(16.26)
End cash received	\$	16.26

- The Company is responsible for delivering the coal. At Texada and Middlepoint, this means loading the coal onto a barge while the coal located at the mine site must be trucked to Middlepoint and loaded on a barge. Should the Company fail to make these arrangements,



Javelin may do so and deduct the costs of delivery from the proceeds to be remitted to the Company.

- Javelin intends to sell the coal to an end user (an “**onward sale**”). As the final sale price on these onward sales will dictate the ultimate sale price that the Company recovers from the sale of the coal to Javelin, both Enceco and the Company must approve the sale prices.
- Both shareholders of Quinsam (Chuck Ebetino and Thomas Clarke) have each provided a US \$500,000 guarantee to Javelin to provide Javelin assurance that it will recover its initial payment of US \$1 million which was paid in advance of any coal delivery.
- As noted in the tables above, a portion of the proceeds from the coal sales is being directed to the Company although Enceco, who has security over all the Company’s assets, could have retained all of the proceeds. In order to facilitate the sale of coal and to fund a portion of the bankruptcy proceedings, Enceco agreed to release its security over certain amounts of the US\$ 1 million payment and up to US\$ 350,000 (approximately Cdn \$458,500) from future proceeds. The trade receivable is comprised of the future payments under the Javelin Agreement.

The Trustee must decide whether it wishes to complete the Javelin agreement and either ratify the agreement or disclaim it. The Trustee intends to ratify the Javelin Agreement as Enceco has agreed to release its security on a certain amount of the proceeds to help fund the costs administering insolvency proceedings.

Both receivable balances are also subject to the statutory secured claims (pursuant to S.81.3 and 81.5 of the BIA) as a result, there is expected to be no recovery from these receivables to unsecured creditors.

Prepaid Expenses

The prepaid expenses consisted of insurance, license fees, health benefit deposits and loading fees for the coal maintained at the Texada Island Terminal. These expenses are not expected to generate any value for creditors.

Inventory

The remaining inventory owned by the Company at the date of bankruptcy represents the spare parts inventory located in the parts warehouse at the mine site. The spare parts inventory were valued on the Company’s books at approximately \$800,000. This value is less than their original cost value as the Company had written the value down based on obsolescence. Spare parts inventory are difficult to sell and have their greatest value if they are used to repair machinery. As a result, the Company estimates that the realizable value may only be \$200,000 if sold to third parties.

All of this inventory is subject to security and there is no recoverable value for the unsecured creditors.

Plant & Equipment

Quinsam owns various plant and equipment with the following broad categories:

- Buildings - Administration office, warehouse, maintenance shop, coal preparation, wash plant
- Infrastructure - Conveyors, barge loader, power systems, power lines
- Vehicles - Toyota trucks, excavators, dump trucks
- Heavy Equipment - Continuous miners, Scoop trams, shuttle cars,
- Office furniture - desks, chairs, tables
- Computer equipment - laptops, desktop computers, server

All of the equipment is subject to security and there is no recoverable value for the unsecured creditors.

Real Property



Quinsam owns approximately 700 acres of land surface rights in fee. These lands cover the following areas of the mine:

- Site infrastructure locations (office, warehouses, wash plant)
- Haul roads
- 2 North open pit tailings ponds and lands over the 2 North underground workings
- 1 South, 2 South and 3 South open pit areas and lands over the 2 South underground workings
- the 7 South surface footprint

These lands were purchased from Timberwest in two tranches: 353 acres in 1997 and 346 acres in 2013. Given the substantial reclamation work that is required, these lands are considered to have no value. The MEMPR is expected to have security over the value of these lands pursuant to subsection 14.06(7) of the BIA.

Mineral Rights

Quinsam has 33,000 acres of coal rights owned in fee and 7,400 acres of coal rights under mineral licenses. The value of these mineral rights are wholly dependent upon whether the mine is acquired by a third party and returned to operations or not. Nevertheless, the MEMPR is expected to have security over the value of these lands pursuant to subsection 14.06(7) of the BIA.

SECURED CREDITORS

Based on the records of the Company and claims filed to date, the trustee has identified the following secured creditors:

B.C Ministry of Energy and Mines and Petroleum Resources (“MEMPR”)

The Company is obliged to conduct certain reclamation activities upon the closure of the mine pursuant to the mining permit issued by MEMPR. MEMPR holds a deposit of approximately \$7.3 million as security for the Company’s reclamation obligations. Further, pursuant to subsection 14.06(7) of the BIA, MEMPR is also provided first priority security over the real property and any immovable assets of the Company.

As at the date of bankruptcy, the Company estimates that the reclamation liabilities could total \$11.9 million as reflected on the statement of affairs. The Company’s reclamation plan will require updating to better determine this liability.

Former Employees of Quinsam

The former employees of Quinsam are owed the following monies:

Claim type	USW members	Management	Total
Unpaid wages & overtime	\$ 10,876	\$ 708	\$ 11,584
Unpaid vacation pay	292,038	69,896	361,934
Unpaid severance	600,040	455,773	1,055,813
Unpaid pay-in-lieu of notice	751,804	-	751,804
Unpaid group termination	607,056	219,263	826,319
Total	\$ 2,261,814	\$ 745,640	\$ 3,007,454

Subsection 81.3(1) of the BIA provides the former employees with security over the current assets of the Company (Cash, Receivables, and Inventory) for balances owing that have accrued in the six months



leading up to the date of bankruptcy. Based on the Company's records, the secured portion of the former employees claims amounts to \$128,119.

United Steelworkers ("USW")

The USW has filed a claim with the trustee for \$60,388 owing to the Vancouver Steelworkers Pension Plan pursuant to the Company's obligations under the collective bargaining agreement (the "CBA"). Subsection 81.5(1) of the BIA provides the pension plan with security over all of the Company's assets. However, this security is subordinate to the security provided under S. 81.3 of the BIA for outstanding wages and the security provided under 14.06(7) of the BIA for costs of reclamation.

The amount owing to the USW as a result of the bankruptcy, is \$60,388 from pension obligations which was not referenced on the Statement of Affairs as it was unknown at this time.

ENCECo Inc.

ENCECo was owed approximately \$3.76 million for funds it advanced to the Company and evidenced by a promissory note. After taking into consideration the payments anticipated under the Javelin Agreement, this balance should be reduced to approximately \$2.55 million.

The Company executed a General Security Agreement in favour of Enceco which provided security against all of the Company's assets. However, the trustee notes that this security ranks subordinate to the security provided by the BIA to the former employees, the USW, and the MEMPR.

The trustee engaged the law firm of Gehlen Dabbs LLP as independent legal counsel to review the security provided to Enceco. Gehlen Dabbs LLP has opined that the security held by Enceco is valid and enforceable as against a trustee in bankruptcy.

Leases

The Company has two outstanding leases which are secured by Gord Knight Ventures Ltd. against two Toyota vehicles. The lease obligations total \$26,018 and were registered in the personal property registry on May 30, 2019 and expire November 26, 2019.

PROVABLE CLAIMS

The Trustee has performed a preliminary review of the claims filed to date which are summarized below.

	As per Statement of Affairs		Claims filed to date	
Secured creditors	\$	8,842,702	\$	181,727
Unsecured creditors		15,317,524		10,437,659
Total	\$	24,160,226	\$	10,619,386

The secured creditors for which claims have been received represent employees who have a claim pursuant to Section 81.3 of the BIA and the Vancouver Steel Workers Pension Plan that have a claim pursuant to Section 81.5 of the BIA. The secured creditors who have not filed a claim consist of the MEMPR and Enceco.

104 claims have been received of approximately 180 unsecured creditors The Trustee has noted some significant differences between the amounts listed on the Statement of Affairs the amounts that creditors



have claimed. The Trustee will assess each of these differences on an individual basis should a detailed review of the claims be required.

PREFERENCES AND TRANSFERS UNDER VALUE

As at the time of this report the Trustee has not completed a review of the books and records of the Company. The Trustee has obtained an image of and secured the books and records of Quinsam and will be reviewing the books and records for any fraudulent preferences and reviewable transaction.

The Trustee, did consider the Javelin agreement and the payments made from the US\$ 1 million advance payment to assess whether any of the payments were preferences or whether the Javelin agreement itself represented a transfer under value in respect of the coal inventory.

The Trustee concluded that the payments made to parties other than the Company from the US\$ 1 million were not preferences as they were made in to creditors or in respect of claims that held security or would rank in priority to the unsecured creditors had they not been paid. As a result of these priority positions, there was no preference.

The Trustee further concluded that the Javelin Agreement itself did not represent a transfer of the Company's coal inventory to Javelin at a value that was less than fair market value. The Trustee noted that the Company (or now the trustee) needed to provide Javelin approval of any onward sale. As a result, the Company/Trustee could ensure that the coal was sold at fair market value.

ESTIMATED DISTRIBUTION OF ASSET RECOVERIES

The Trustee has prepared a preliminary waterfall that illustrates the anticipated recoveries from the Company's assets and the claims against them which is presented in the table below:

	Current assets	Real & immovable assets	Other fixed assets	Total
Estimated recovery value ("ERV")	\$ 1,001,546	\$ 7,389,797	\$ 1,000,000	\$ 9,391,343
Less: Inventory & shipping costs	(406,685)	-	-	(406,685)
Adjusted ERV	594,861	7,389,797	1,000,000	8,984,658
Secured Claims:				
MEMPR		(7,389,797)		(7,389,797)
Former Employees	(128,119)			(128,119)
Pension			(60,488)	(60,388)
ERV available to Enceco before operating & maintenance costs	466,742	-	939,512	1,406,354
Enceco's secured claim				(2,546,298)
Shortfall				\$ (1,139,944)

Based on this analysis, the trustee does not expect that there will be any monies available to unsecured creditors.

**TRUSTEE'S FEE ARRANGEMENT**

At the time of appointment the Trustee had received a deposit from the Company in the amount of \$100,000. This payment was funded from the US\$ 1 million advance payment for the sale of coal under the Javelin Agreement.

DATED AT the City of Vancouver, this 22nd day of July, 2019

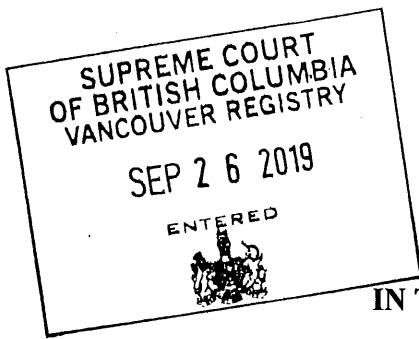
PricewaterhouseCoopers Inc., LIT
Trustee of the Estate of
Quinsam Coal Corporation, a bankrupt

A handwritten signature in black ink, appearing to read "Neil P. Bunker", written in a cursive style.

Neil P. Bunker, CPA, CA, CIRP, LIT
Senior Vice President

APPENDIX B

Copy of the Receivership Order entered September 26, 2019



No. S1910538
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

Her Majesty the Queen in right of the Province of British Columbia

Petitioner

And:

Quinsam Coal Corporation, Barclays Canada Leasing Corporation, Barclays Bank of
Canada, ENCECo, Inc. and Gord Knight Ventures Ltd.

Respondents

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE)

Mr. JUSTICE BOWDEN)

) 20/09/2019
)
)

ON THE APPLICATION of the Applicant for an Order pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and Section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended (the “**LEA**”) appointing the Bowra Group Inc. as Receiver and Manager (in such capacity, the “**Receiver**”) without security, of all of the assets, undertakings and property of Quinsam Coal Corporation (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, coming on for hearing this day at Vancouver, British Columbia.

AND ON READING the Affidavit #1 of Nathaniel Amann-Blake sworn September 19, 2019 and the consent of the Bowra Group Inc. to act as the Receiver; AND ON HEARING Aaron Welch and Elizabeth Rowbotham, counsel for Her Majesty the Queen in right of the Province of British Columbia (the “**Province**” or the “**Applicant**”) and Kimberley Robertson and Blair McRadu, counsel for ENCECo, Inc., and no one else appearing.

THIS COURT ORDERS AND DECLARES that:

APPOINTMENT

1. The time for service of the Petition herein be and is hereby abridged such that the Petition is properly returnable today.
2. Despite a notice not being sent under subsection 244(1) of the BIA, it is appropriate in these circumstances to appoint a receiver before the expiry of the notice period.
3. Pursuant to Section 243(1) of the BIA and Section 39 of the LEA the Bowra Group Inc. is appointed Receiver, without security, of all of the assets, undertakings and property of the Debtor (the "**Property**") and certain coal inventory (the "**Coal Inventory**") located at the Quinsam mine site, the Middle Point Barge Terminal and Texada Island which is the subject matter of a Sales Confirmation (the "**Confirmation**") with Javelin Global Commodities (UK) Ltd. ("**Javelin**"), and all proceeds therein. For greater certainty, nothing in this Order determines the property and ownership rights in and to the Coal Inventory, or proceeds therefrom

RECEIVER'S POWERS

4. To the extent authorized and approved by the Applicant, the Receiver is empowered and authorized, but not obligated, to act at once in respect of the Property and the Coal Inventory, where applicable, and, without in any way limiting the generality of the foregoing, the Receiver is expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
 - (a) to take possession of and exercise control over the Property and the Coal Inventory and any and all receipts and disbursements arising out of or from the Property;
 - (b) to receive, preserve and protect the Property and the Coal Inventory, or any part or parts thereof, including, but not limited to, changing locks and security codes, relocation of Property and the Coal Inventory, engaging independent security personnel, taking physical inventories and placing insurance coverage;
 - (c) to manage, operate and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
 - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order;
 - (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;

- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting these amounts, including, without limitation, enforcement of any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and the Coal Inventory and operations of the Debtor;
- (j) to initiate, manage and direct all legal proceedings now pending or hereafter pending (including appeals or applications for judicial review) in respect of the Debtor, the Property or the Receiver, including initiating, prosecuting, continuing, defending, settling or compromising the proceedings;
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver considers appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
 - (i) without the approval of this Court in respect of a single transaction for consideration up to \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the individual or aggregate purchase price exceeds the limits set out in subparagraph (i) above,

and in each such case notice under Section 59(10) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 shall not be required;
- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers, free and clear of any liens or encumbrances;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver considers appropriate on all matters relating to the Property and the receivership, and to share information, subject to confidentiality terms as the Receiver considers appropriate;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if considered necessary or appropriate by the Receiver, in the name of the Debtor;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limitation, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have;
- (s) to do all things reasonably necessary to deliver the Coal Inventory in accordance with the requirements of the Confirmation, including, without limitation,
 - (i) to execute, assign, issue and endorse documents of whatever nature in respect of the Coal Inventory, whether in the Receiver's name or in the name and on behalf of the Debtor;
 - (ii) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver considers appropriate on matters relating to the Coal Inventory, and to share information, subject to confidentiality terms as the Receiver considers appropriate;

but without authority to amend or alter the terms of the Confirmation, unless agreed to in writing by Javelin, the Province, and Enceco or further order of the court;
- (t) to carry out care and maintenance and reclamation activities with respect to any of the Debtor's mines or other sites; and
- (u) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. Each of (i) the Debtor; (ii) all of the Debtor's current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf; and (iii) all other individuals, firms, corporations, or other entities having notice of this Order (collectively, "**Persons**" and each a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property and the Coal Inventory to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.

6. All Persons, other than governmental authorities, shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (collectively, the “**Records**”) in that Person’s possession or control. Upon request, governmental authorities shall advise the Receiver of the existence of any Records in that Person’s possession or control.
7. Upon request, all Persons shall provide to the Receiver or permit the Receiver to make, retain and take away copies of the Records and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities, provided however that nothing in paragraphs 6, 7 or 8 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to solicitor client privilege or statutory provisions prohibiting such disclosure.
8. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by an independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may require including, without limitation, providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

9. No proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

10. No Proceeding against or in respect of the Debtor or the Property or the Coal Inventory shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property or the Coal Inventory are stayed and suspended pending further Order of this Court; provided, however, that nothing in this Order shall prevent any Person from commencing a Proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such Proceeding is not commenced before the expiration of the stay provided by this paragraph and provided that no further

step shall be taken in respect of the Proceeding except for service of the initiating documentation on the Debtor and the Receiver.

NO EXERCISE OF RIGHTS OR REMEDIES

11. All rights and remedies (including, without limitation, set-off rights) against the Debtor, the Receiver, or affecting the Property or the Coal Inventory, are stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this Order shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) affect the rights of any regulatory body as set forth in section 69.6(2) of the BIA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. This stay and suspension shall not apply in respect of any "eligible financial contract" as defined in the BIA or the Confirmation, nor shall anything contained herein alter the terms of the Confirmation.

NO INTERFERENCE WITH THE RECEIVER

12. No Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court. Nothing in this Order shall prohibit any party to an eligible financial contract from closing out and terminating such contract in accordance with its terms.

CONTINUATION OF SERVICES

13. All Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

14. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever including, without limitation, the sale of all or any of the Property and the collection of any accounts receivable, in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post-Receivership Accounts**") and the monies standing to the credit of such Post-Receivership Accounts from time to time, net

of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

15. Javelin shall pay the net proceeds of sale from the sale of the Coal Inventory, after payment to Javelin in accordance with the terms of the Confirmation, to the Receiver to be held in a Post-Receivership Account to be paid out with the consent of the Receiver, the Province and ENCECo or further order of the court. Such payment shall be made notwithstanding the direction to pay from the Debtor to Javelin pursuant to the Direction to Pay letter dated 28 June 2019.

EMPLOYEES

16. The Receiver shall not be liable for any employee-related liabilities of the Debtor, including any successor employer liabilities as referred to in Section 14.06(1.2) of the BIA, other than amounts the Receiver may specifically agree in writing to pay or in respect of obligations imposed specifically on receivers by applicable legislation, including sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, S.C. 2005, c.47. The Receiver shall be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts relating to any employees that the Receiver may hire in accordance with the terms and conditions of such employment by the Receiver.

PERSONAL INFORMATION

17. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 or Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, the Receiver may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

18. Nothing in this Order shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release, or deposit of a substance contrary to any federal, provincial or other law relating to the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating

to the disposal of waste or other contamination (collectively "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation.

19. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property or the Coal Inventory within the meaning of any Environmental Legislation, unless the Receiver is actually in possession.
20. Notwithstanding anything in federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arises or environmental damage that occurred:
 - (a) before the Receiver's appointment; or,
 - (b) after the Receiver's appointment, unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
21. Notwithstanding anything in federal or provincial law, but subject to paragraph 20 of this Order and without prejudice to an argument by ENCECo that the Coal Inventory is not real property or an immovable within the meaning of section 14.06(7) of the BIA, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property or the Coal Inventory, if the Receiver complies with the BIA section 14.06(4), the Receiver is not personally liable for the failure to comply with the order and is not personally liable for any costs that are or would be incurred by any Person in carrying out the terms of the order.

LIMITATION ON THE RECEIVER'S LIABILITY

22. The Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except:
 - (a) any gross negligence or wilful misconduct on its part; or
 - (b) amounts in respect of obligations imposed specifically on receivers by applicable legislation.

Nothing in this Order shall derogate from the protections afforded the Receiver by Section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

23. The Receiver and its legal counsel, if any, are granted a charge (the "**Receiver's Charge**") on the Property, as security for the payment of their fees and disbursements, in each case at their standard rates, in respect of these proceedings, whether incurred before or after the making of this Order. The Receiver's Charge shall form a first charge on the

Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA (a “**First Charge**”).

24. The Receiver's Charge shall also attach as a First Charge as against the proceeds of sale from the Coal Inventory held in the Post-Receivership Account referred to in paragraph 15 of this Order for those costs and expenses directly attributable to giving effect to the delivery of the Coal Inventory as contemplated in the Javelin Confirmation, including actions under paragraphs 4(b) and 4(s) of this Order, to the maximum amount of the Canadian equivalent of US\$495,000, less amounts paid out under s. 81.4(4), and 81.6(2) of the BIA, unless otherwise agreed to in writing by Enceco Inc., the Province, the Receiver and Javelin, or further order of the Court.
25. Notwithstanding the preceding paragraph, this Order does not determine the allocation of the Receiver's Charge as against any or all of the Property.
26. Any interested party may apply to this Court on notice to any other party likely to be affected for an order allocating the Receiver's Charge amongst the Property.
27. This Order is made without prejudice to any argument as between the Province and Enceco Inc., as to their respective priorities in and to the Property and applicable proceeds from the Coal Inventory held in the Post-Receivership Account referred to in paragraph 15, and the Province and ENCECO are directed to set down a hearing in respect of those issues before November 30, 2019, if a settlement has not been reached before then.
28. The Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis.
29. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

30. The Receiver is at liberty to apply for borrowings at a later date, and a determination of the priority for same.

SERVICE AND NOTICE OF MATERIALS

31. The Receiver shall establish and maintain a website in respect of these proceedings at: <https://www.bowragroup.com/quinsam-coal-corporation> (the “**Website**”) and shall post there as soon as practicable:

- (a) all materials prescribed by statute or regulation to be made publicly available, including pursuant to Rule 10-2 of the *Supreme Court Civil Rules*; and,
 - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.
32. Any Person who is served with a copy of this Order and that wishes to be served with any future application or other materials in these proceedings must provide to counsel for each of the Receiver and the Applicant a demand for notice in the form attached as Schedule B (the “**Demand for Notice**”). The Receiver and the Applicant need only provide further notice in respect of these proceedings to Persons that have delivered a properly completed Demand for Notice. The failure of any Person to provide a properly completed Demand for Notice releases the Receiver and the Applicant from any requirement to provide further notice in respect of these proceedings until such Person delivers a properly completed Demand for Notice.
33. The Receiver shall maintain a service list identifying all parties that have delivered a properly completed Demand for Notice (the “**Service List**”). The Receiver shall post and maintain an up-to-date form of the Service List on the Website.
34. Any interested party, including the Receiver, may serve any court materials in these proceedings by facsimile or by emailing a PDF or other electronic copy of such materials to the numbers or addresses, as applicable, set out on the Service List. Any interested party, including the Receiver, may serve any court materials in these proceedings by mail to any party on the Service List that has not provided a facsimile number or email address, and materials delivered by mail shall be deemed received five (5) days after mailing.
35. Notwithstanding the preceding paragraph of this Order, service of the Petition and any affidavits filed in support shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c.C-50 and its regulations for the Federal Crown and the *Crown Proceedings Act*, R.S.B.C. 1996 c.89 in respect of the British Columbia Crown.
36. The Receiver and its counsel are authorised to serve or distribute this Order, any other orders and any other materials as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding copies by facsimile or by email to the Debtor’s creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of any legal or juridical obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*.

GENERAL

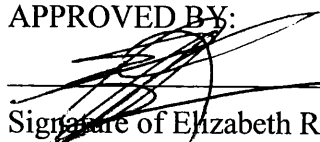
37. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) clear business days’ notice to the Service List and to any other party who may

be affected by the variation or amendment, or upon such other notice, if any, as this Court may order.

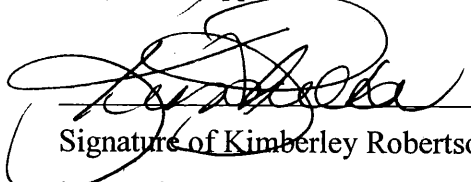
- 38. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
- 39. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
- 40. This Court requests the aid, recognition and assistance of any court, tribunal, regulatory or administrative body having jurisdiction, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All such courts, tribunals and regulatory and administrative bodies are respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
- 41. The Receiver is authorized and empowered to apply to any court, tribunal or regulatory or administrative body, wherever located, for recognition of this Order and for assistance in carrying out the terms of this Order and the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
- 42. The Applicant shall have its costs of this motion, up to and including entry and service of this Order, on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

THE FOLLOWING PARTIES APPROVE OF THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

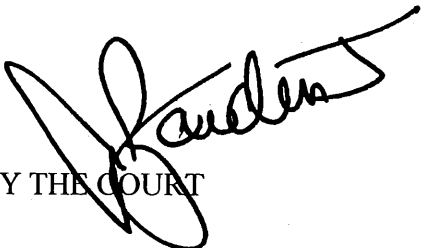
APPROVED BY:



 Signature of Elizabeth Rowbotham
 lawyer for Applicant



 Signature of Kimberley Robertson
 lawyer for ENCECo, Inc.


 BY THE COURT
 DISTRICT REGISTRAR

Schedule "B"

Demand for Notice

TO: Her Majesty the Queen in right of the Province of British Columbia
 c/o Aaron Welch
 Attention: Aaron Welch
 Revenue & Taxation Group
 Legal Services Branch
 Ministry of Attorney General
 P.O. Box 9289, Stn Prov Govt,
 400 - 1675 Douglas Street, Victoria, British Columbia, V8W 9J7;
 Telephone: (250) 356-8589;

Fax number address for service of the petitioner: 250-387-0700

Email: Aaron.Welch@gov.bc.ca

AND TO:

The Bowra Group Inc.
 c/o Mario Mainella
 Attention: Mario Mainella
 PO Box 72, Bentall One
 505 Burrard Street, Suite 430
 Vancouver, B.C. V7X 1M3
 Tel: 604 689 8939
 Fax: 604 689 8584
 Email: mmainella@bowragroup.com

And the Bowra Group Inc.'s counsel:
 c/o Colin Brousson at Gowling WLG
 Attention: Colin Brousson
 Gowling WLG
 550 Burrard Street, Suite 2300, Bentall 5,
 Vancouver, British Columbia, V6C 2B5, Canada
 Tel: 604-891-2286
 Fax: 604-683-3558
 Email: colin.brousson@gowlingwlg.com

Re: In the matter of the Receivership of Quinsam Coal Corporation

I hereby request that notice of all further proceedings in the above Receivership be sent to me in the following manner:

1. By email, at the following address (or addresses):

OR

2. By facsimile, at the following facsimile number (or numbers):

OR

3. By mail, at the following address:

Name of Creditor: _____

Name of Counsel (if any): _____

Creditor's Contact Address: _____

Creditor's Contact Phone Number: _____

APPENDIX C

Copy of the Sales Procedure Order entered December 20, 2019



No. S1910538
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF
BRITISH COLUMBIA.

PETITIONER

AND:

QUINSAM COAL CORPORATION, BARCLAYS CANADA
LEASING CORPORATION, BARCLAYS BANK OF CANADA,
ENCECO, INC. and GORD KNIGHT VENTURES LTD.

RESPONDENTS

ORDER MADE AFTER APPLICATION
(Approving Bidding Procedures)

BEFORE THE HONOURABLE)	FRIDAY, THE 20 TH DAY
MR./MADAM JUSTICE <u>RUSSELL</u>)	OF DECEMBER, 2019

ON THE APPLICATION of The Bowra Group Inc., in its capacity as the Court-appointed receiver (the "Receiver") of all of the assets, undertakings and property of Quinsam Coal Corporation (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor pursuant to the receivership order issued on September 20, 2019, (the "Receivership Order") in the within proceedings, coming on for hearing before me this day; AND ON READING the Affidavit #1 of Gordon Brown, sworn on December 12, 2019; AND ON HEARING Colin D. Brousson, counsel for the Receiver, and other counsel as listed on **Schedule "A"** hereto, and no one else appearing, although duly served;

THIS COURT ORDERS AND DECLARES that:

Service

1. the time for service of the Notice of Application herein and supporting materials be and are hereby abridged and deemed good and sufficient such that the Notice of Application is properly returnable today, and service upon any interested party other than those parties on the service list maintained by the Receiver in this proceeding is hereby dispensed with;

Approval of bidding procedures

2. the sale procedures (the "**Sale Procedure**") for the sale of the Property (as defined in the Sale Procedure), substantially in the form attached as **Schedule "B"** to this Order, are hereby approved;
3. the Receiver is authorized and directed to implement the Sale Procedure and to do all such things as it considers necessary or desirable to conduct and give full effect to the Sale Procedure;
4. the Receiver, and its affiliates, partners, directors, employees, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of performing its obligations under the Sale Procedure, except to the extent such losses, claims, damages or liabilities result from the gross negligence or willful misconduct of the Receiver in performing its obligations under the Sale Procedure (as determined by this Court);
5. in connection with the Sale Procedure and pursuant to clause 7(3)(c) of the *Personal Information and Electronic Documents Act* (Canada), the Receiver and the Debtor are authorized and permitted to disclose personal information of identifiable individuals to prospective purchasers or offerors and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more transactions (each, a "**Transaction**"). Each prospective purchaser or offeror to whom such information is disclosed shall maintain and protect the privacy of such information and shall limit the use

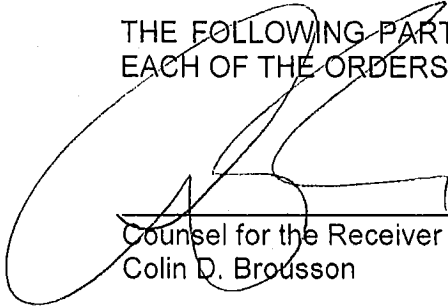
of such information to its evaluation of the Transaction, and if it does not complete a Transaction, shall: (i) return all such information to the Receiver; (ii) destroy all such information, or (iii) in the case of such information that is electronically stored, destroy all such information to the extent it is reasonably practical to do so. The transacting party with respect to any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Receiver, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed;

General

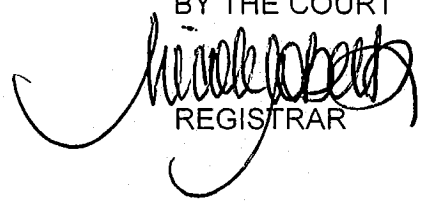
6. nothing in this order shall be construed as determining the distribution of the proceeds of the sale of the Property by the Receiver or the allocation of the proceeds as against the Property. Subject to the terms of the Receivership Order, the Receiver and all parties claiming an entitlement to a share of the proceeds of the Property are at liberty to apply for an order in regard to such allocation or distribution.
7. service of this Order shall be deemed good and sufficient by:
 - (a) serving the same in accordance with the Receivership Order on:
 - (i) the persons listed on the service list created in these proceedings;
 - (ii) any other person served with notice of the application for this Order;
 - (iii) any other parties attending or represented at the application for this Order;and
 - (b) posting a copy of this Order on the Receiver's website at www.bowragroup.com/quinsam-coal-corporationand service on any other person is hereby dispensed with;

- 8. endorsement of this Order by counsel appearing on this application other than counsel for the Receiver is hereby dispensed with;

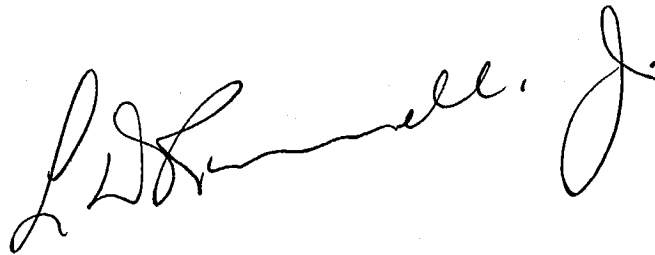
THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS NOTED ABOVE:



 Counsel for the Receiver
 Colin D. Brousson

BY THE COURT

 REGISTRAR





SCHEDULE "A"

LIST OF COUNSEL

NAME OF LAWYER	REPRESENTING
Lee Mauro	H.M.C. in Right of the Province of BC.
Elizabeth Fowbotham	u "

Schedule "B"

SALE PROCEDURE

Pursuant to an Order (as may be amended from time to time, the "**Receivership Order**") of the Supreme Court of British Columbia (the "**Court**") dated September 20, 2019 in Action No. S1910538, Vancouver Registry (the "**Receivership Action**"), the Bowra Group Inc. was appointed as receiver and manager (in such capacity, the "**Receiver**") over all of the assets, undertakings, property of Quinsam Coal Corporation (the "**Property**").

On December 20, 2019, the Court made an order (the "**Sale Procedure Order**"), among other things, approving this Sale Procedure for the solicitation of offers for the acquisition of some or all of the Property.

Accordingly, the following Sale Procedure shall govern (a) the sales process relating to the solicitation by the Receiver of one or more Qualified Bids for the Property and (b) the proposed sale of all or substantially all of the Property pursuant to one or more Qualified Bids.

All denominations are in Canadian dollars.

1. Definitions

Capitalized terms used in this Sale Procedure shall have the definitions given to them in the preamble hereto and as follows:

"Acknowledgement of Sale Procedure" means an acknowledgement of the Sale Procedure in the form attached as **Schedule "A"** hereto;

"Acquisition Entity" means an entity specially formed for the purpose of effectuating the contemplated transaction;

"Bid" means an offer or proposal for the acquisition of the Property submitted by a Qualified Bidder. For clarity only a Qualified Bidder may submit a bid for consideration in this Sale Procedure;

"Bid Deadline" means 11:00 a.m. local time in Vancouver, B.C. Canada on April 1, 2020, or as extended by the Receiver on notice to all Participants and posted on the Receiver's Website;

"Bidder Qualification Requirements" has the meaning given to it in Section 6;

"Confidentiality Agreement" means an executed confidentiality agreement in form and substance acceptable to the Receiver and its counsel;

"Due Diligence Materials" means some or all of the following information regarding Quinsam and the Property to the extent that it is available to the Receiver:

- (a) Contracts and Permits, each as defined in the Form of APA; and
- (b) Equipment lists;

all of which will be made available to Participants by way of an electronic data room assembled and administered by the Receiver;

“Form of APA” means the Form of Asset Purchase Agreement attached as **Schedule “C”** hereto;

“Good Faith Deposit” means a cash deposit of \$500,000;

“Modified APA” means an executed mark-up of the Form of APA reflecting the applicable Qualified Bidder’s proposed changes to the Form of APA;

“Offer Termination Date” has the meaning given to it in Section 7(c);

“Participant” means any person who has delivered the Participant Requirements and had those Participant Requirements deemed satisfactory by the Receiver in accordance with Section 4;

“Participant Requirements” has the meaning given to it in Section 4;

“Principals” means, collectively, the equity holder(s) of any Acquisition Entity and any guarantor of any Bid made by such Acquisition Entity;

“Qualified Bidder” means a Participant that, (i) having satisfactorily met the Participant Requirements prior to the Bid Deadline, (ii) meets the Bidder Qualification Requirements prior to the Bid Deadline, and (iii) whom the Receiver, in accordance with Section 6, deems is reasonably likely to have the financial capacity to submit a binding bona fide offer and would be able to consummate a transaction if selected as the Successful Bidder.

“Qualified Bid” means a Bid submitted by a Qualified Bidder on or prior to the Bid Deadline that satisfies the conditions set out in Section 7.

“Receiver’s Website” means the website established by the Receiver in connection with the Receivership Action at: www.bowragroup.com/quinsam-coal-corporation

“Sale Procedure Order” means the Order authorizing this Sale Procedure;

“Successful Bid” means the highest and best Qualified Bid as determined by the Receiver, taking into account financial and contractual terms and the factors relevant to the Sale Procedure, including those factors affecting the speed and certainty of consummating the proposed sale;

“Successful Bidder” means the Qualified Bidder who submitted the Successful Bid;

“**Vesting Order**” means the order of the Court that approves the sale of the Purchased Assets (as defined in the Successful Bid) to the Successful Bidder and vests title of the Purchased Assets to the Successful Bidder.

2. **Assets for Sale**

The Receiver is soliciting offers for all of the Property. For the purposes of this Sale Procedure, a Participant may exclude from its Bid any of the Property.

The sale of any of the Property pursuant to this Sale Procedure shall be on an “**as is, where is**” basis and without representations or warranties of any kind, nature or description by the Receiver, or its directors, officers, employees or agents except to the extent set forth in the Successful Bid. Each Participant and anyone submitting a Bid shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Property prior to making its Bid, that it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or the Property in making its Bid, and that it did not rely on any written or oral statements, representations, promises, warranties, conditions or guarantees whatsoever, whether express, implied, by operation of law or otherwise, regarding the Property, or the completeness of any information provided in connection therewith, except as expressly stated in this Sale Procedure.

3. **Marketing**

The Receiver will solicit Bids for the Property, including but not limited to the following:

- (a) preparing a teaser document (the “**Teaser**”) that outlines the Property for sale, includes this Sale Procedure and invites parties to satisfy the Participant Requirements to gain access to the Due Diligence Materials;
- (b) sending the Teaser to a list of potential interested parties based on the Receiver’s research as soon as practicable after the Sale Procedure is approved by the Court;
- (c) posting an advertisement in the Globe and Mail or similar national newspaper as soon as practicable and advisable after January 1, 2020, inviting parties to participate in the Sale Procedure;
- (d) arranging site visits for interested parties, as required; and
- (e) responding as appropriate at any time prior to the Bid Deadline to various questions and queries from interested parties, Participants and Qualified Bidders with the assistance of the Receiver’s consultants.

4. **Participant Requirements**

In order to participate in this Sale Procedure an interested party must first deliver each of the following to the Receiver:

- (a) an executed Confidentiality Agreement;
- (b) an executed Acknowledgement of Sale Procedure; and
- (c) identification of the Participant and any Principals, and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction,

(collectively the “Participant Requirements”).

Any interested party who wishes to be a Participant in the Sale Procedure must deliver all of the Participant Requirements to the Receiver. The Receiver shall review all Participant Requirements received and if the Participant Requirements are deemed satisfactory by the Receiver at its reasonable discretion then the person shall be deemed a Participant in this Sale Procedure.

At any time after February 14, 2020, the Receiver may, if no parties are at that time deemed to be Participants, or if the Receiver otherwise determines in its business judgment that the Sales Procedure should be terminated, then the Receiver shall be at liberty to, without notice, immediately terminate the Sale Procedure and the Receiver shall post notice of such fact on the Receiver’s Website.

5. **Participant’s Access to Due Diligence Materials**

Only those persons deemed to be Participants in this Sale Procedure will be permitted access to the Due Diligence Materials. Participants will be permitted access to the Due Diligence Materials as soon as practicable after being deemed Participants. The Receiver may at its discretion furnish, but shall not be obliged to furnish, any due diligence information other than the Due Diligence Materials. The Receiver is not responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the sale of the Property.

6. **Bidder Qualification Requirements**

To have a Bid considered by the Receiver a Participant must establish itself as a Qualified Bidder. In order to be considered for qualification as a Qualified Bidder, each Participant must provide the Receiver with all of the relevant information and materials set out in the attached **Schedule “B”** (collectively the “**Bidder Qualification Requirements**”) by no later than the Bid Deadline.

The Receiver shall review all Bidder Qualification Requirements received from a Participant to determine, in its reasonable discretion, whether:

- (a) evidence of financial wherewithal provided by the Participant is reasonably acceptable;

- (b) it is reasonably likely that the Participant has the financial capacity to submit a binding bona fide offer; and
- (c) it is reasonably likely that the Participant will be able to consummate a transaction if selected as the Successful Bidder.

If the Receiver is satisfied that the Participant satisfies the requirements above, then the Participant shall be deemed a Qualified Bidder in this Sale Procedure. A Participant may amend or resubmit Bidder Qualification Requirements at any time prior to the Bid Deadline and the Receiver shall review such amended or resubmitted Bidder Qualification Requirements.

Each Participant shall comply with all reasonable requests for additional information by the Receiver regarding such Participant and its contemplated transaction (whether such requests are made before or after the Bid Deadline). Failure by a Participant to comply with requests for additional information will be a basis for the Receiver to determine that the Participant is not a Qualified Bidder.

7. **Bid Requirements**

Only Qualified Bidders shall have their Bids considered by the Receiver. In order to be considered a Qualified Bid a Bid must satisfy each of the following conditions:

- (a) Written Submission of Modified APA and Commitment to Close. A Qualified Bid must be submitted by the Bid Deadline in the form of an executed Modified APA (together with a blackline of the Modified APA against the Form of APA), and a written and binding commitment to close on the terms and conditions set forth therein;
- (b) Executive Approval. Written evidence of the Participant's chief executive officer, board of directors or other appropriate senior executive's approval of the Bid; provided, however, that, if the Participant is an Acquisition Entity, then the Participant must furnish written evidence reasonably acceptable to the Receiver of the approval of the Bid by the Acquisition Entity's Principals.
- (c) Irrevocable. A Qualified Bid must be open for acceptance and irrevocable until 5:00 pm local time in Vancouver on the 10th business day after the Bid Deadline (the "**Offer Termination Date**");
- (d) Contingencies. A Qualified Bid may not be conditional on or subject to obtaining financing or any internal approval or on the outcome or review of due diligence by the Qualified Bidder;
- (e) Financing Sources. A Qualified Bid must be accompanied by written evidence of a commitment for financing or other evidence of the ability to consummate the transaction satisfactory to the Receiver and appropriate contact information for such financing sources must be provided;

- (f) No Fees payable to Qualified Bidder. A Qualified Bid may not request or entitle the Qualified Bidder to any break-up fee, expense reimbursement or similar type of payment;
- (g) Good Faith Deposit. Each Qualified Bid must be accompanied by a Good Faith Deposit that shall be paid to the Receiver by certified cheque or bank draft, to be held by the Receiver in trust in accordance with this Sale Procedure;
- (h) Delivery. A Qualified Bid must be delivered to the Receiver in accordance with Section 14 at or prior to the Bid Deadline.

Participants should note that the Receiver's preference is that no significant modifications to the Form of APA be made in the Modified APA. Please note that the Receiver will consider the extent and nature of the revisions in the Modified APA in evaluating Qualified Bids.

The Receiver shall be entitled to, but is not obligated to, discuss or seek additional information and clarifications from any Participant or Qualified Bidder in respect of its Bidder Qualification Requirements or Bid at any time. Failure by a Participant to comply with requests for additional information or clarifications will be a basis for the Receiver to reject a Bid.

The Receiver may negotiate and request the amendment to any Bid and any Bid or amended Bid received as a result of such negotiations shall be deemed to have been received on or prior to the Bid Deadline. A Participant may not modify, amend or withdraw its Bid without the written consent of the Receiver. Any purported modification, amendment or withdrawal of a Bid by a Participant without the written consent of the Receiver prior to the Offer Termination Date shall result in a forfeiture of such Participant's Good Faith Deposit.

8. Selection of the Successful Bidder

After any clarifying discussions or negotiations the Receiver shall review all Qualified Bids and other documentation and information submitted by the Qualified Bidders and shall either (a) determine the Successful Bidder, or (b) reject all Bids and end the Sales Procedure.

If the Receiver determines the Successful Bid then the Receiver shall:

- (i) as soon as practicable post notice of the determination on the Receiver's Website; and
- (ii) as soon as practicable, seek Court approval of, and authority to consummate, the Successful Bid and the transactions provided for therein by Vesting Order.

9. Vesting Order and Closing of the Successful Bid

The Receiver shall complete the sale transaction or transactions with the Successful Bidder following the granting of a Vesting Order with regard to the Successful Bid. The Receiver will be deemed to have accepted a Successful Bid only when a Vesting Order has been

granted with regard to the Successful Bid. The Receiver shall apply for a Vesting Order as soon as practicable after the determination by the Receiver of the Successful Bidder.

10. **Return of Good Faith Deposits**

Good Faith Deposits of all Qualified Bidders shall be held in an account of the Receiver. Good Faith Deposits of all Qualified Bidders, other than the Successful Bidder, shall be returned to such Qualified Bidders within three (3) business days of the selection of the Successful Bidder. Good Faith Deposits of the Successful Bidder shall be applied to the purchase price of such transaction at closing. If a Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Receiver shall be entitled to retain the Good Faith Deposit of the Successful Bidder as part of their damages resulting from the breach or failure to perform by the Successful Bidder.

11. **Delivery of documents to the Receiver**

All documents or other materials to be delivered to the Receiver pursuant to this Sale Procedure, including the Participant Requirements, Bidder Qualification Requirements but excluding all Bids, must be submitted by email to gbrown@bowragroup.com so that they are actually received by the Receiver no later than the Bid Deadline.

Bids, including the Good Faith Deposit in the form of a certified cheque or bank draft must be delivered to the Receiver at [Receiver's Address], Vancouver, BC, Canada [POSTAL CODE] Attention: Gordon Brown, by hard copy by the Bid Deadline. A Bid that is not received by hard copy prior to the Bid Deadline shall not constitute a Qualified Bid and shall be disqualified.

12. **Modifications and Reservations**

The Receiver reserves the right in its reasonable discretion to: (a) waive strict compliance with any one or more provisions of this Sale Procedure; and (b) modify or amend this Sale Procedure provided that if such modification or amendment materially deviates from this Sale Procedure, such modification or amendment may only be made by order of the Court.

The Receiver may reject at any time before entry of an order of the Court approving a Successful Bid, any or all Bids that in the Receiver's business judgment (a) provide inadequate or insufficient consideration, (b) are not in conformity with the requirements of this Sale Procedure, or the terms and conditions of sale, or (c) are contrary to the best interests of the Receivership estate.

SCHEDULE "A"
to the Sale Procedure

ACKNOWLEDGEMENT OF SALE PROCEDURE

The undersigned hereby acknowledges receipt of the Sale Procedure approved by the Order of the Supreme Court of British Columbia on [DATE], 2019 in Action No. S1910538, Vancouver Registry and further acknowledges that compliance with the terms and provisions of the Sale Procedure is required in order to participate in the Sale Procedure and for any Bid to be considered by the Receiver.

The Participant and any Principals, and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction are as follows:

Participant:

Principals:

Representatives (name/title/company):

This _____ day of _____, 2019.

[NAME]

By:

(Signing Officer)

SCHEDULE "B"
to the Sale Procedure

BIDDER QUALIFICATION REQUIREMENTS

1. PARTICIPANT DESCRIPTION

1.1 Participant Identity

- (a) For both the Participant, and if applicable, the Acquisition Entity, state the full legal name, form of organization (corporation, general partnership, limited partnership, joint venture, etc.), jurisdiction in which it is incorporated or formed, the date on which it was incorporated or formed and any incorporation or similar identifying number, the date and number of registration in British Columbia, if applicable, the street and mailing address(es) of the principal place of business, its general telephone and fax number and its website address, if any.
- (b) Except in the case of a limited partnership, if the Participant or Acquisition Entity is a general partnership, joint venture or otherwise consists of two or more legal entities, provide the information described in 1.1(a) for each such entity.
- (c) If the Participant or Acquisition Entity is a limited partnership, provide the information described in 1.1(a) for the partnership and the general partner only.
- (d) If the Participant or Acquisition Entity is a public company (i.e., its shares or other securities are listed on a recognized stock exchange), it may choose to include a copy of its latest Annual Report as an Exhibit to the Bidder Qualification Materials.

1.2 Ownership

- (a) If the common shares or similar ownership interests of the Participant or Acquisition Entity are listed on a stock exchange, state the name of the exchange and applicable trading symbol.
- (b) If the common shares or similar ownership interests of the Participant or Acquisition Entity are not listed on a stock exchange, state the full name and principal business or resident address of each public company or other person who holds, directly or indirectly, an equity ownership interest in it equal to or greater than 10%. Include an ownership chart where such a chart can best describe the Participant's and Acquisition Entity's ownership structure.

1.3 Bankers, Auditors and Advisors

- (a) State the name and address of the Participant's principal financial institution(s).
- (b) State the name of the Participant's auditors, or if financial statements are not subject to audit, state the name of the Participant's principal external accountant, if any.

- (c) State the name and address of the Participant's principal legal advisor. Include the name and location of the firm and/or in-house legal department and the lawyer primarily responsible for advising the Participant on the Modified APA.

2. FINANCIAL CAPACITY AND CREDIT WORTHINESS

- (a) Written evidence upon which the Receiver may reasonably conclude that the Participant has the necessary financial ability to close the contemplated transaction and provide adequate assurance of future performance of all obligations to be assumed in such contemplated transaction.

3. SUPPLEMENTARY INFORMATION

3.1 Evidence of experience in the industry.

3.2 Other Matters Affecting the Participant or Performance

- (a) To the extent not otherwise disclosed, describe any pending or threatened claims or legal actions, suits or proceedings before any arbitrator, court or regulatory body affecting the Participant that could reasonably be expected to have a material and adverse effect on the ability of the Participant to develop and operate a coal mine.
- (b) To the extent not otherwise disclosed, describe any pending or threatened strikes, lockouts or labour disturbances affecting the Participant that could reasonably be expected to have a material and adverse effect on the ability of the Participant to develop and operate a coal mine.

3.3 Other Data

The Participant is invited to provide any other information concerning the Participant and/or the project, (i) which is not addressed above, and (ii) which the Participant believes is relevant and may impact the Receiver's assessment of the Participant's Bid.

SCHEDULE "C"
to the Sale Procedure

ASSET PURCHASE AGREEMENT

THIS AGREEMENT is made as of the ____ day of _____, 2019,

BETWEEN:

THE BOWRA GROUP INC., in its capacity as court-appointed receiver and manager of all of the assets, undertakings and properties of Quinsam Coal Corporation, and not in its personal or corporate capacity, having an office at Bentall One 505 Burrard Street, Suite 430 Vancouver, B.C. Canada V7X 1M3

(the "**Vendor**")

AND:

◇ (the "**Purchaser**")

BACKGROUND

- A. Quinsam Coal Corporation ("**Quinsam**") was in the business of operating the Quinsam coal mine near Campbell River, B.C. (the "**Mine**"), the mining, processing and refining of the coal mined therefrom, and transporting coal to storage and shipping points for its delivery to market.
- B. Pursuant to an Order (as may be amended from time to time, the "**Receivership Order**") of the Supreme Court of British Columbia (the "**Court**") dated September 20, 2019 in Action No. S1910538, Vancouver Registry (the "**Receivership Action**"), the Bowra Group Inc. was appointed as receiver and manager over all of the assets, undertakings, property of Quinsam (the "**Property**"), with the power and authority to, among other things, sell the Purchased Assets (as defined below); and
- C. Subject to the issuing of the Vesting Order (as defined below) and other terms and conditions of this Agreement, the Vendor wishes to sell, and the Purchaser wishes to purchase, all of Quinsam's right, title, and interest in and to the Purchased Assets.

TERMS OF AGREEMENT

In consideration of the premises and the covenants, agreements, representations, warranties and payments contained in this Agreement, the Parties agree with one another as follows:

1. Definitions

The following terms have the following meanings:

(a) “**Adjustments**” means the adjustment to the Purchase Price for any amounts due or accruing from and after the date of this Agreement, in respect of expenses incurred in the ordinary course, including but not limited to insurance premiums, utilities, property taxes, and water licence rentals/fees, and as determined pursuant to Section 8, such that:

(i) any such expenses accruing for the period prior to the Closing Date shall be for the account of the Vendor and to the extent paid by the Purchaser shall result in a decrease to the Purchase Price; and

(ii) any such expenses accruing for the period from and after the Closing Date shall be for the account of the Purchaser, and to the extent paid by the Vendor shall result in an increase to the Purchase Price.

(b) “**Agreement**” means this asset purchase agreement, including all Schedules, as made as of the date first written above;

(c) “**Applicable Law**” means, in relation to any Person, property or circumstance, all laws, statutes, rules, regulations, official directors and orders of Governmental Entities, including judgments, orders and decrees of courts, commissions or bodies exercising similar functions, as amended, and includes the provisions and conditions of any permit, licence or other governmental or regulatory authorization, that are in effect as at the relevant time and are applicable to such Person, property or circumstance;

(d) “**Assumed Obligations**” means:

(i) the obligations and liabilities of Quinsam or the Vendor under a Permit, in connection with the Permit or arising from an activity under the Permit, whether accrued prior to or from and after the Closing Date; and

(ii) any other obligations and liabilities of Quinsam or the Vendor in connection with the Purchased Assets to the extent such other obligations and liabilities accrue from and after the Closing Date,

but, for the avoidance of doubt, shall not include the Excluded Obligations.

(e) “**Business Day**” means any day other than a Saturday, a Sunday or any other statutory holiday in British Columbia;

(f) “**Closing**” means the successful completion of the transactions contemplated in this Agreement;

(g) “**Closing Date**” means the tenth (10th) Business Day following the date on which the last of the Conditions Precedent are fulfilled or waived, or as otherwise agreed upon in writing by the Vendor and the Purchaser;

(h) “**Closing Time**” means 10:00 am, Vancouver, British Columbia time on the Closing Date;

- (i) **“Coal Inventory”** means all Quinsam coal inventories located at the Mine, Middlepoint and Texada Island, B.C.;
- (j) **“Conditions Precedent”** means the conditions precedent set forth in Sections 1616 to 18 of this Agreement;
- (k) **“Contracts”** means the agreements listed in Schedule “A”;
- (l) **“Court”** has the meaning ascribed thereto in Recital B;
- (m) **“Deposit”** has the meaning ascribed thereto in Section 7.3(a);
- (n) **“Deposit Return Event”** means the occurrence of any of the following:
- (i) the Parties mutually agree in writing that any of the conditions set forth in Section 18.1 have not been satisfied or are incapable of being satisfied on or prior to the Closing Date;
 - (ii) this Agreement is validly terminated by mutual agreement;
 - (iii) this Agreement is validly terminated by the Vendor pursuant to Section 17.3, provided that, at the time of such termination, the Vendor is not in material breach of any of its covenants under this Agreement; and
 - (iv) this Agreement is validly terminated by the Purchaser pursuant to Section 16.3, provided that, at the time of such termination, the Purchaser is not in material breach of any of its covenants under this Agreement; and
- (o) **“Encumbrance”** means any encumbrance or interest against or in the Purchased Assets of any kind whatsoever and includes, without limitation, a security interest, mortgage, lien, hypothec, pledge, assignment, charge, title retention agreement, option, trust or deemed trust (whether contractual, statutory or otherwise arising), licence and any covenant or other agreement, restriction or limitation relating to the Purchased Assets or the transfer of the Purchased Assets to the Purchaser pursuant to this Agreement;
- (p) **“Equipment”** means all the machinery, equipment spare parts, and control systems owned by Quinsam and used in the business of Quinsam, including the Equipment listed in Schedule “B”;
- (q) **“Excluded Assets”** means, notwithstanding anything to the contrary contained in Section 1(jj) or elsewhere in this Agreement, all property and assets of Quinsam other than the Purchased Assets, including the following property and assets of Quinsam pertaining to its business and all documents, books, accounts, records and other information relating to those assets:
- (i) all cash currently held by the Vendor, bank balances, money in possession of banks and other depositories, term or time deposits and similar cash or cash equivalents of, owned or held by or for the account of Quinsam;

- (ii) all accounts receivable;
 - (iii) all Coal Inventory;
 - (iv) all the corporate, financial and other records of Quinsam not pertaining to the operation of its business; and
 - (v) all tax credits receivable by or refundable to the Vendor or Quinsam, income tax installments paid by the Vendor or Quinsam and the right to receive any refund of taxes paid by the Vendor or Quinsam; and
 - (vi) all Contracts that are not expressly listed in "Schedule "A";
- (r) "**Excluded Obligations**" means the obligations and liabilities of Quinsam or the Vendor that are not Assumed Obligations;
- (s) "**ETA**" means the *Excise Tax Act* (Canada);
- (t) "**Final Adjustment**" has the meaning ascribed thereto in Section 8.1;
- (u) "**Final Adjustment Date**" has the meaning ascribed thereto in Section 8.1;
- (v) "**Governmental Entity**" means any Canadian, foreign, domestic, federal, territorial, provincial, state, municipal or local governmental authority, quasi-governmental authority, instrumentality, court, government or self-regulatory organization, bureau, commission, tribunal or organization or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing having jurisdiction under or for the account of the foregoing, the Purchased Assets or any other matter that is the subject of this Agreement;
- (w) "**GST**" means the goods and services or harmonized sales tax payable pursuant to the ETA, and any applicable federal or provincial regulations associated therewith, as may be amended from time to time;
- (x) "**Initial Adjustment**" has the meaning ascribed thereto in Section 8.1;
- (y) "**Intangibles**" means the choses in action and other similar rights or claims directly related to the Purchased Assets;
- (z) "**Intellectual Property**" means all of Quinsam's Canadian and foreign intellectual and industrial property rights of any kind, listed and as described in Schedule "C" hereto;
- (aa) "**Middlepoint**" means the Quinsam operation at Barge Terminal Rd., Vancouver Island, B.C.
- (bb) "**Notice**" has the meaning ascribed thereto in Section 5;
- (cc) "**Party**" means either the Vendor or the Purchaser, as applicable, and "**Parties**" means both the Vendor and the Purchaser;

- (dd) **“Permitted Encumbrances”** means the permitted Encumbrances listed and described in Schedule “D”, which shall be accepted and/or assumed on Closing by the Purchaser;
- (ee) **“Person”** means any individual, corporation, partnership, limited partnership, limited liability company, joint venture, association, joint-stock company, trust, society, incorporated organization, Governmental Entity or any other similar entity;
- (ff) **“Permits”** means the authorizations, registrations, permits, certificates of approval, approvals, grants, licences, quotas, consents, commitments, rights or privileges issued or granted by a Governmental Entity to Quinsam in respect of the Purchased Assets, described in Schedule “E” hereto;
- (gg) **“PST”** means any provincial retail sales tax payable under the PST Act and its regulations, as amended from time to time;
- (hh) **“PST Act”** means the *Provincial Sales Tax Act*
- (ii) **“Purchase Price”** has the meaning ascribed thereto in Section 7.1;
- (jj) **“Purchased Assets”** means all of the right, title, and interest of Quinsam in the Contracts, Equipment, Intangibles, Real Property Interests, Permits, and Intellectual Property, but specifically excluding the Excluded Assets;
- (kk) **“Real Property Interests”** means all of Quinsam’s interest in real property including those fee simple interests, mineral claims, contracts, grants, options, leases, mineral leases, licences, easements, statutory rights of way, and other like interests which grant real property interests to Quinsam or the Vendor including, if applicable, those interests listed and as described in Schedule “F”;
- (ll) **“Receivership Action”** has the meaning ascribed thereto in Recital B;
- (mm) **“Receivership Order”** has the meaning ascribed thereto in Recital B;
- (nn) **“Regulatory Approvals”** means any approval, consent, ruling, authorization notice or acknowledgement from any Governmental Entity pursuant to Applicable Law or required to convey, assign and transfer the right, title and interest of Quinsam in and to the Purchased Assets to the Purchaser;
- (oo) **“Sale Procedure”** means the sale procedure for marketing and selling the Purchased Assets as materially set out in Schedule “G”;
- (pp) **“Sale Procedure Order”** means the order of the Court approving the Sale Procedure in all material respects and approving the Vendor entering into this Agreement as materially set out (without schedules) in Schedule “H”;
- (qq) **“Sales Taxes”** means all transfer, sales, excise, stamp, license, production, value-added and other like taxes, assessments, charges, duties, fees, levies or other governmental

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charges of any kind, and includes without limitation additions by way of penalties, interest and other amounts with respect thereto, including PST and GST;

(rr) **“Statement of Adjustments”** has the meaning ascribed thereto in Section 8.1;

(ss) **“Vendor’s Certificate”** means a certificate executed by an officer of the Vendor in substantially the form attached hereto as Schedule “I”;

(tt) **“Vendor’s Solicitors”** means the firm of Gowling WLG (Canada) LLP; and

(uu) **“Vesting Order”** means an order of the Court in the Receivership Action, approving the entry into this Agreement by the Vendor and the consummation of the transactions contemplated hereby, and vesting in the Purchaser or its nominee(s) all right, title and interest in and to the Purchased Assets free and clear of all Encumbrances, except for the Permitted Encumbrances upon payment of the Purchase Price, which order shall be substantially agreed to by the parties acting reasonably.

2. **Currency and Form of Payment**

2.1 All references to currency shall mean Canadian Dollars unless otherwise expressly provided.

2.2 All payments to be made by the Purchaser to the Vendor to effect the transactions set out in this Agreement are to be payable by certified cheque, bank draft or wire transfer to the Vendor’s Solicitors, “In Trust”.

3. **Purchase and Sale of Purchased Assets**

3.1 Subject to the timely fulfillment or waiver of all of the conditions precedent herein, including the granting of the Vesting Order, the Vendor agrees to sell, assign and transfer to the Purchaser, and the Purchaser agrees to purchase from the Vendor, all right, title and interest in and to the Purchased Assets upon the terms hereof.

4. **“As is, Where is”**

4.1 The Purchaser acknowledges that the Vendor is selling the Purchased Assets on an “as is, where is” basis as they exist on the Closing Date. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendor does not guarantee title to the Purchased Assets and that the Purchaser has conducted or will have conducted such inspections of the condition of and title to the Purchased Assets as it deems appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to title, encumbrances, description, fitness for purpose, merchantability, condition, quantity or quality, assignability or in respect of any other matter or thing whatsoever concerning the Purchased Assets or the right of the Vendor to sell them save and except as expressly represented or warranted in this Agreement. The description of the Purchased Assets contained in this Agreement is for purposes of identification only.

4.2 The Purchaser hereby agrees to assume and comply with all of the Assumed Obligations and all responsibilities arising from and in connection with the Purchased Assets, without any recourse whatsoever against the Vendor therefor. Without limiting the generality of this Section, the Purchaser acknowledges and agrees with the Vendor that:

(a) the Purchaser is entering into this Agreement relying entirely upon its own inspections and there are no representations, warranties or covenants or conditions, whether direct or collateral, or express or implied, which induced the Purchaser to enter into this Agreement or on which reliance is placed by the Purchaser, or which affect this Agreement or the Purchased Assets, other than as expressly set out in this Agreement; and

(b) the Purchaser is relying on its own due diligence in reviewing the documents and other materials in respect of the Purchased Assets made available to it by the Vendor and that such documents and other materials are not intended to constitute a representation or warranty as to any of the contents thereon of the part of the Vendor.

4.3 The Vendor shall have no obligations or responsibility to the Purchaser after Closing with respect to any matter relating to the Purchased Assets or the condition thereof, save as otherwise expressly provided in or contemplated by this Agreement.

4.4 This Section 4 shall survive Closing and shall be restated or incorporated by reference, where applicable, in the closing documents.

5. No Liabilities Assumed by Purchaser other than Assumed Obligations

5.1 In connection with its acquisition of the Purchased Assets, the Purchaser covenants and agrees to assume all of the Vendor's and Quinsam's right, title and interest in and to the Purchased Assets, as well as the Assumed Obligations, but no other obligations or liabilities. For greater certainty, the Purchaser shall not be responsible for any of the Excluded Obligations.

5.2 The Purchaser acknowledges that the Vendor will have no responsibility whatsoever for curing any defaults, paying any arrears, or performing any obligations under or with respect to the Assumed Obligations, save and except as otherwise specified herein.

6. Excluded Assets

6.1 Notwithstanding anything to the contrary in this Agreement, the Excluded Assets shall not form part of the purchase and sale contemplated in this Agreement and the Purchaser shall not assume or be responsible for any claim, liability or obligation in relation to or arising out of the Excluded Assets.

7. Purchase Price and Payment

7.1 The aggregate cash consideration payable by the Purchaser to the Vendor for the Purchased Assets is \$< > (the "**Purchase Price**"), plus all applicable Sales Taxes.

7.2 The Parties acknowledge and agree that the Purchase Price shall be allocated among the Purchased Assets in accordance with Schedule "J" and the Vendor and the Purchaser will report

the sale and purchase of the Purchased Assets for all tax purposes in a manner consistent with such allocation and shall not file any return that is inconsistent with such allocation.

7.3 Subject to the terms and conditions of this Agreement, the Purchase Price shall be paid as follows:

(a) by the Purchaser delivering to the Vendor's Solicitors, in trust, within five (5) Business Days of the execution of this Agreement by the Parties, a deposit of \$500,000 (the "**Deposit**"), to be held in trust and released only in accordance with the terms of this Agreement; and

(b) the balance of the Purchase Price, after crediting the Deposit, by payment at or prior to the Closing Time to the Vendor or as it may otherwise direct.

8. Purchase Price Adjustment

8.1 Adjustments to the Purchase Price shall be made as of the Closing Date pursuant to a statement of adjustments (the "**Statement of Adjustments**") to be prepared by the Vendor and agreed to by the Purchaser. If the final cost or amount of any item which is to be adjusted cannot be determined at the Closing Date, then an initial estimated adjustment for such item shall be made at the Closing Date (the "**Initial Adjustment**"), such amount to be estimated by the Vendor and agreed to by the Purchaser, as of the Closing Date on the basis of the best evidence available and being commercially reasonable at Closing as to what the final cost or amount of such item will be. The Initial Adjustment shall be finally adjusted on a final post-closing basis within 30 days from the Closing Date (the "**Final Adjustment Date**") upon mutual agreement by the Parties (the "**Final Adjustment**"). If the Parties are unable to come to a mutual agreement regarding the Statement of Adjustments, the Initial Adjustment or the Final Adjustment, then the dispute shall be submitted to a mutually appointed independent accountant for final determination, the costs, charges and expenses for which shall be paid equally by each of the Parties.

9. Deposit

9.1 The Deposit shall be non-refundable and shall not be returned to the Purchaser under any circumstances unless a Deposit Return Event has occurred, in which case the Vendor, by written direction to the Vendor's Solicitors, shall cause the Vendor's Solicitors to transfer the Deposit and any interest earned thereon to the Purchaser within three (3) Business Days of the occurrence of the Deposit Return Event.

9.2 If this Agreement is terminated by either the Vendor or the Purchaser, but a Deposit Return Event has not occurred, the Vendor shall be entitled to cause the Vendor's solicitors, by written direction to the Vendor's Solicitors, to transfer the Deposit and any interest earned thereon to the Vendor and the Vendor shall be entitled to keep the Deposit and any interest earned on the basis that such amount is a genuine pre-estimate of damages suffered by the Vendor and is not a penalty.

9.3 The Parties acknowledge that the Vendor's Solicitors shall transfer the Deposit and any interest earned thereon to the Vendor or the Purchaser, as applicable, in accordance with the

terms of this Agreement and the Vendor's Solicitors shall have no obligation to independently determine or verify whether a Deposit Return Event has or has not occurred.

9.4 The Parties agree that at the Closing Time, the Vendor's Solicitors shall release the Deposit and any interest earned thereon to the Vendor to be applied against payment of the Purchase Price upon written confirmation by the Parties that the Closing has occurred.

10. Taxes

10.1 The Parties acknowledge that the Purchase Price is exclusive of all Sales Taxes. The Purchaser will be solely liable for and shall pay all Sales Taxes, including, without limitation, PST and GST payable upon and in connection with the sale and transfer of the Purchased Assets by the Vendor to the Purchaser, and will file all necessary documentation with respect to such Sales Taxes when due. If the Vendor is required under any Applicable Law to pay or remit any such Sales Taxes, the Purchaser shall promptly reimburse the Vendor the full amount of such Sales Taxes upon delivery to the Purchaser of copies of receipts showing payment or remittance of such Sales Taxes. In any event, the reimbursement shall be made within three Business Days of delivery of the receipts.

10.2 The Parties will, on the Closing Date, elect jointly under Subsection 167(1)(b) of the ETA, in the prescribed form and containing the prescribed information to permit the Purchased Assets to be conveyed without GST being payable in respect of the purchase and sale thereof hereunder, and the Parties will jointly complete the election forms in respect of such election. The Purchaser shall file the joint election with the Canada Revenue Agency on or before the due date for filing its GST return for its reporting period in which, in the absence of making this joint election, would be the earliest date on which GST would become payable on the sale of the Purchased Assets under this Agreement. The Parties agree that they will cooperate and use commercially reasonable efforts, as may be advisable under Applicable Laws, to mitigate, reduce or eliminate any PST that may be applicable or imposed in respect of the sale of the Purchased Assets under this Agreement, including the Purchaser providing to the Vendor, at or before the time of Closing, a duly completed, signed and dated Certificate of Exemption - Production Machinery and Equipment (FIN 492) for any production machinery and equipment eligible for exemption under Part 5 in the Provincial Sales Tax Exemption and Refund Regulation under the PST Act, and a duly completed, signed and dated Certificate of Exemption - General (FIN 490) for any penstock machinery, equipment, apparatus and parts eligible for exemption under section 31 of the said Regulation. To the extent that no exemption from PST is available on the sale of the Purchased Assets, the Vendor shall charge and collect the PST from the Purchaser on or before the Closing for reporting and remitting to the BC Ministry of Finance in a timely manner. Notwithstanding the foregoing or anything else in this Agreement, the Purchaser shall indemnify the Vendor, and save the Vendor harmless from, any GST, PST, interest, penalties and any other amounts assessed by the Canada Revenue Agency, BC Ministry of Finance or any other applicable Governmental Entity in respect of the sale of the Purchased Assets under this Agreement, except to the extent arising from the late reporting and remittance by the Vendor of any PST collected on Closing. This indemnity shall extend to any costs of investigating and/or disputing any such assessment or proposed assessment of Sales Taxes. The indemnification shall be paid by the Purchaser to the Vendor within three Business Days of the Purchaser receiving delivery from the Vendor of a copy of any such assessment, or as applicable, evidence of such

reasonable costs (such as a copy of a supplier's invoice). This indemnity shall survive the completion of the transactions under this Agreement and the Closing indefinitely.

11. Representations and Warranties of the Vendor

11.1 The Vendor represents and warrants to the Purchaser that:

- (a) subject to the Vesting Order being granted, the Vendor has the power, authority and capacity to enter into this Agreement and to complete the transactions contemplated therein, subject to its terms;
- (b) Quinsam is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada); and
- (c) Quinsam is registered for purposes of the GST under Part IX of the ETA and the Vendor will provide the registration numbers for Quinsam prior to the Closing Date.

11.2 Except as expressly warranted by the Vendor in this Agreement, the Purchaser shall be deemed to have relied solely and entirely upon its own investigations and inspections of and with respect to the Purchased Assets and to the extent that any information which the Vendor has provided to the Purchaser, the Vendor makes no representation whatsoever with respect to the accuracy of any such information.

11.3 Notwithstanding anything to the contrary herein, the Purchaser hereby expressly acknowledges that: (i) if any consents of any Person are required to effect the transfer of any of the Purchased Assets to the Purchaser pursuant to this Agreement, then it is the sole responsibility of the Purchaser to obtain any such consents, and the granting of any such consents shall not be a condition precedent to the Purchaser's obligations under this Agreement, including the payment of the Purchase Price; and (ii) all out of pocket expenses associated with such consents are the sole obligation of the Purchaser.

11.4 The Purchaser hereby acknowledges that: (i) another prospective purchaser may make an offer for the Purchased Assets including, without limitation, pursuant to the Sale Procedure; (ii) the Vendor is duty bound to consider any such offers; and (iii) the Vendor may have a duty to recommend that the Court approve such other offer and not this Agreement.

12. Representations and Warranties of the Purchaser

12.1 The Purchaser represents and warrants to the Vendor as follows, with the intent that the Vendor will rely on these representations and warranties in entering into this Agreement, and in concluding the purchase and sale contemplated by this Agreement:

- (a) the Purchaser is a <> duly established, validly existing and in good standing under the jurisdiction of its establishment and in accordance with applicable legislation governing <> in the jurisdiction of its establishment, and has the power and capacity to enter into this Agreement and carry out its terms;

- (b) the execution and delivery of this Agreement and the completion of the transactions contemplated by this Agreement have been duly and validly authorized by all necessary corporate action on the part of the Purchaser, and this Agreement constitutes a legal, valid and binding obligation of the Purchaser;
- (c) except for the Vesting Order, no authorization or approval or any other action by, and not notice to or filing with, any Governmental Entity or regulatory body exercising jurisdiction over the Purchased Assets is required for the due execution, delivery and performance by the Purchaser of this Agreement;
- (d) the Purchaser is not a party to, bound or affected by or subject to any indenture, agreement, instrument, charter or by-law provision, order, judgment or decree which would be violated, contravened or breached by the execution and delivery by it of this Agreement or the performance by it of any of the terms contained in this Agreement;
- (e) the Purchaser is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada) and is not a non-Canadian person for the purposes of the *Investment Canada Act* (Canada);
- (f) the Purchaser is registered for GST under Part IX of the ETA; and
- (g) the Purchaser is not a person who is excluded under section 115 of the Provincial Sales Tax Exemption and Refund Regulation from purchasing or acquiring production machinery and equipment exempt from PST under Part 5 of the said Regulation.

13. Survival of Representations

All representations and warranties made by the Vendor and the Purchaser in Sections 1 and 2, respectively, shall survive the Closing and shall continue for a period of six months after the Closing and after such period neither Party shall have any further liability hereunder with respect to such representations and warranties except with respect to any claims made by the other Party within such period or in the case of fraud.

14. Covenants of the Vendor

14.1 Upon payment of the Purchase Price by the Purchaser at the Closing Time, and subject to the terms of this Agreement, the Vendor will transfer and assign to the Purchaser all of Quinsam's right, title and interest in and to the Purchased Assets in accordance with the terms of this Agreement and the Vesting Order.

14.2 Subject to Section 11.4 and other terms of this Agreement, the Vendor will use all reasonable efforts to take or cause to be taken all other actions, and do or cause to be done all other things, necessary or appropriate to obtain the Vesting Order and to consummate the transactions contemplated by this Agreement.

14.3 From the date of this Agreement until the completion of the transaction contemplated herein:

- (a) the Vendor covenants to maintain the Purchased Assets in a reasonable manner;
- (b) except as contemplated by this Agreement or the Sale Procedure, the Vendor will not sell, transfer or otherwise dispose of, or agree to sell, transfer, pledge, lease, encumber or otherwise dispose of, any Purchased Assets, or enter into any agreement or transaction which would result in the creation of any Encumbrance on any of the Purchased Assets other than such Encumbrances that shall be removed from the Purchased Assets by the Vesting Order; and
- (c) the Vendor covenants to promptly disclose to the Purchaser prior to Closing the occurrence of any material adverse event or change relating to the Purchased Assets.

14.4 The Vendor will provide reasonable assistance to the Purchaser to facilitate the transfer (if possible) of all Permits. The Vendor's obligation under this section 14.4 shall terminate on the 30th day after Closing.

15. Covenants of the Purchaser

15.1 On the Closing Date, the Purchaser will assume all obligations and liabilities arising from and in connection with the Purchased Assets but only to the extent such obligations and liabilities accrue from and after the Closing Date.

16. Conditions Precedent in favour of the Purchaser

16.1 The obligations of the Purchaser to complete the transactions contemplated under this Agreement are subject to the fulfillment of all of the following conditions precedent:

- (a) each of the representations and warranties of the Vendor set forth in Section 11.1 shall be true and correct as if restated on and as of the Closing Date;
- (b) the covenants and obligations contained in this Agreement to be complied with by the Vendor on or before the Closing Date shall have been complied with to the extent required and not been breached in any material respect;
- (c) on or before the Closing Date, the Vendor will have delivered all items which it is required to deliver to the Purchaser pursuant to Section 22.3;

16.2 The Purchaser may, in its sole discretion, waive any of the foregoing conditions. Any waiver by the Purchaser must be in writing and delivered to the Vendor's Solicitors.

16.3 If any one of the conditions precedent contained in Section 16.1 has not been satisfied or waived by the Purchaser on or before the Closing Date, the Purchaser may terminate this Agreement by written notice to the Vendor.

17. Conditions Precedent in favour of the Vendor

17.1 The obligations of the Vendor to complete the transactions contemplated under this Agreement are subject to the fulfillment of all of the following conditions precedent:

- (a) each of the representations and warranties of the Purchaser set forth in Section 12.1 shall be true and correct as if restated on and as of the Closing Date;
- (b) the covenants and obligations contained in this Agreement to be complied with by the Purchaser on or before the Closing Date shall have been complied with to the extent required and not been breached in any material respect; and
- (c) on or before the Closing Date, the Purchaser will have delivered all items which it is required to deliver to the Vendor pursuant to Section 22.2.

17.2 The Vendor may, in its sole discretion, waive any of the foregoing conditions. Any waiver by the Vendor must be in writing and delivered to the Purchaser.

17.3 If any one of the conditions precedent contained in Section 17.1 has not been satisfied or waived by the Vendor on or before the Closing Date, the Vendor may terminate this Agreement by written notice to the Purchaser.

18. Mutual Conditions Precedent

18.1 Notwithstanding anything herein contained, the obligations of the Parties under this Agreement are subject to the fulfilment of all the following mutual conditions precedent:

- (a) the Sale Procedure Order approving all material terms of the Sale Procedure having been granted by the Court;
- (b) the Vesting Order having been granted by the Court and not having been stayed or set aside on appeal; and
- (c) there shall be in effect no order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of the Court or other court of competent jurisdiction or of a relevant Governmental Entity prohibiting the consummation of the transactions contemplated hereby and which has not been withdrawn or terminated.

18.2 The Parties may agree to amend or waive any the foregoing conditions. Any amendment or waiver by the Parties must be in writing and delivered to one another in accordance with Section 5.

19. Efforts to Fulfill Conditions Precedent

19.1 Subject to Section 11.4 and other terms of this Agreement, each Party shall proceed diligently and in good faith and use reasonable efforts to satisfy and comply with and assist in the satisfaction of and compliance with their respective conditions precedent contained herein as soon as possible after the date of this Agreement and in any event.

20. Termination

20.1 This Agreement may be terminated prior to or at the Closing Time as follows:

- (a) by mutual written agreement of the Parties;
- (b) by the Vendor in accordance with Section 17.3; or
- (c) by the Purchaser in accordance with Section 16.3.

20.2 Each Party's right of termination under this Section 20 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. Nothing in this Section 20 limits or affects any other rights or causes of action any Party may have with respect to the representations, warranties, covenants and indemnities in its favour contained in this Agreement. If a Party waives compliance with any of the conditions, obligations or covenants contained in this Agreement, the waiver will be without prejudice to any of its rights of termination in the event of non-fulfilment, non-observance or non-performance of any other condition, obligation or covenant in whole or in part.

21. Risk

21.1 The Purchased Assets will be at the Vendor's risk until the completion of the transaction contemplated herein on the Closing Date and thereafter at the Purchaser's risk.

22. Closing

22.1 Subject to the terms and conditions of this Agreement, and the satisfaction or the waiver of the conditions precedent in Sections 166 through 188, the purchase and sale of the Purchased Assets will be completed at the Closing Time at the offices of the Vendor's Solicitors.

22.2 At the Closing Time the Purchaser will deliver, or cause to be delivered to the Vendor:

- (a) the Purchase Price, less the Deposit, plus all applicable Sales Taxes;
- (b) a certificate of a senior officer of the Purchaser dated the Closing Date, confirming that all of the representations and warranties of the Purchaser contained in this Agreement are true as of the Closing Date, with the same effect as though made on and as of the Closing Date;
- (c) an undertaking to readjust and pay the amount of any Final Adjustments, in accordance with Section 8.1; and
- (d) such further and other documentation as is referred to in this Agreement or as the Purchaser may reasonably require to give effect to this Agreement.

22.3 At the Closing Time the Vendor shall deliver, or cause to be delivered to the Purchaser:

- (a) all of Quinsam's right, title and interest in and to the Purchased Assets in accordance with the Vesting Order;

- 15 -

- (b) a Court-certified copy of the Vesting Order;
- (c) an executed copy of the Vendor's Certificate;
- (d) a receipt for the Purchase Price and all applicable Sale Taxes;
- (e) a duly executed General Conveyance;
- (f) the undertaking to readjust and pay the amount of any Final Adjustments in accordance with Section 8.1; and
- (g) all such assignments, instruments of transfer, deeds, assurances, consents, registrations and other documents executed by the Vendor as requested by the Purchaser in respect of transferring the Purchased Assets to the Purchaser and registrations in connection therewith, and the Purchaser shall be entitled to possession of the Purchased Assets, in accordance with the Vesting Order, upon payment of the Purchase Price in accordance with this Agreement.

23. Vendor Liability

23.1 The Purchaser hereby expressly acknowledges and agrees that the Vendor is acting only in its representative capacity as court-appointed receiver and manager of the assets, undertakings and properties of Quinsam and shall have no personal liability under or as a result of entering into or carrying out the transaction which is the subject of this Agreement except in such capacity and without limitation to the generality of the foregoing the Vendor shall have no liability under or as a result of entering into or carrying out of such transaction in its personal capacity, other than in the case of gross negligence or wilful misconduct.

24. Further Assurances

24.1 The Parties will execute such further and other documents, do such further and other things, and deliver up any keys, passcodes or information that are in the possession of the Vendor as may be necessary to carry out and give effect to the intent of this Agreement and give possession of the Purchased Assets to the Purchaser.

25. Notice

25.1 Any notice, direction or other communication (each a "Notice") given regarding the matters contemplated by this Agreement must be in writing and:

- (a) sent by personal delivery or by courier;
- (b) sent by prepaid registered mail; or
- (c) transmitted by facsimile, e-mail or functionally equivalent electronic means of transmission, charges (if any) prepaid;

and addressed:

to the Vendor at:

The Bowra Group Inc. in its capacity as receiver and manager
of Quinsam Coal Corporation

Attention: Maria Mainella and Gordon Brown

Bentall One 505 Burrard Street, Suite 430

Vancouver, B.C. Canada V7X 1M3

Email: mmainella@bowragroup.com and gbrown@bowragroup.com

with a copy to:

Gowling WLG (Canada) LLP

Attention: Colin D. Brousson and Jonathan B. Ross

Suite 2300 – 550 Burrard Street

Vancouver, B.C., Canada V6C 2B5

Email: colin.brousson@gowlingwlg.com and jonathan.ross@gowlingwlg.com

to the Purchaser at:

◇

◇

Attention: ◇

or at any other address as any Party may at any time advise the other by Notice given or made in accordance with this Section 25. Any Notice delivered to the Party to whom it is addressed will be deemed to have been given or made and received on the day it is delivered at that Party's address, provided that if that day is not a Business Day then the Notice will be deemed to have been given or made and received on the next Business Day. Any Notice sent by prepaid registered mail will be deemed to have been given or made and received on the fifth Business Day after which it is mailed. If a strike or lockout of postal employees is then in effect, or generally known to be impending, every Notice must be delivered personally or by courier or transmitted by facsimile, e-mail or functionally equivalent electronic means of transmission. Any Notice transmitted by facsimile, e-mail or other functionally equivalent electronic means of transmission will be deemed to have been given or made and received on the day on which it is transmitted; but if the Notice is transmitted on a day which is not a Business Day or after 4:00 p.m. (local time of the recipient), the Notice will be deemed to have been given or made and received on the next Business Day.

Legal Advice

25.2 The Purchaser has consulted with and been advised by its own legal, tax and other professional advisors before entering into this Agreement, has read same and understands the contents thereof.

26. Entire Agreement

26.1 This Agreement constitutes the entire agreement between the Parties and there are no representations or warranties, express or implied, statutory or otherwise and no collateral agreements other than as expressly set forth or referred to in this Agreement.

27. Amendment

27.1 No supplement, modification, amendment, waiver, discharge or termination of this Agreement will be binding unless made in writing and signed by both Parties. No waiver of, failure to exercise or delay in exercising, any provision of this Agreement constitutes a waiver of any other provision (whether or not similar) nor does such waiver constitute a continuing waiver unless otherwise expressly provided.

28. Assignment

28.1 This Agreement may not be assigned by any Party hereto without the prior written consent of the other Party hereto.

29. Time of the Essence

29.1 Time is of the essence of this Agreement.

30. Applicable Law and Court Jurisdiction

30.1 This Agreement shall be governed by, and construed in accordance with, the laws of the Province of British Columbia and the laws of Canada applicable therein, and the Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of British Columbia in relation to any matter relating to this Agreement.

31. Successors and Assigns

31.1 This Agreement will enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

32. Headings

32.1 The headings appearing in this Agreement are inserted for convenience of reference only and will not affect the interpretation of this Agreement.

33. Severability

33.1 If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions hereof and each provision is hereby declared to be separate, severable and distinct. To the extent that any provision is found to be invalid, illegal or unenforceable, the Parties shall act in good faith to substitute for

such provision, to the extent possible, a new provision with content and purpose as close as possible to the provision so determined to be invalid, illegal or unenforceable.

34. Counterparts

34.1 This Agreement may be executed and delivered by the Parties in one or more counterparts, each of which will be an original, and each of which may be delivered by facsimile, e-mail or other functionally equivalent electronic means of transmission and those counterparts will together constitute one and the same instrument.

[THE REMAINDER OF THIS PAGE HAS INTENTIONALLY BEEN LEFT BLANK]

AS EVIDENCE OF THEIR AGREEMENT the Parties have executed this Agreement as of the day and year first above written.

THE BOWRA GROUP INC., in its capacity as court-appointed receiver and manager of all of the assets, undertakings and properties of Quinsam Coal Corporation, and not in its personal or corporate capacity

Per: _____

Name:

Title:

<>

Per: _____

Name:

Title:

SCHEDULE "A"

CONTRACTS

SCHEDULE "B"
EQUIPMENT

SCHEDULE "C"
INTELLECTUAL PROPERTY

SCHEDULE "D"
PERMITTED ENCUMBRANCES

SCHEDULE "E"

PERMITS

SCHEDULE "F"
REAL PROPERTY INTERESTS

SCHEDULE "G"
SALE PROCEDURE

SCHEDULE "H"
SALE PROCEDURE ORDER

SCHEDULE "I"
VENDOR'S CERTIFICATE

TO: <> (the "**Purchaser**")

RE: Asset Purchase Agreement dated ●, 2019 (the "**Agreement**") between **THE BOWRA GROUP INC.**, in its capacity as court-appointed receiver and manager of all of the assets, undertakings and properties of Quinsam Coal Corporation, and not in its personal or corporate capacity, (the "**Vendor**") and the Purchaser.

Unless otherwise defined herein, the definitions provided for in the Agreement are adopted in this certificate (the "**Certificate**").

I, ●, a <> of The Bowra Group Inc., hereby certify that as of the date of this Certificate:

1. I am personally familiar with the matters hereinafter mentioned.
2. Each of the representations and warranties of the Vendor contained in Section 11 of the Agreement were true and correct in all material respects when made and are true and correct in all material respects as of the Closing Date.
3. All obligations of the Vendor contained in the Agreement to be performed prior to or at the Closing Time have been timely performed in all material respects.
4. This Certificate is made by The Bowra Group Inc. solely in its capacity as the receiver and manager of the assets, undertakings and properties of Quinsam not in its personal or corporate capacity, and is binding upon the Vendor.
5. This Certificate is made with full knowledge that the Purchaser is relying on the same for the closing of the transactions contemplated by the Agreement.

IN WITNESS WHEREOF I have executed this Certificate this ____ day of _____, 2019.

THE BOWRA GROUP INC., in its capacity as court-appointed receiver and manager of all of the assets, undertakings and properties of Quinsam Coal Corporation, and not in its personal or corporate capacity,

Per: _____
Name:
Title:

SCHEDULE "J"
PURCHASE PRICE ALLOCATION

1. Equipment	CA\$[•]
2. Real Property Interests	CA\$[•]
3. Other Purchased Assets	CA\$[•]
Total (Purchase Price):	CA\$[•]

No. S1811330
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ROYAL BANK OF CANADA

PETITIONER

AND:

502489 B.C. LTD., LESLIE ALLAN RIDLEY, TRAVELERS
LEASING LTD., FT. NELSON TIRE LTD., MAYNBRIDGE
CAPITAL INC., G.D. CORNISH TRUCKING LTD., AND
HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA

RESPONDENTS

ORDER

GOWLING WLG (CANADA) LLP
Barristers & Solicitors
Bentall 5, Suite 2300,
550 Burrard Street
Vancouver, BC V6C 2B5

Tel: 604.683.6498 Fax: 604.683.3558

File No. V49241

CDB/msh

APPENDIX D

Receiver's Interim Statement of Receipts and Disbursements

For the period September 20, 2019 to October 31, 2021

Vancouver Registry
No. S1910538
Estate No. 11-254199

**In the Matter of the Receivership of Quinsam Coal Corporation
Receiver's Interim Statement of Receipts and Disbursements
For the Period September 20, 2019 to October 31, 2021**

	\$
Receipts	
Advances from Province	7,096,010
Carbon taxes collected	2,531,609
Release of Receiver's Charge	630,368
GST refunds	214,225
Transfer of pre-receivership funding ¹	38,257
Miscellaneous other receipts	8,848
GST collected	91
	10,519,408
Disbursements ²	
Carbon taxes remitted	2,531,585
Payroll	2,512,705
Receiver's fees	1,171,244
Utilities	1,205,831
Contractor costs	697,423
Legal fees and disbursements	376,126
Environmental testing and safety equipment	324,365
Insurance	305,494
GST paid	221,972
Occupancy rent	206,726
Other miscellaneous disbursements	151,583
Pre-receivership contractor costs	112,338
Fuel	97,054
Computer services	61,618
Pre-receivership legal fees	53,991
Administrative disbursements	45,379
Marketing	44,924
PST paid	29,889
Appraisals	14,588
Courier	1,245
Newspaper ad	647
Travel & meals	522
Bank charges	387
Search fees	83
Filing fees paid to official receiver	70
Registration of receivership	20
	10,167,809
Excess of receipts over disbursements	351,599
Payment of priority claims	
Payment of WEPP priority	128,119
Payment of unpaid pension contributions	60,389
	188,508
Funds in Receiver's account ³	163,091

Vancouver Registry
No. S1910538
Estate No. 11-254199

Notes to the Receiver's Interim Statement of Receipts and Disbursements:

1. The Province advanced funding of \$184,989 to The Bowra Group Inc. in its capacity as Contractor for care and maintenance prior to the appointment of the Receiver. The balance remaining from the initial advance of \$38,257 was transferred to the Receiver upon appointment. The Receiver's Interim Statement of Receipts and Disbursements does not include the Contractor's activities.
2. Disbursements include direct costs of \$802,557 that relate to delivery of coal pursuant to the Javelin Sales Agreement.
3. The cash balance does not include funds held in trust of \$825,432 consisting of:
 - i. Coal Proceeds Balance of \$802,676; and
 - ii. Insurance settlement proceeds of \$22,756.

APPENDIX E

Summary of Receiver's Invoices and Hours

For the period September 20, 2019 to October 31, 2021

**In the Matter of the Receivership of
Quinsam Coal Corporation
Summary of Receiver's Invoices
For the Period September 20, 2019 to October 31, 2021**

Period	Invoice	Fees	Disbursements	GST	Total
September 20 to October 31, 2019	8800	103,970.50	3,537.00	5,375.38	112,882.88
November 1 to November 30, 2019	8819	61,650.25	2,454.92	3,205.26	67,310.43
December 1 to December 31, 2019	8841	60,149.25	2,593.44	3,137.13	65,879.82
January 1 to January 31, 2020	8862	76,083.25	3,151.20	3,961.72	83,196.17
February 1 to February 29, 2020	8884	49,434.25	2,140.65	2,578.74	54,153.64
March 1 to March 31, 2020	8903	54,255.50	2,107.80	2,818.17	59,181.47
April 1 to April 30, 2020	8920	55,469.25	1,904.40	2,868.68	60,242.33
May 1 to May 31, 2020	8936	36,957.50	1,325.40	1,914.15	40,197.05
June 1 to June 30, 2020	8957	41,726.25	1,426.80	2,157.65	45,310.70
July 1 to July 31, 2020	8967	38,696.50	1,377.60	2,003.71	42,077.81
August 1 to August 31, 2020	8993	35,233.75	1,345.50	1,828.96	38,408.21
September 1 to September 30, 2020	9005	34,966.25	1,467.75	1,821.70	38,255.70
October 1 to October 31, 2020	9020	39,799.00	1,573.50	2,068.63	43,441.13
November 1 to November 30, 2020	9059	45,103.75	1,761.75	2,343.28	49,208.78
December 1 to December 31, 2020	9083	38,020.00	1,497.75	1,975.89	41,493.64
January 1 to January 31, 2021	9100	39,296.25	1,551.00	2,042.36	42,889.61
February 1 to February 28, 2021	9118	38,165.00	1,593.00	1,987.90	41,745.90
March 1 to March 31, 2021	9141	48,220.00	1,884.00	2,505.20	52,609.20
April 1 to April 30, 2021	9173	44,051.25	1,646.25	2,284.88	47,982.38
May 1 to May 31, 2021	9197	37,245.00	1,483.50	1,936.43	40,664.93
June 1 to June 30, 2021	9218	36,572.50	1,473.00	1,902.28	39,947.78
July 1 to July 31, 2021	9229	38,033.75	1,497.75	1,976.58	41,508.08
August 1 to August 31, 2021	9256	35,285.00	1,388.25	1,833.66	38,506.91
September 1 to September 30, 2021	9276	41,841.50	1,625.25	2,173.34	45,640.09
October 1 to October 31, 2021	9297	41,018.25	1,572.00	2,129.51	44,719.76
Total		1,171,243.75	45,379.46	60,831.19	1,277,454.40

**In the Matter of the Receivership of
Quinsam Coal Corporation
Summary of Receiver's Staff Hours and Hourly Rates
For the Period September 20, 2019 to October 31, 2021**

Name	Title	Hours	Average Hourly Rate (\$)
Mario Mainella	President	434.45	562
Gordon Brown	Vice President	1,535.35	403
Kevin Koo	Senior Associate	901.40	253
Andrew Pappel	Senior Associate	0.25	250
Michael Busch	Associate	241.25	178
Sofie Parker	Insolvency Administrator	71.90	185
Estate Administration		190.75	123
		3,375.35	347 *

**Average Hourly Rate*

APPENDIX F

Summary of Gowling WLG (Canada) LLP's Invoices
For the period September 16, 2019 to July 31, 2020

**In the Matter of the Receivership of
Quinsam Coal Corporation
Summary of Gowling WLG (Canada) LLP's Invoices
For the Period September 16, 2019 to July 31, 2020**

Period	Invoice	Fees	Disbursements	GST	PST	Total
September 20 to September 27, 2019	19248813	11,248.00	16.50	563.23	787.36	12,615.09
September 16 to October 28, 2019	19267298	55,668.50	609.18	2,806.17	3,922.24	63,006.09
October 24 to November 27, 2019	19287716	28,739.50	23.25	1,438.14	2,011.76	32,212.65
September 9 to December 31, 2019	19317846	43,581.00	340.17	2,195.59	3,050.66	49,167.42
January 2 to January 29, 2020	19336699	17,946.00	223.89	908.49	1,256.22	20,334.60
January 7 to February 26, 2020	19351940	15,259.50	30.54	763.46	1,068.16	17,121.66
February 28 to March 30, 2020	19371175	10,715.00	117.09	537.28	750.05	12,119.42
March 30 to April 28, 2020	19386985	13,612.00	-	680.60	952.84	15,245.44
April 3 to May 27, 2020	19405215	10,759.00	-	537.95	753.13	12,050.08
June 1 to June 19, 2020	19420883	7,213.00	-	360.65	504.91	8,078.56
June 29 to July 31, 2020	19443203	9,580.00	-	479.00	670.60	10,729.60
Total		224,321.50	1,360.62	11,270.56	15,727.93	252,680.61

APPENDIX G

Summary of DLA Piper (Canada) LLP's Invoices
For the period August 17, 2020 to October 31, 2021

**In the Matter of the Receivership of
Quinsam Coal Corporation
Summary of DLA Piper (Canada) LLP's Invoices
For the Period August 17, 2020 to October 31, 2021**

Period	Invoice	Fees	Disbursements	GST	PST	Total
August 17 to August 31, 2020	1971798	4,635.50	-	231.78	324.49	5,191.77
September 1 to September 30, 2020	1977997	10,050.50	-	502.53	703.54	11,256.57
October 1 to October 31, 2020	1985986	13,528.00	-	676.40	946.96	15,151.36
November 1 to November 30, 2020	1993018	12,311.00	127.77	616.27	861.77	13,916.81
December 1 to December 31, 2020	2000561	11,086.50	1,513.75	629.32	776.06	14,005.63
January 1 to January 31, 2021	2006351	12,090.00	245.22	604.50	846.30	13,786.02
February 1 to February 28, 2021	2015418	4,690.00	-	234.50	328.30	5,252.80
March 1 to April 1, 2021	2020834	11,687.50	-	584.38	818.13	13,090.01
April 1 to April 30, 2021	2030175	6,432.50	7.93	322.01	450.28	7,212.72
May 1 to May 31, 2021	2036322	23,502.50	192.38	1,176.25	1,645.18	26,516.31
June 1 to June 30, 2021	2044537	5,037.50	6.39	252.18	352.63	5,648.70
July 1 to July 31, 2021	2049947	12,275.00	25.50	613.98	859.25	13,773.73
August 1 to August 31, 2021	2057610	8,615.00	3.79	430.93	603.05	9,652.77
September 1 to September 30, 2021	2063238	6,210.00	-	310.50	434.70	6,955.20
October 1 to October 31, 2021	2070165	6,170.00	-	308.50	431.90	6,910.40
	Total	148,321.50	2,122.73	7,494.03	10,382.54	168,320.80

APPENDIX H

Estimated Care and Maintenance Costs

For the period November 1, 2021 to March 31, 2022

In the matter of the Receivership of Quinsam Coal Corporation
Receiver's Estimated Care and Maintenance Costs
For the Period November 1, 2021 to March 31, 2022

	\$'s
Estimated Care and Maintenance Costs	From Nov 1, 2021 to Mar 31, 2022
Contractors and consultants	641,400
Payroll	529,997
Utilities	321,250
Professional fees	275,000
Occupation rent, property taxes and misc.	210,000
Repairs and maintenance	118,000
Contingency	100,000
Middle Point costs	70,000
Environmental & Safety	61,350
Fuel	24,000
Insurance	6,500
Total Care and Maintenance Costs	2,357,497