

Court No.: 15411  
Estate No.: 51-1228301  
Court File No.: B-M-06-09

IN THE COURT OF QUEEN'S BENCH OF  
NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF BATHURST

B E T W E E N:

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

- and -

**IN THE MATTER OF THE APPLICATION  
OF BLUE NOTE CARIBOU MINES INC., a  
body corporate**

- and -

**IN THE MATTER OF THE APPLICATION  
OF PRICEWATERHOUSECOOPERS INC.,  
Trustee in Bankruptcy of BLUE NOTE  
CARIBOU MINES INC.**

- and -

**IN THE MATTER OF AN APPLICATION  
BY BREAKWATER RESOURCES LTD.  
and CANZINCO LTD. FOR VARIOUS  
ORDERS RELATING TO THE STAY OF  
PROCEEDINGS AGAINST BLUE NOTE  
CARIBOU MINES INC.**

**NOTICE OF MOTION  
(FORM 37A)**

TO: All secured and unsecured creditors of  
Blue Note Caribou Mines Inc.

AND Blue Note Caribou Mines Inc.  
c/o George Cooper  
Cox & Palmer

COUR DU BANC DE LA REINE DU  
NOUVEAU-BRUNSWICK

DIVISION DE PREMIERE INSTANCE

CIRCONSCRIPTION JUDICIAIRE

E N T R E:

- et -

**AVIS DE MOTION  
(FORMULE 37A)**

DESTINATAIRE:

Blue Cross Centre  
644 Main Street, Suite 500  
Moncton, NB E1C 1E2

AND Blue Note Mining Inc.  
c/o George Cooper  
Cox & Palmer  
Blue Cross Centre  
644 Main Street, Suite 500  
Moncton, NB E1C 1E2

AND PricewaterhouseCoopers Inc. acting in  
its capacity as Monitor in proceedings in  
respect of Blue Note Caribou Mines Inc.  
under the *Companies' Creditors  
Arrangement Act* and as Trustee in  
Bankruptcy of Blue Note Caribou Mines  
Inc.  
c/o Josh McElman  
Cox & Palmer  
1 Germain Street, Suite 1500  
P.O. Box 1324, Stn. Main  
Saint John, NB E2L 4H8

AND PricewaterhouseCoopers Inc. acting in  
its capacity as Monitor in proceedings in  
respect of Blue Note Mining Inc. under  
the *Companies' Creditors Arrangement  
Act*  
c/o Christian Bourque  
PricewaterhouseCoopers Inc.  
1250 René Lévesque Boulevard West  
Montréal, PQ H3B 2G4

AND Diorite Securities Limited, as  
Trustee of Fern Trust  
c/o Thomas G. O'Neil, Q.C. and  
Melissa Young  
McInnes Cooper  
Suite 1700, Brunswick Square  
1 Germain Street  
P.O. Box 6370  
Saint John, N.B. E2L 4R8Z

AND Senior Secured Noteholders  
c/o Steven L. Graffe and Aaron Collins  
Aird & Berlis LLP  
Brookfield Place  
1800-181 Bay Street

Toronto, ON M5J 2T9

- AND Province of New Brunswick  
c/o John B.D. Logan and  
Nathalie LeBlanc  
Department of Justice  
Centennial Building  
P.O. Box 6000  
Fredericton, NB E3B 5H1
- AND Maple Minerals Corporation  
c/o Howard A. Gorman and  
Karl R. Seidenz  
Macleod Dixon LLP  
3700 Canterra Tower  
400 – 3<sup>rd</sup> Avenue S.W.  
Calgary, AB T2P 4H2
- AND J.S. Redpath Limited and  
Longyear Canada, ULC and Boart  
Longyear Alberta Limited, d.b.a. Boart  
Longyear Canada  
c/o Gerald F. Smith, Q.C.  
Smith & Smith  
155 Pleasant Street  
P.O. Box 100  
Miramichi, NB E1V 3M2
- AND Atlantic Reproduction Co. Ltd. and  
K & M Utility Lines Ltd.  
c/o Euclide LeBouthillier  
Doiron LeBouthillier Boudreau Allain  
3674, rue Principale  
CP/PO Box 3010, Bureau Chef  
Tracadie-Sheila, NB E1X 1G5
- AND Hachey Construction & Fabrication Ltd.  
c/o Eric P. Sonier  
Sonier Duguay  
1-3623 rue Principale  
Tracadie-Sheila, NB, E1X 1C9

Breakwater Resources Ltd.  
("Breakwater") and CanZinco Ltd.  
("CanZinco") will apply to the Court at 254  
Patrick Street, Bathurst, New Brunswick, on the  
11th day of December, 2009 at 9:30 a.m. for:

Le demandeur (ou selon le cas)  
demandera à la Cour à  
le 20 , à h ,  
d'ordonner:

(a) an order abridging time for service of the within motion pursuant to Rules 2.01, 2.02 and 3.02 of the **Rules of Court**, declaring that there has been good and valid service of the within motion and dispensing with the necessity of filing a Record on Motion;

(b) an order in the form annexed hereto as Schedule "A" declaring that the delivery by Breakwater to Blue Note Caribou Mines Inc. ("Blue Note Caribou") and PricewaterhouseCoopers Inc. ("PwC") of notice of its intention to exercise certain Rights of First Refusal contemplated by Articles 14 and 15 of a Joint Venture Agreement was not stayed by virtue of the Initial Order or the Extension Orders issued in this matter under the **Companies' Creditors Arrangement Act**, R.S.C. 1985, C. c.-36 (the "CCAA") or by the provisions of the **Bankruptcy and Insolvency Act**, R.S.C. 1985, c. B-3 (the "BIA") or by any other cause;

(c) alternatively, an order in the form annexed hereto as Schedule "B" declaring that the stay imposed by virtue of the Initial Order and the Extension Orders issued under the CCAA and by virtue of the provisions of the BIA is lifted *nunc pro tunc* so as to validate delivery of the notice referred to in subparagraph (b) hereof; or

(d) in the further alternative, an order in the form annexed hereto as Schedule "C" declaring that the stay imposed by virtue of the Initial Order and the Extension Orders issued under the CCAA and by virtue of the provisions of the BIA is temporarily lifted for the limited purpose of enabling Breakwater to give the notice referred to in subparagraph (b) hereof, and that Breakwater is granted leave so as to give

A l'audition de la motion, les affidavits ou les autres preuves littérales suivantes seront présentées:

this notice; and

(e) such further and other relief as this Honourable Court deems just.

The grounds to be argued in support of the Motion are as follows:

1. On or about July 26, 2006, CanZinco sold two New Brunswick mines (the "Mines") to Blue Note Metals Inc. [now Blue Note Mining Inc. which shall hereinafter be referred to as "Blue Note"];

2. As part of the consideration for acquiring the Mines and at the direction of CanZinco, Blue Note issued to Breakwater an Unsecured Subordinated Convertible Debenture dated August 1, 2006 in an amount of \$15,000,000.00 CDN (the "Debenture");

3. Pursuant to the Debenture, Breakwater was granted an option to convert the Debenture into a twenty percent (20%) interest in the Mines;

4. Pursuant to the Debenture, the surrender of the Debenture, accompanied by a notice that Breakwater intended to convert the Debenture, was deemed to constitute a contract between Breakwater and Blue Note whereby the parties were required to enter into a Joint Venture Agreement;

5. By "Agreement for Transfer of Caribou and Restigouche Mines" dated June 29, 2007 (but not received by Breakwater until February 28, 2008), Blue Note transferred its interest in the Mines to its subsidiary corporation, Blue Note Caribou;

6. By notice dated August 29, 2008, accompanied by the surrender of the Debenture, Breakwater exercised its option to convert the Debenture, thereby acquiring a 20% interest in the Mines and causing the parties to enter into the Joint Venture Agreement (the "Joint Venture Agreement");

7. In February, 2009, Blue Note Caribou sought protection under the CCAA and subsequently obtained the Initial Order and the Extension Orders whereby PwC was appointed as Monitor, and any and all proceedings commenced or continued against or in respect of Blue Note Caribou were stayed;

8. Blue Note Caribou later made an assignment into bankruptcy;

9. By Order dated July 27, 2009, the Court of Queen's Bench authorized PwC to pursue a plan of liquidation of the assets of Blue Note Caribou;

10. As a result, PwC scheduled a public auction of certain personal property of Blue Note Caribou to take place on September 30, 2009;

11. The day before the public auction was scheduled to occur, PwC received an offer from 2190776 Ontario Inc. for the bulk purchase of the property of Blue Note Caribou and proceeded to cancel the scheduled auction and to negotiate an agreement with this offeror for the sale of that property;

12. It is the position of Breakwater that, pursuant to Articles 14 and 15 of the Joint Venture Agreement, it possesses rights of first refusal (the "Rights of First Refusal") in connection with any proposed sale of the Mines;

13. On or about November 19, 2009, Breakwater received a copy of an Affidavit of Robert Smith of PwC (the "November 19<sup>th</sup> Affidavit");

14. The November 19<sup>th</sup> Affidavit represented the first disclosure by PwC to Breakwater of the terms of the sale of the assets of Blue Note Caribou to 647078 N.B. Ltd. (a nominee of 2190776 Ontario Inc. which later became known as Maple Minerals Corporation) in sufficient detail so as to permit Breakwater to make a determination as to whether to exercise

the Rights of First Refusal;

15. Breakwater wishes to give notice of its intention to exercise its Rights of First Refusal for the sole purpose of preserving whatever rights it may possess pending the ultimate determination thereof at a hearing currently scheduled for January 12 to 14, 2010;

16. PwC has taken the position that Breakwater is prohibited or stayed from giving notice of its intention to exercise the Rights of First Refusal;

17. In the event that the relief sought in the within motion is not granted, Breakwater would be materially prejudiced;

18. It is equitable that the relief sought in the within motion be granted and that Breakwater be permitted to give notice of its intention to exercise the Rights of First Refusal so as to preserve whatever rights it may possess pending the ultimate determination thereof.

Upon the hearing of the motion, the following affidavits or other documentary evidence will be presented:

1. the Affidavit of David Langille, Vice President, Finance and Chief Financial Officer of the Applicant, Breakwater, and Chief Financial Officer and a director of the Applicant, CanZinco, sworn to on the 8th day of December, 2009;

2. such further and other affidavits or other documentary evidence as the Applicants' counsel may file and serve on Respondents' counsel at or prior to the hearing of the Motion.

The Applicant intends to rely upon section 11 of the CCAA, sections 69.3 and 69.4 of the BIA and Rules 37, 1.03(2), 3.02 and 2.04 of the New Brunswick *Rules of Court*, as well as the inherent jurisdiction of this Honourable Court.

This Motion will take approximately one

hour to hear.

You are advised that:

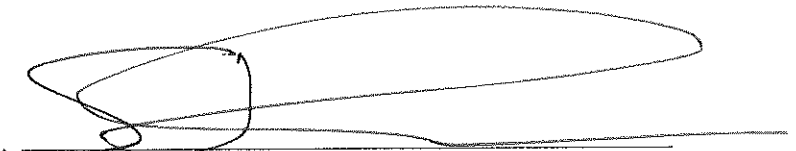
- (a) you are entitled to issue documents and present evidence at the hearing in English or French or both;
- (b) the Applicant intends to proceed in the English language; and
- (c) if you intend to proceed in the other official language, an interpreter may be required and you must so advise the clerk at least 5 days before the hearing.

Sachez que:

- 3. vous avez le droit d'émettre des documents et de présenter votre preuve à l'audience en français, en anglais ou dans les deux langues:
- 4. le demandeur a l'intention d'utiliser la langue ; et
- 5. si vous avez l'intention d'utiliser l'autre langue officielle, les services d'un interprète pourront être requis et vous devrez en aviser le greffier au moins 5 jours avant l'audience.

Dated at Saint John, New Brunswick this 8<sup>th</sup> day of December, 2009.

**STEWART McKELVEY**  
Solicitors for Breakwater Resources Ltd.  
and CanZinco Ltd.



Stephen J. Hutchison

Stewart McKelvey  
Barristers & Solicitors  
44 Chipman Hill, Suite 1000  
P.O. Box 7289 Station "A"  
Saint John, N.B. E2L 2A9

Telephone : (506) 632-1970  
Facsimile: (506) 652-1989

**Schedule "A"**

Court No.: 15411  
Estate No.: 51-1228301  
Court File No.: B-M-06-09

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF BATHURST

B E T W E E N:

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

- and -

**IN THE MATTER OF THE APPLICATION OF BLUE  
NOTE CARIBOU MINES INC., a body corporate**

- and -

**IN THE MATTER OF THE APPLICATION OF  
PRICEWATERHOUSECOOPERS INC., Trustee in  
Bankruptcy of BLUE NOTE CARIBOU MINES INC.**

- and -

**IN THE MATTER OF AN APPLICATION BY  
BREAKWATER RESOURCES LTD. and CANZINCO  
LTD. FOR VARIOUS ORDERS RELATING TO THE  
STAY OF PROCEEDINGS AGAINST BLUE NOTE  
CARIBOU MINES INC.**

**O R D E R**

UPON APPLICATION of Breakwater Resources Ltd. ("Breakwater") and CanZinco Ltd. ("CanZinco");

UPON READING the Notice of Motion of Breakwater and CanZinco and the Affidavit of David Langille, sworn to herein on the 8th day of December, 2009;

UPON HEARING Stephen J. Hutchison of Stewart McKelvey, counsel for Breakwater and CanZinco;

UPON HEARING \_\_\_\_\_ for Blue Note Caribou Mines Inc.;

UPON HEARING \_\_\_\_\_ for Blue Note Mining Inc.;

UPON HEARING George L. Cooper and Joshua J.B. McElman, counsel for PricewaterhouseCoopers Inc. ("PwC") acting in its capacity as Monitor in proceedings in respect of Blue Note Caribou Mines Inc. ("Blue Note Caribou") under the *Companies' Creditors Arrangement Act* and as Trustee in Bankruptcy of Blue Note Caribou;

UPON HEARING \_\_\_\_\_ for PricewaterhouseCoopers Inc. acting in its capacity as Monitor in proceedings in respect of Blue Note Mining Inc. under the *Companies' Creditors Arrangement Act*;

UPON HEARING Thomas O'Neil, Q.C. and Melissa Young of McInnes Cooper, counsel for Diorite Securities Limited, as Trustee of Fern Trust;

UPON HEARING Steven L. Graffe and Aaron Collins of Aird & Berlis LLP, counsel for the Senior Secured Noteholders;

UPON HEARING John B.D. Logan and Nathalie LeBlanc, counsel for the Province of New Brunswick;

UPON HEARING Howard A. Gorman and Karl R. Seidenz of Macleod Dixon LLP, counsel for Maple Minerals Corporation;

UPON HEARING Gerald F. Smith, Q.C. of Smith & Smith, counsel for J.S. Redpath Limited and Longyear Canada, ULC and Boart Longyear Alberta Limited, d.b.a. Boart Longyear Canada;

UPON HEARING Euclide LeBouthillier of Doiron LeBouthillier Boudreau Allain, counsel for Atlantic Reproduction Co. Ltd. and K.& M Utility Lines Ltd.;

AND UPON HEARING Eric P. Sonier of Sonier Duguay, counsel for Hachey Construction & Fabrication Ltd.;

WHEREAS, by e-mail to counsel for Blue Note Caribou and to Robert C. Smith of PwC dated December 2, 2009, a copy of which is attached hereto as Schedule "A", Breakwater gave notice of its intention to exercise certain Rights of First Refusal contemplated by Articles 14 and 15 of the Joint Venture Agreement in issue in this matter (the "Notice of Intention");

IT IS HEREBY ORDERED THAT:

- (a) the time for any required service or notice of the Motion be and is hereby abridged and validated such that the Motion is properly returnable today;
- (b) there has been good and sufficient notice, service, and delivery of the within Notice of Motion and further service on any interested party is hereby dispensed with;
- (c) the necessity of filing a Record on Motion is hereby dispensed with;

- (d) the delivery by Breakwater of the Notice of Intention was not prohibited or stayed by virtue of:
  - (i) the Initial Order issued in this matter on February 20, 2009 (the "Initial Order") pursuant to subsection 11(3) of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA"),
  - (ii) the further Orders issued in this matter on March 20, May 20 and November 13, 2009 pursuant to subsection 11(4) of the CCAA (the "Extension Orders"),
  - (iii) subsection 69.3(1) or any other provision of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA"), or
  - (iv) any other cause; and
- (e) the delivery of the Notice of Intention was effective for the sole purpose of preserving whatever rights Breakwater may possess pending the ultimate determination thereof by the Court at a hearing currently scheduled for January 12 to 14, 2010.

Dated at Bathurst, New Brunswick this \_\_\_\_ day of December, 2009

.....  
J.C.Q.B.N.B

Schedule "A"

**From:** Stephen J. Hutchison  
**Sent:** Wednesday, December 02, 2009 6:14 PM  
**To:** Cooper, George L. (Moncton); McElman, Josh (NB); robert.smith@ca.pwc.com  
**Cc:** Lesley Duncan; Paul Smith; Dave Langille  
**Subject:** Breakwater Resources Ltd - Blue Note Caribou Mines Inc. CCAA and BIA Proceedings  
**Attachments:** 2Dec2009 Exercise Right of First Refusal.pdf

George, Josh, Bob,

As discussed, please find attached PDF copy of Breakwater's correspondence of today's date signifying its intention to exercise its rights of first refusal. An original copy will be delivered to Mr. Smith's office tomorrow.

Kindly acknowledge receipt on behalf of PricewaterhouseCoopers Inc., Court Appointed Monitor and Trustee in the Bankruptcy of Blue Note Caribou Mines Inc.

Please contact me to finalize arrangements for completion of the sale of the assets to Breakwater. Please advise me if you have any questions arising out of this correspondence.

Best regards,

Steve Hutchison

---

**Stephen J. Hutchison**

Stewart McKelvey | Barristers, Solicitors and Trademark Agents

Suite 1000 | Brunswick House | 44 Chipman Hill | P.O. Box 7289 | Postal Station A | Saint John NB E2L 4S6 | Web: [www.smss.com](http://www.smss.com)

Direct Dial: 506.632.2784 | Main Tel: 506.632.1970 | Fax: 506.652.1989 | Email: [shutchison@smss.com](mailto:shutchison@smss.com)

|x|



December 2, 2009

**BY EMAIL & DELIVERED**

PricewaterhouseCoopers Inc.  
Trustee in Bankruptcy of Blue Note Caribou Mines Inc.  
Suite 301, 44 Chipman Hall  
Saint John, New Brunswick  
E2L 4B9

Attn: Mr. Robert Smith

**Re: Joint Venture Agreement (the "Joint Venture")  
Exercise of Right of First Refusal**

On November 19, 2009, Breakwater Resources Ltd. ("Breakwater") received certain documents from PricewaterhouseCoopers Inc. acting as monitor and trustee in bankruptcy of Blue Note Caribou Mines Inc. ("Blue Note"). These documents included a Notice of Motion and the affidavit of Robert C Smith sworn November 19, 2009. Included as Exhibit O to the affidavit of Robert C Smith was an offer to purchase the assets of Blue Note by 2190776 Ontario Inc. (the "Third Party Sale").

As acknowledged by PricewaterhouseCoopers Inc. on July 17, 2009 (copy attached), Breakwater obtained a 20% joint venture interest in the assets relating to the Caribou Mine (the "Assets") effective August 29, 2008. The terms of such joint venture are governed by the joint venture agreement forming Exhibit B to the unsecured subordinated convertible debenture of Blue Note dated August 1, 2006 (the "Joint Venture Agreement").

The proposed sale of Blue Note's interest in the Assets pursuant to the Third Party Sale is not in compliance with the terms and conditions of the Joint Venture Agreement and, in particular, we have not received the notices required under Articles 14 and 15 of the Joint Venture Agreement. Notwithstanding such non-compliance, in accordance with its rights under Articles 14 and 15 of the Joint Venture Agreement, Breakwater hereby gives notice of its exercise of its rights of first refusal in respect of the sale of Blue Note's interest in the Assets in accordance with the provisions of the Joint Venture Agreement and the Third Party Sale.



---

Please proceed as soon as possible to complete the sale of the Blue Note's interest in the Assets to us and advise of the closing date. We will advise you shortly as to the entity that will take title.

Yours truly,  
**BREAKWATER RESOURCES LTD.**

A handwritten signature in dark ink, appearing to read "David Petroff", with a long horizontal line extending to the right.

David Petroff  
President & Chief Executive Officer

A handwritten signature in dark ink, appearing to read "D. Langille", written in a cursive style.

David Langille  
Vice President, Finance and Chief Financial Officer

PricewaterhouseCoopers Inc.  
1250 René-Lévesque Boulevard  
West  
Suite 2800  
Montreal Quebec  
Canada H3B 2G4  
Phone: +1 (514) 205 5000  
Fax: +1 (514) 205 5694

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL  
N°: 500-11-036722-094

SUPERIOR COURT

IN THE MATTER OF THE PLAN OF ARRANGEMENT  
OF;

Blue Note Mining Inc., a legal person duly constituted under the Canada Business Corporation Act having its head office at 1, Place Ville-Marie, Suite 1511, Montreal, Quebec, H3B 2B5.

1.1 DEBTOR

and

PricewaterhouseCoopers Inc., a corporation having its principal place of business in Quebec at 1250 René-Lévesque Blvd. West, Suite 2800, Montreal, Quebec, H3B 2G4, acting in its capacity of monitor under proceedings pending in respect of Blue Note Mining Inc. under the Companies' Creditors Arrangement Act.

MONITOR

NOTICE OF DISALLOWANCE OF CLAIM  
(Article 6.3 of the Plan of Arrangement)

Breakwater Resources Ltd  
950 - 95 Wellington Street West  
Toronto (Ontario) M5J 2N7

We hereby acknowledge receipt of your proof of claim dated July 9, 2009 and received in the above mentioned matter.

We wish to advise you that in accordance with the court order on the Petition to establish a claims and meeting process by the Superior Court of Quebec rendered on June 19, 2009, we hereby disallow in part your proof of claim for the following reasons:

On August 1<sup>st</sup>, 2006, Blue Note Metals Inc. (now Blue Note Mining Inc.) issued an unsecured subordinated convertible debenture in favour of Breakwater Resources Ltd. in the principal amount of \$15 000 000 in lawful money of Canada.



On August 29, 2008, Breakwater Resources Ltd. sent the following letter to Blue Note Mining Inc.:

*"In accordance with Article 3.2(a) of the Debenture, Breakwater Resources Ltd. ("Breakwater") hereby surrenders the Debenture to Blue Note Mining Inc. (formerly, Blue Note Metals Inc.) ("Blue Note") and encloses a written notice, substantially in the form set out in Exhibit A of the Debenture, stating Breakwater's election to exercise its Property Interest Conversion Option (as defined in the Debenture) (the "Notice").*

*By surrendering the Debenture and providing Blue Note and Blue Note Caribou Mines Inc. with the Notice, this shall constitute a contract between Breakwater and Blue Note Caribou Mines Inc. whereby Breakwater and Blue Note Caribou Mines Inc. shall enter into a joint venture agreement pursuant to Section 3.2(b) of the Debenture and Breakwater, subject to receipt of fully executed joint venture agreement, substantially in the form set out in Exhibit B of the Debenture, releases Blue Note and Blue Note Caribou Mines Inc. from all liability under the Debenture.*

*The conversion date shall be such date as described in Section 3.2(c) of the Debenture.*

*Pursuant to Section 3.2(d) of the Debenture, Blue Note and Blue Note Caribou Mines Inc. shall cause title to the Properties to be recorded in Breakwater's name in proportion to Breakwater's Interest (as defined in the Debenture) as soon as practicable after the Date of Property Interest Conversion (as defined in the Debenture). Please provide us with a copy of such title as soon as possible."*

On the same date, Breakwater sent a Notice of exercise of Property Interest Conversion Option stating:

*"The undersigned, the Register Holder of the Unsecured Subordinated Convertible Debenture issued by Blue Note Metals Inc. (now Blue Note Mining Inc.) on August 1, 2006 (the "Debenture") hereby irrevocably elects to convert the indebtedness outstanding under the Debenture into a 20% interest in the Properties (as defined in the Debenture) in accordance with the terms of the Debenture."*

In view of the above, Breakwater Resources Ltd. cannot claim to be a creditor of Blue Note Mining Inc. in the amount stated in its proof of claim as it can no longer claim the principal value of the Debenture, being \$15 000 000.

The amount claimed by Breakwater Resources Ltd in its proof of claim is therefore reduced to \$923,241.00.

In this regard, we are unable to accept your claim as filed.

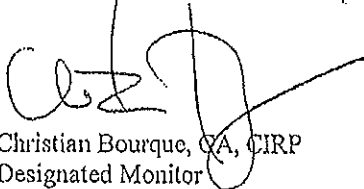


If you wish to contest this Notice of Revision or Disallowance, you must, within ten (10) days of the this Notice, file an appeal motion with the Court and serve a copy of such appeal motion to the Petitioner and the Monitor.

Yours truly,

DATED AT MONTREAL, this 17<sup>th</sup> day of July, 2009

PRICEWATERHOUSECOOPERS INC.  
Court Appointed Monitor.



Christian Bourque, CA, CIRP  
Designated Monitor

**Schedule "B"**

Court No.: 15411  
Estate No.: 51-1228301  
Court File No.: B-M-06-09

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF BATHURST

B E T W E E N:

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

- and -

**IN THE MATTER OF THE APPLICATION OF BLUE  
NOTE CARIBOU MINES INC., a body corporate**

- and -

**IN THE MATTER OF THE APPLICATION OF  
PRICEWATERHOUSECOOPERS INC., Trustee in  
Bankruptcy of BLUE NOTE CARIBOU MINES INC.**

- and -

**IN THE MATTER OF AN APPLICATION BY  
BREAKWATER RESOURCES LTD. and CANZINCO  
LTD. FOR VARIOUS ORDERS RELATING TO THE  
STAY OF PROCEEDINGS AGAINST BLUE NOTE  
CARIBOU MINES INC.**

**O R D E R**

UPON APPLICATION of Breakwater Resources Ltd. ("Breakwater") and CanZinco Ltd. ("CanZinco");

UPON READING the Notice of Motion of Breakwater and CanZinco and the Affidavit of David Langille, sworn to herein on the 8th day of December, 2009;

UPON HEARING Stephen J. Hutchison of Stewart McKelvey, counsel for Breakwater and CanZinco;

UPON HEARING \_\_\_\_\_ for Blue Note Caribou Mines Inc.;

UPON HEARING \_\_\_\_\_ for Blue Note Mining Inc.;

UPON HEARING George L. Cooper and Joshua J.B. McElman, counsel for PricewaterhouseCoopers Inc. ("PwC") acting in its capacity as Monitor in proceedings in respect of Blue Note Caribou Mines Inc. ("Blue Note Caribou") under the *Companies' Creditors Arrangement Act* and as Trustee in Bankruptcy of Blue Note Caribou;

UPON HEARING \_\_\_\_\_ for PricewaterhouseCoopers Inc. acting in its capacity as Monitor in proceedings in respect of Blue Note Mining Inc. under the *Companies' Creditors Arrangement Act*;

UPON HEARING Thomas O'Neil, Q.C. and Melissa Young of McInnes Cooper, counsel for Diorite Securities Limited, as Trustee of Fern Trust;

UPON HEARING Steven L. Graffe and Aaron Collins of Aird & Berlis LLP, counsel for the Senior Secured Noteholders;

UPON HEARING John B.D. Logan and Nathalie LeBlanc, counsel for the Province of New Brunswick;

UPON HEARING Howard A. Gorman and Karl R. Seidenz of Macleod Dixon LLP, counsel for Maple Minerals Corporation;

UPON HEARING Gerald F. Smith, Q.C. of Smith & Smith, counsel for J.S. Redpath Limited and Longyear Canada, ULC and Boart Longyear Alberta Limited, d.b.a. Boart Longyear Canada;

UPON HEARING Euclide LeBouthillier of Doiron LeBouthillier Boudreau Allain, counsel for Atlantic Reproduction Co. Ltd. and K.& M Utility Lines Ltd.;

AND UPON HEARING Eric P. Sonier of Sonier Duguay, counsel for Hachey Construction & Fabrication Ltd.;

WHEREAS a stay of proceedings in favour of Blue Note Caribou has been imposed by virtue of an Initial Order issued on February 20, 2009 (the "Initial Order") under subsection 11(3) of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA"), by virtue of further Orders issued on March 20, May 20 and November 13, 2009 under subsection 11(4) of the CCAA (the "Extension Orders") and by virtue of subsection 69.3(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA") (hereinafter collectively referred to as the "Stay");

AND WHEREAS, by e-mail to counsel for Blue Note Caribou and to Robert C. Smith of PwC dated December 2, 2009, a copy of which is attached hereto as Schedule "A", Breakwater gave notice of its intention to exercise certain Rights of First Refusal contemplated by Articles 14 and 15 of the Joint Venture Agreement in issue in this matter (the "Notice of Intention");

IT IS HEREBY ORDERED THAT:

- (a) the time for any required service or notice of the Motion be and is hereby abridged and validated such that the Motion is properly returnable today;

- (b) there has been good and sufficient notice, service, and delivery of the within Notice of Motion and further service on any interested party is hereby dispensed with;
- (c) the necessity of filing a record of Motion is hereby dispensed with;
- (d) the Stay is lifted *nunc pro tunc* so as to validate the delivery by Breakwater of the Notice of Intention; and
- (e) the delivery of the Notice of Intention was effective for the sole purpose of preserving whatever rights Breakwater may possess pending the ultimate determination thereof by the Court at a hearing currently scheduled for January 12 to 14, 2010.

Dated at Bathurst, New Brunswick this \_\_\_\_ day of December, 2009

.....  
J.C.Q.B.N.B

Schedule "A"

**From:** Stephen J. Hutchison  
**Sent:** Wednesday, December 02, 2009 6:14 PM  
**To:** Cooper, George L. (Moncton); McElman, Josh (NB); robert.smith@ca.pwc.com  
**Cc:** Lesley Duncan; Paul Smith; Dave Langille  
**Subject:** Breakwater Resources Ltd - Blue Note Caribou Mines Inc. CCAA and BIA Proceedings  
**Attachments:** 2Dec2009 Exercise Right of First Refusal.pdf

George, Josh, Bob,

As discussed, please find attached PDF copy of Breakwater's correspondence of today's date signifying its intention to exercise its rights of first refusal. An original copy will be delivered to Mr. Smith's office tomorrow.

Kindly acknowledge receipt on behalf of PricewaterhouseCoopers Inc., Court Appointed Monitor and Trustee in the Bankruptcy of Blue Note Caribou Mines Inc.

Please contact me to finalize arrangements for completion of the sale of the assets to Breakwater. Please advise me if you have any questions arising out of this correspondence.

Best regards,

Steve Hutchison

---

**Stephen J. Hutchison**

Stewart McKelvey | Barristers, Solicitors and Trademark Agents

Suite 1000 | Brunswick House | 44 Chipman Hill | P.O. Box 7289 | Postal Station A | Saint John NB E2L 4S6 | Web: [www.smss.com](http://www.smss.com)

Direct Dial: 506.632.2784 | Main Tel: 506.632.1970 | Fax: 506.652.1989 | Email: [shutchison@smss.com](mailto:shutchison@smss.com)

✘

12/3/2009



December 2, 2009

**BY EMAIL & DELIVERED**

PricewaterhouseCoopers Inc.  
Trustee in Bankruptcy of Blue Note Caribou Mines Inc.  
Suite 301, 44 Chipman Hall  
Saint John, New Brunswick  
E2L 4B9

Attn: Mr. Robert Smith

**Re: Joint Venture Agreement (the "Joint Venture")  
Exercise of Right of First Refusal**

On November 19, 2009, Breakwater Resources Ltd. ("Breakwater") received certain documents from PricewaterhouseCoopers Inc. acting as monitor and trustee in bankruptcy of Blue Note Caribou Mines Inc. ("Blue Note"). These documents included a Notice of Motion and the affidavit of Robert C Smith sworn November 19, 2009. Included as Exhibit O to the affidavit of Robert C Smith was an offer to purchase the assets of Blue Note by 2190776 Ontario Inc. (the "Third Party Sale").

As acknowledged by PricewaterhouseCoopers Inc. on July 17, 2009 (copy attached), Breakwater obtained a 20% joint venture interest in the assets relating to the Caribou Mine (the "Assets") effective August 29, 2008. The terms of such joint venture are governed by the joint venture agreement forming Exhibit B to the unsecured subordinated convertible debenture of Blue Note dated August 1, 2006 (the "Joint Venture Agreement").

The proposed sale of Blue Note's interest in the Assets pursuant to the Third Party Sale is not in compliance with the terms and conditions of the Joint Venture Agreement and, in particular, we have not received the notices required under Articles 14 and 15 of the Joint Venture Agreement. Notwithstanding such non-compliance, in accordance with its rights under Articles 14 and 15 of the Joint Venture Agreement, Breakwater hereby gives notice of its exercise of its rights of first refusal in respect of the sale of Blue Note's interest in the Assets in accordance with the provisions of the Joint Venture Agreement and the Third Party Sale.



---

Please proceed as soon as possible to complete the sale of the Blue Note's interest in the Assets to us and advise of the closing date. We will advise you shortly as to the entity that will take title.

Yours truly,  
**BREAKWATER RESOURCES LTD.**

A handwritten signature in dark ink, appearing to read "David Petroff", written over a horizontal line.

David Petroff  
President & Chief Executive Officer

A handwritten signature in dark ink, appearing to read "D. Langille", written in a cursive style.

David Langille  
Vice President, Finance and Chief Financial Officer

PricewaterhouseCoopers Inc.  
1250 René-Lévesque Boulevard  
West  
Suite 2800  
Montreal Quebec  
Canada H3B 2G4  
Phone: +1 (514) 205 5000  
Fax: +1 (514) 205 5694

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL  
N°: 500-11-036722-094

SUPERIOR COURT

IN THE MATTER OF THE PLAN OF ARRANGEMENT  
OF:

Blue Note Mining Inc., a legal person duly constituted under the Canada Business Corporation Act having its head office at 1, Place Ville-Marie, Suite 1511, Montreal, Quebec, H3B 2B5.

1.1 DEBTOR

and

PricewaterhouseCoopers Inc., a corporation having its principal place of business in Quebec at 1250 René-Lévesque Blvd. West, Suite 2800, Montreal, Quebec, H3B 2G4, acting in its capacity of monitor under proceedings pending in respect of Blue Note Mining Inc. under the Companies' Creditors Arrangement Act.

MONITOR

NOTICE OF DISALLOWANCE OF CLAIM  
(Article 6.3 of the Plan of Arrangement)

Breakwater Resources Ltd  
950 - 95 Wellington Street West  
Toronto (Ontario) M5J 2N7

We hereby acknowledge receipt of your proof of claim dated July 9, 2009 and received in the above mentioned matter.

We wish to advise you that in accordance with the court order on the Petition to establish a claims and meeting process by the Superior Court of Quebec rendered on June 19, 2009, we hereby disallow in part your proof of claim for the following reasons:

On August 1<sup>st</sup>, 2006, Blue Note Metals Inc. (now Blue Note Mining Inc.) issued an unsecured subordinated convertible debenture in favour of Breakwater Resources Ltd. in the principal amount of \$15 000 000 in lawful money of Canada.

On August 29, 2008, Breakwater Resources Ltd. sent the following letter to Blue Note Mining Inc.:

*"In accordance with Article 3.2(a) of the Debenture, Breakwater Resources Ltd. ("Breakwater") hereby surrenders the Debenture to Blue Note Mining Inc. (formerly, Blue Note Metals Inc.) ("Blue Note") and encloses a written notice, substantially in the form set out in Exhibit A of the Debenture, stating Breakwater's election to exercise its Property Interest Conversion Option (as defined in the Debenture) (the "Notice").*

*By surrendering the Debenture and providing Blue Note and Blue Note Caribou Mines Inc. with the Notice, this shall constitute a contract between Breakwater and Blue Note Caribou Mines Inc. whereby Breakwater and Blue Note Caribou Mines Inc. shall enter into a joint venture agreement pursuant to Section 3.2(b) of the Debenture and Breakwater, subject to receipt of fully executed joint venture agreement, substantially in the form set out in Exhibit B of the Debenture, releases Blue Note and Blue Note Caribou Mines Inc. from all liability under the Debenture.*

*The conversion date shall be such date as described in Section 3.2(c) of the Debenture.*

*Pursuant to Section 3.2(d) of the Debenture, Blue Note and Blue Note Caribou Mines Inc. shall cause title to the Properties to be recorded in Breakwater's name in proportion to Breakwater's Interest (as defined in the Debenture) as soon as practicable after the Date of Property Interest Conversion (as defined in the Debenture). Please provide us with a copy of such title as soon as possible."*

On the same date, Breakwater sent a Notice of exercise of Property Interest Conversion Option stating:

*"The undersigned, the Register Holder of the Unsecured Subordinated Convertible Debenture issued by Blue Note Metals Inc. (now Blue Note Mining Inc.) on August 1, 2006 (the "Debenture") hereby irrevocably elects to convert the indebtedness outstanding under the Debenture into a 20% interest in the Properties (as defined in the Debenture) in accordance with the terms of the Debenture."*

In view of the above, Breakwater Resources Ltd. cannot claim to be a creditor of Blue Note Mining Inc. in the amount stated in its proof of claim as it can no longer claim the principal value of the Debenture, being \$15 000 000.

The amount claimed by Breakwater Resources Ltd in its proof of claim is therefore reduced to \$923,241.00.

In this regard, we are unable to accept your claim as filed.

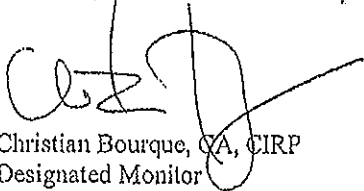


If you wish to contest this Notice of Revision or Disallowance, you must, within ten (10) days of the this Notice, file an appeal motion with the Court and serve a copy of such appeal motion to the Petitioner and the Monitor.

Yours truly,

DATED AT MONTREAL, this 17<sup>th</sup> day of July, 2009

PRICEWATERHOUSECOOPERS INC.  
Court Appointed Monitor.



Christian Bourque, CA, CIRP  
Designated Monitor

**Schedule "C"**

Court No.: 15411  
Estate No.: 51-1228301  
Court File No.: B-M-06-09

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF BATHURST

B E T W E E N:

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

- and -

**IN THE MATTER OF THE APPLICATION OF BLUE  
NOTE CARIBOU MINES INC., a body corporate**

- and -

**IN THE MATTER OF THE APPLICATION OF  
PRICEWATERHOUSECOOPERS INC., Trustee in  
Bankruptcy of BLUE NOTE CARIBOU MINES INC.**

- and -

**IN THE MATTER OF AN APPLICATION BY  
BREAKWATER RESOURCES LTD. and CANZINCO  
LTD. FOR VARIOUS ORDERS RELATING TO THE  
STAY OF PROCEEDINGS AGAINST BLUE NOTE  
CARIBOU MINES INC.**

**O R D E R**

UPON APPLICATION of Breakwater Resources Ltd. ("Breakwater") and CanZinco Ltd. ("CanZinco");

UPON READING the Notice of Motion of Breakwater and CanZinco and the Affidavit of David Langille, sworn to herein on the 8th day of December, 2009;

UPON HEARING Stephen J. Hutchison of Stewart McKelvey, counsel for Breakwater and CanZinco;

UPON HEARING \_\_\_\_\_ for Blue Note Caribou Mines Inc.;

UPON HEARING \_\_\_\_\_ for Blue Note Mining Inc.;

UPON HEARING George L. Cooper and Joshua J.B. McElman, counsel for PricewaterhouseCoopers Inc. (“PwC”) acting in its capacity as Monitor in proceedings in respect of Blue Note Caribou Mines Inc. (“Blue Note Caribou”) under the *Companies’ Creditors Arrangement Act* and as Trustee in Bankruptcy of Blue Note Caribou;

UPON HEARING \_\_\_\_\_ for PricewaterhouseCoopers Inc. acting in its capacity as Monitor in proceedings in respect of Blue Note Mining Inc. under the *Companies’ Creditors Arrangement Act*;

UPON HEARING Thomas O’Neil, Q.C. and Melissa Young of McInnes Cooper, counsel for Diorite Securities Limited, as Trustee of Fern Trust;

UPON HEARING Steven L. Graffe and Aaron Collins of Aird & Berlis LLP, counsel for the Senior Secured Noteholders;

UPON HEARING John B.D. Logan and Nathalie LeBlanc, counsel for the Province of New Brunswick;

UPON HEARING Howard A. Gorman and Karl R. Seidenz of Macleod Dixon LLP, counsel for Maple Minerals Corporation;

UPON HEARING Gerald F. Smith, Q.C. of Smith & Smith, counsel for J.S. Redpath Limited and Longyear Canada, ULC and Boart Longyear Alberta Limited, d.b.a. Boart Longyear Canada;

UPON HEARING Euclide LeBouthillier of Doiron LeBouthillier Boudreau Allain, counsel for Atlantic Reproduction Co. Ltd. and K.& M Utility Lines Ltd.;

AND UPON HEARING Eric P. Sonier of Sonier Duguay, counsel for Hachey Construction & Fabrication Ltd.;

WHEREAS a stay of proceedings in favour of Blue Note Caribou has been imposed by virtue of an Initial Order issued on February 20, 2009 (the “Initial Order”) under subsection 11(3) of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “CCAA”), by virtue of further Orders issued on March 20, May 20 and November 13, 2009 under subsection 11(4) of the CCAA (the “Extension Orders”) and by virtue of subsection 69.3(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “BIA”) (hereinafter collectively referred to as the “Stay”);

AND WHEREAS, by e-mail to counsel for Blue Note Caribou and to Robert C. Smith of PwC dated December 2, 2009, a copy of which is attached hereto as Schedule “A”, Breakwater gave notice of its intention to exercise certain Rights of First Refusal contemplated by Articles 14 and 15 of the Joint Venture Agreement in issue in this matter (the “Notice of Intention”);

IT IS HEREBY ORDERED THAT:

- (a) the time for any required service or notice of the Motion be and is hereby abridged and validated such that the Motion is properly returnable today;
- (b) there has been good and sufficient notice, service, and delivery of the within Notice of Motion and further service on any interested party is hereby dispensed with;
- (c) the necessity of filing a Record on Motion is dispensed with;
- (d) the Stay is temporarily lifted for the limited purpose of enabling Breakwater to deliver the Notice of Intention to PwC and Blue Note Caribou; and
- (e) the Stay is lifted for the sole purpose of preserving whatever rights Breakwater may possess pending the ultimate determination thereof by the Court at a hearing currently scheduled for January 12 to 14, 2010.

Dated at Bathurst, New Brunswick this \_\_\_\_ day of December, 2009

.....  
J.C.Q.B.N.B

Schedule "A"

**From:** Stephen J. Hutchison  
**Sent:** Wednesday, December 02, 2009 6:14 PM  
**To:** Cooper, George L. (Moncton); McElman, Josh (NB); robert.smith@ca.pwc.com  
**Cc:** Lesley Duncan; Paul Smith; Dave Langille  
**Subject:** Breakwater Resources Ltd - Blue Note Caribou Mines Inc. CCAA and BIA Proceedings  
**Attachments:** 2Dec2009 Exercise Right of First Refusal.pdf

George, Josh, Bob,

As discussed, please find attached PDF copy of Breakwater's correspondence of today's date signifying its intention to exercise its rights of first refusal. An original copy will be delivered to Mr. Smith's office tomorrow.

Kindly acknowledge receipt on behalf of PricewaterhouseCoopers Inc., Court Appointed Monitor and Trustee in the Bankruptcy of Blue Note Caribou Mines Inc.

Please contact me to finalize arrangements for completion of the sale of the assets to Breakwater. Please advise me if you have any questions arising out of this correspondence.

Best regards,

Steve Hutchison

---

**Stephen J. Hutchison**



Stewart McKelvey | Barristers, Solicitors and Trademark Agents  
Suite 1000 | Brunswick House | 44 Chipman Hill | P.O. Box 7289 | Postal Station A | Saint John NB E2L 4S6 | Web: [www.smss.com](http://www.smss.com)  
Direct Dial: 506.632.2784 | Main Tel: 506.632.1970 | Fax: 506.652.1989 | Email: [shutchison@smss.com](mailto:shutchison@smss.com)



December 2, 2009

**BY EMAIL & DELIVERED**

PricewaterhouseCoopers Inc.  
Trustee in Bankruptcy of Blue Note Caribou Mines Inc.  
Suite 301, 44 Chipman Hall  
Saint John, New Brunswick  
E2L 4B9

Attn: Mr. Robert Smith

**Re: Joint Venture Agreement (the "Joint Venture")  
Exercise of Right of First Refusal**

On November 19, 2009, Breakwater Resources Ltd. ("Breakwater") received certain documents from PricewaterhouseCoopers Inc. acting as monitor and trustee in bankruptcy of Blue Note Caribou Mines Inc. ("Blue Note"). These documents included a Notice of Motion and the affidavit of Robert C Smith sworn November 19, 2009. Included as Exhibit O to the affidavit of Robert C Smith was an offer to purchase the assets of Blue Note by 2190776 Ontario Inc. (the "Third Party Sale").

As acknowledged by PricewaterhouseCoopers Inc. on July 17, 2009 (copy attached), Breakwater obtained a 20% joint venture interest in the assets relating to the Caribou Mine (the "Assets") effective August 29, 2008. The terms of such joint venture are governed by the joint venture agreement forming Exhibit B to the unsecured subordinated convertible debenture of Blue Note dated August 1, 2006 (the "Joint Venture Agreement").

The proposed sale of Blue Note's interest in the Assets pursuant to the Third Party Sale is not in compliance with the terms and conditions of the Joint Venture Agreement and, in particular, we have not received the notices required under Articles 14 and 15 of the Joint Venture Agreement. Notwithstanding such non-compliance, in accordance with its rights under Articles 14 and 15 of the Joint Venture Agreement, Breakwater hereby gives notice of its exercise of its rights of first refusal in respect of the sale of Blue Note's interest in the Assets in accordance with the provisions of the Joint Venture Agreement and the Third Party Sale.



---

Please proceed as soon as possible to complete the sale of the Blue Note's interest in the Assets to us and advise of the closing date. We will advise you shortly as to the entity that will take title.

Yours truly,  
**BREAKWATER RESOURCES LTD.**

A handwritten signature in dark ink, appearing to read "D. Petroff", written over a horizontal line.

David Petroff  
President & Chief Executive Officer

A handwritten signature in dark ink, appearing to read "D. Langille", written in a cursive style.

David Langille  
Vice President, Finance and Chief Financial Officer

PricewaterhouseCoopers Inc.  
1250 René-Lévesque Boulevard  
West  
Suite 2800  
Montreal Quebec  
Canada H3B 2G4  
Phone: +1 (514) 205 5000  
Fax: +1 (514) 205 5694

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL  
N°: 500-11-036722-094

SUPERIOR COURT

IN THE MATTER OF THE PLAN OF ARRANGEMENT  
OF:

Blue Note Mining Inc., a legal person duly constituted under the Canada Business Corporation Act having its head office at 1, Place Ville-Marie, Suite 1511, Montreal, Quebec, H3B 2B5.

1.1 DEBTOR

and

PricewaterhouseCoopers Inc., a corporation having its principal place of business in Quebec at 1250 René-Lévesque Blvd. West, Suite 2800, Montreal, Quebec, H3B 2G4, acting in its capacity of monitor under proceedings pending in respect of Blue Note Mining Inc. under the Companies' Creditors Arrangement Act.

MONITOR

NOTICE OF DISALLOWANCE OF CLAIM  
*(Article 6.3 of the Plan of Arrangement)*

Breakwater Resources Ltd  
950 - 95 Wellington Street West  
Toronto (Ontario) M5J 2N7

We hereby acknowledge receipt of your proof of claim dated July 9, 2009 and received in the above mentioned matter.

We wish to advise you that in accordance with the court order on the Petition to establish a claims and meeting process by the Superior Court of Quebec rendered on June 19, 2009, we hereby disallow in part your proof of claim for the following reasons:

On August 1<sup>st</sup>, 2006, Blue Note Metals Inc. (now Blue Note Mining Inc.) issued an unsecured subordinated convertible debenture in favour of Breakwater Resources Ltd. in the principal amount of \$15 000 000 in lawful money of Canada.

On August 29, 2008, Breakwater Resources Ltd. sent the following letter to Blue Note Mining Inc.:

*"In accordance with Article 3.2(a) of the Debenture, Breakwater Resources Ltd. ("Breakwater") hereby surrenders the Debenture to Blue Note Mining Inc. (formerly, Blue Note Metals Inc.) ("Blue Note") and encloses a written notice, substantially in the form set out in Exhibit A of the Debenture, stating Breakwater's election to exercise its Property Interest Conversion Option (as defined in the Debenture) (the "Notice").*

*By surrendering the Debenture and providing Blue Note and Blue Note Caribou Mines Inc. with the Notice, this shall constitute a contract between Breakwater and Blue Note Caribou Mines Inc. whereby Breakwater and Blue Note Caribou Mines Inc. shall enter into a joint venture agreement pursuant to Section 3.2(b) of the Debenture and Breakwater, subject to receipt of fully executed joint venture agreement, substantially in the form set out in Exhibit B of the Debenture, releases Blue Note and Blue Note Caribou Mines Inc. from all liability under the Debenture.*

*The conversion date shall be such date as described in Section 3.2(c) of the Debenture.*

*Pursuant to Section 3.2(d) of the Debenture, Blue Note and Blue Note Caribou Mines Inc. shall cause title to the Properties to be recorded in Breakwater's name in proportion to Breakwater's Interest (as defined in the Debenture) as soon as practicable after the Date of Property Interest Conversion (as defined in the Debenture). Please provide us with a copy of such title as soon as possible."*

On the same date, Breakwater sent a Notice of exercise of Property Interest Conversion Option stating:

*"The undersigned, the Register Holder of the Unsecured Subordinated Convertible Debenture issued by Blue Note Metals Inc. (now Blue Note Mining Inc.) on August 1, 2006 (the "Debenture") hereby irrevocably elects to convert the indebtedness outstanding under the Debenture into a 20 % interest in the Properties (as defined in the Debenture) in accordance with the terms of the Debenture."*

In view of the above, Breakwater Resources Ltd. cannot claim to be a creditor of Blue Note Mining Inc. in the amount stated in its proof of claim as it can no longer claim the principal value of the Debenture, being \$15 000 000.

The amount claimed by Breakwater Resources Ltd in its proof of claim is therefore reduced to \$923,241.00.

In this regard, we are unable to accept your claim as filed.

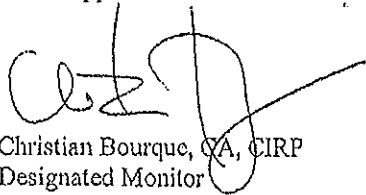


If you wish to contest this Notice of Revision or Disallowance, you must, within ten (10) days of the this Notice, file an appeal motion with the Court and serve a copy of such appeal motion to the Petitioner and the Monitor.

Yours truly,

DATED AT MONTREAL, this 17<sup>th</sup> day of July, 2009

PRICEWATERHOUSECOOPERS INC.  
Court Appointed Monitor.

A handwritten signature in black ink, appearing to read 'Christian Bourque', written over a circular stamp or mark.

Christian Bourque, CA, CIRP  
Designated Monitor

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK  
TRIAL DIVISION  
JUDICIAL DISTRICT OF BATHURST  
B E T W E E N:

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

- and -

**IN THE MATTER OF THE APPLICATION OF BLUE  
NOTE CARIBOU MINES INC., a body corporate**

- and -

**IN THE MATTER OF THE APPLICATION OF  
PRICEWATERHOUSECOOPERS INC., Trustee in  
Bankruptcy of BLUE NOTE CARIBOU MINES INC.**

- and -

**IN THE MATTER OF AN APPLICATION BY  
BREAKWATER RESOURCES LTD. and CANZINCO  
LTD. FOR VARIOUS ORDERS RELATING TO THE  
STAY OF PROCEEDINGS AGAINST BLUE NOTE  
CARIBOU MINES INC.**

## **A F F I D A V I T**

I, David Langille, of the Town of Richmond Hill, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am the Vice President, Finance and Chief Financial Officer of the Applicant, Breakwater Resources Ltd. ("Breakwater"), and Chief Financial Officer and a director of CanZinco Ltd. ("CanZinco") and, as such, have personal knowledge of all matters herein deposed to except where otherwise stated.
2. CanZinco is a wholly owned subsidiary of Breakwater. CanZinco is the previous owner of the Caribou Mine, an underground mining and mineral processing property located 50 km

west of Bathurst, New Brunswick (the "Caribou Mine"), and the Restigouche Mine, an open-pit mining property located in the County of Restigouche, New Brunswick (the "Restigouche Mine"). The Caribou and Restigouche Mines shall hereinafter be collectively referred to as the "Mines".

3. In 2004, CanZinco entered into negotiations for the sale of the Mines to Forest Gate Resources Inc., a predecessor company of Blue Note Metals Inc.

4. By Asset Purchase Agreement dated July 26, 2006, a copy of which is attached hereto and marked as **Exhibit "A"**, CanZinco sold the Mines to Blue Note Metals Inc. [now Blue Note Mining Inc. which shall hereinafter be referred to as "Blue Note"].

5. As part of the consideration for acquiring the Mines and at the direction of CanZinco, Blue Note issued to Breakwater an Unsecured Subordinated Convertible Debenture dated August 1, 2006 in an amount of \$15,000,000.00 CDN. (the "Debenture"), a copy of which is attached hereto and marked as **Exhibit "B"**.

6. Pursuant to Article 3.1(a) of the Debenture, Breakwater was granted an option to convert the Debenture into a twenty percent (20%) interest in the Mines (the "Property Interest Conversion Option").

7. Pursuant to Article 3.2(a) of the Debenture, in order to exercise the Property Interest Conversion Option, Breakwater was required to surrender the Debenture accompanied by written notice stating that it elected to exercise the Property Interest Conversion Option (the "Notice of Exercise of Property Interest Conversion Option"). Pursuant to Article 3.2(b) of the Debenture, the surrender of the Debenture accompanied by the Notice of Exercise of Property Interest Conversion Option was deemed to constitute a contract between Breakwater and Blue Note whereby the parties were required to enter into a joint venture agreement substantially in the form attached to the Debenture. Pursuant to Article 3.2(c) of the Debenture, the date of receipt by Blue Note of the Debenture and the Notice of Exercise of Property Interest Conversion Option would be the "Date of Property Interest Conversion".

8. By "Agreement for Transfer of Caribou and Restigouche Mines" dated June 29, 2007 (but not received by Breakwater until February 28, 2008), a copy of which is attached hereto and

marked as **Exhibit "C"**, Blue Note transferred its interest in the Mines to its subsidiary corporation, Blue Note Caribou Mines Inc. ("Blue Note Caribou").

9. The transfer of the Mines by Blue Note did not affect the Property Interest Conversion Option of Breakwater. In the "Agreement for Transfer of Caribou and Restigouche Mines", Blue Note Caribou specifically acknowledged as follows:

...WHEREAS pursuant to the Debenture, Breakwater has the right to convert the Debenture into a 20% interest in the Mines which, if exercised, would be governed by a joint venture agreement, the form of which is appended to the Debenture (the "JV Agreement");

AND WHEREAS the Mines were purchased by Blue Note on August 1, 2006 and Blue Note has transferred the Mines to Blue Note Caribou Mines Inc. ("NB Caribou"), a wholly-owned subsidiary of Blue Note;

AND WHEREAS this agreement is entered into pursuant to Article 11 of the Debenture;

NOW THEREFORE THIS AGREEMENT WITNESSES that for good and valuable consideration, the receipt and sufficiency of which is acknowledged by the undersigned and, by acceptance of this Agreement, by Breakwater, it is agreed by the undersigned and Breakwater as follows:

...

2. Acknowledgement and Covenant. NB Caribou hereby acknowledges Breakwater's Property Interest Conversion Option rights under the Debenture and hereby covenants to provide Breakwater with the Holder's Interest in the Properties in the event that Breakwater exercises its Property Interest Conversion Option pursuant to Subsection 3.11(a) of the Debenture.

3. JV Agreement. BN Caribou and Blue Note hereby agree that in the event that Breakwater exercises its Property Interest Conversion Option, the JV Agreement will be entered into between BN Caribou and Breakwater and all references in the JV Agreement to Blue Note shall be references to BN Caribou.

10. Breakwater did not consent to the assumption by Blue Note Caribou of the obligation of Blue Note to enter into the Joint Venture Agreement and maintained that the proper party to the Joint Venture Agreement was Blue Note. This was the subject matter of an action commenced by Breakwater as further described in paragraph 12 below.

11. By Notice of Exercise of Property Interest Conversion Option dated August 29, 2008, a copy of which is attached hereto and marked as **Exhibit "D"**, accompanied by the surrender of

the Debenture, Breakwater exercised its Property Interest Conversion Option, thereby acquiring a 20% interest in the Mines. As of this date, pursuant to Article 3.2(b) of the Debenture, Breakwater and Blue Note were deemed to have entered into a Joint Venture Agreement in substantially the form attached to the Debenture (the "Joint Venture Agreement"). Initially, Blue Note took the position that the Joint Venture Agreement should be signed by an authorized signing officer of Blue Note Caribou rather than Blue Note. However, given Breakwater's position that the proper party to the Joint Venture Agreement continued to be Blue Note, an authorized signing officer of Blue Note ultimately signed the Joint Venture Agreement, a copy of which is attached hereto as **Exhibit "E"**.

12. By Notice of Action with Statement of Claim Attached issued on December 9, 2008, a copy of which is attached hereto as **Exhibit "F"**, Breakwater commenced an action against Blue Note and Blue Note Caribou for relief based on, among other things, the failure by Blue Note and Blue Note Caribou to cause title to the Mines to be recorded in Breakwater's name in proportion to Breakwater's interest, and to keep the Mines free and clear of any and all liens and encumbrances.

13. By Statement of Defence and Counterclaim dated January 15, 2009, a copy of which is attached hereto as **Exhibit "G"**, Blue Note and Blue Note Caribou defended this action and counterclaimed against Breakwater. By Amended Notice of Action with Statement of Claim Attached dated January 30, 2009, a copy of which is attached hereto as **Exhibit "H"**, Breakwater amended its Statement of Claim. By Reply and Defence to Counter-claim dated February 6, 2009, a copy of which is attached hereto as **Exhibit "I"**, Breakwater replied to the Statement of Defence and defended the Counterclaim.

14. By Certificates of Pending Litigation dated January 30, 2009 and registered in the Restigouche County Registry on February 2, 2009, copies of which are attached hereto as **Exhibits "J" and "K"** respectively, the Deputy Clerk of the Court of Queen's Bench certified that, in the action instituted by Breakwater, some title or interest in the land on which the Restigouche Mine was located was questioned. By Certificate of Pending Litigation dated January 30, 2009 and registered on the Land Titles Registry on February 2, 2009, a copy of which is attached hereto as **Exhibit "L"**, the Deputy Clerk of the Court of Queen's Bench

certified that, in the action instituted by Breakwater, some title or interest in the land on which the Caribou Mine was located was questioned.

15. In February, 2009, Blue Note Caribou sought protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA"). By Initial Order dated February 20, 2009 (the "Initial Order"), a copy of which is attached hereto as **Exhibit "M"**, the Court of Queen's Bench ordered that, until and including March 22, 2009, any and all proceedings commenced, taken or continued against or in respect of Blue Note Caribou were stayed pursuant to section 11 of the CCAA. Pursuant to paragraph 25 of the Initial Order, PricewaterhouseCoopers Inc. ("PwC") was appointed as Monitor of the business and affairs of Blue Note Caribou.

16. By further Orders dated March 20, 2009, May 20, 2009 and November 13, 2009 (the "Extensions Orders"), copies of which are attached hereto and marked as **Exhibit "N"**, the Court of Queen's Bench extended the CCAA stay termination date for successive periods until May 21, 2010. All of the Extension Orders contained a clause which was the same as, or very similarly worded to that set out below:

Nothing in this order shall give the Monitor, the Applicant or any liquidator the right to sell any real property including mining rights, leases and licences in connection with the Caribou Mine without further order of the Court (on reasonable notice to the Fern Trust, CanZinco Ltd. and Breakwater Resources Ltd.) or without the written consent of the Fern Trust, CanZinco Ltd. and Breakwater Resources Ltd..

17. On July 3, 2009, Blue Note Caribou assigned itself into bankruptcy. By "Order to Continue" dated July 14, 2009, a copy of which is attached hereto and marked as **Exhibit "O"**, the Clerk of the Court of Queen's Bench ordered that the CCAA proceedings be continued with PwC serving as the Applicant in its capacity as Trustee in Bankruptcy of Blue Note Caribou.

18. By Notice of Motion dated July 15, 2009, a copy of which is attached hereto as **Exhibit "P"**, PwC applied for an Order approving a plan for the liquidation of certain personal property of Blue Note Caribou. In support of this motion, PwC filed with the Court the Third Report of the Monitor dated July 15, 2009, a copy of which is attached hereto as **Exhibit "Q"** in which Robert C. Smith of PwC reported to the Court at paragraph 14 that it "is not our intention at this time to sell any real property and this motion does not seek any such authority". By Order dated

July 27, 2009, a copy of which is attached hereto as **Exhibit "R"**, the Court of Queen's Bench ordered at paragraph 4 that PwC be authorized to follow the plan of liquidation as described in the Third Report of the Monitor. Accordingly, a public auction of the assets of Blue Note Caribou consisting of its tangible personal property was scheduled for September 30, 2009.

19. In an Affidavit sworn September 28, 2009 in response to a motion by the Fern Trust for an order delaying the impending sale of the personal property of Blue Note Caribou, a copy of which is attached hereto and marked as **Exhibit "S"**, Robert C. Smith of PwC confirmed that the intention of PwC was not to sell the assets of Blue Note Caribou *en bloc* but, rather, to liquidate these assets on a piece-mail basis. In particular, at paragraphs 4 and 5 of this Affidavit, Mr. Smith stated as follows:

4. As will more fully appear by reference to the three Monitor's reports before the Court, substantial efforts were undertaken in the months since the granting of the initial order of February 20, 2009, with a view to selling all of BNC's assets as a going concern. Those efforts did not result in a sale.

5. Accordingly, as an alternative to selling the assets *en bloc*, it was determined that efforts would be made to liquidate the assets on a piecemeal basis.

20. Pursuant to paragraphs 14 and 15 of the Joint Venture Agreement, Breakwater possesses rights of first refusal (the "Rights of First Refusal") in connection with any proposed sale of the Mines. Specifically, Articles 14.1 and 15.1(b) of the Joint Venture Agreement provide as follows:

14. ASSIGNMENT OF INTEREST – RIGHT OF FIRST REFUSAL

14.1 If a party (hereafter in this subparagraph 14.1 called the "Vendor") shall wish or seek to sell, assign, transfer, convey or otherwise dispose of all or part of its Interest at any time during the currency of this Agreement, the other parties then having an Interest (hereafter in this subparagraph 14.1 called the "Purchasers") shall be entitled to a right of first refusal in respect thereof ...

...

15 Sale of Property – Right of First Refusal

...

15.1...(b) Within 45 days after receipt of the Sale Notice, Breakwater shall have the right (the "Right of First Refusal") to purchase the Property from Blue Note on payment by Breakwater to Blue Note of the same Sale Price that Blue Note

specified in its Sale Notice. Where Breakwater determines to exercise its Right of First Refusal, then, on the Sale Date, Breakwater shall deliver or cause to be delivered to Blue Note payment of the total Sale Price for the Property.

21. As of September 29, 2009, Breakwater did not intend to exercise any right of first refusal over assets which would be sold in a piece-meal manner at a public auction. As of September 29, 2009, it was the understanding of Breakwater that, based on the Order of July 27, 2009, the Extension Orders and the several explicit statements made by Robert Smith, PwC was not seeking to, nor was authorized to, sell or otherwise deal with any of the real property of Blue Note Caribou but, rather, was seeking to liquidate certain personal property of Blue Note Caribou in a piece-meal manner by way of a public auction in accordance with a "liquidation plan".

22. By e-mail dated September 30, 2009, a copy of which is attached hereto as **Exhibit "T"**, counsel for PwC forwarded to counsel for Breakwater a copy of the Interim Report of the Monitor dated September 30, 2009.

23. Despite the fact that the Order of July 27, 2009 and the Extension Orders clearly did not authorize PwC to sell the real estate of Blue Note Caribou and despite the clear statements of Robert C. Smith to the effect that PwC intended to sell only certain personal property of Blue Note Caribou (and not any real estate thereof) and intended to do so in a piece-meal manner at a public auction, the Interim Report nevertheless indicated that, on the day before the public auction was scheduled to occur, PwC had received an offer from a prospective purchaser for the "mine assets" *en bloc* and that PwC had proceeded to negotiate an agreement or agreements with this purchaser. In light of this transaction, the public auction of certain personal property of Blue Note Caribou which had previously been scheduled for September 30, 2009 was apparently cancelled.

24. The Interim Report dated September 30, 2009 did not disclose the identity of the purchaser of the mine assets, the amount of the offer received for the purchase of these assets, any descriptions of the assets which were being sold, the terms or conditions of any sale, the date of any sale, etc.

25. By fax correspondence dated October 22, 2009, a copy of which is attached hereto and marked as **Exhibit "U"**, counsel for PwC forwarded to counsel for Breakwater a copy of the

Affidavit of Robert C. Smith of PwC sworn to on October 22, 2009, which Affidavit was filed with the Court on the issue of costs arising out of a hearing held on September 29, 2009. Attached to this Affidavit was a partial copy of an "Offer to Purchase the Assets of the Blue Note Caribou Mines Inc." (the "Offer"), pursuant to which 2190776 Ontario Inc. (or its nominee) submitted an offer for the bulk purchase of the property of Blue Note Caribou. The partial copy of the Offer did not include any listing of the Stage 1 or Stage 2 Assets which were the subject of the sale. Also attached to the Affidavit was a copy of a "Monitor's and Trustee's Bill of Sale" dated October 6, 2009, pursuant to which Blue Note Caribou purported to sell to 647078 N.B. Ltd. (the "nominee" of 2190776 Ontario Inc.) the property described in Schedule A attached thereto.

26. By e-mail dated November 4, 2009, a copy of which is attached hereto as **Exhibit "V"**, counsel for PwC forwarded to counsel for Breakwater copies of the Notice of Motion for the Third Extension Order, together with the Affidavit of Robert C. Smith sworn on November 4, 2009 in support thereof. Attached to this Affidavit was another copy of the Offer. Once again, this copy of the Offer was incomplete as it did not contain a Schedule of Stage 1 assets.

27. By e-mail dated November 5, 2009, a copy of which is attached hereto as **Exhibit "W"**, counsel for PwC forwarded a copy of the Monitor's Fifth Report to counsel for Breakwater. Attached to this Report was another copy of the Offer. Once again, the copy of the Offer attached to this report was incomplete.

28. By Notice of Motion dated November 19, 2009, a copy of which is attached hereto as **Exhibit "X"**, PwC, acting as court-appointed monitor under the CCAA and as Trustee in Bankruptcy of Blue Note Caribou, applied to the Court for an order approving the agreement dated as of September 30, 2009 (as amended by an extension agreement dated October 7, 2009) whereby Blue Note Caribou agreed to sell the real property associated with the Mines to Maple Minerals Corporation (formerly 647078 N.B. Inc.) (hereinafter the "Approval Order"). In support of this motion, PwC filed with the Court the Affidavit of Robert C. Smith of PwC sworn to on November 19, 2009, a copy of which is attached hereto and marked as **Exhibit "Y"** (without exhibits). A copy of this Affidavit is attached without exhibits due to the voluminous nature of the exhibits. Exhibit "P" to the afore-mentioned Affidavit of Robert Smith appeared to be an Extension Agreement between the Monitor, 2190776 Ontario Inc. and 647078 N.B. Ltd., a

copy of which is attached hereto as **Exhibit "Z"**. Breakwater had no previous notice of the Extension Agreement which contained additional terms and conditions with respect to the sale of the Stage 1 Assets, including the closing date of such sale.

29. The Affidavit of Robert Smith sworn to on November 19, 2009 represented the first disclosure by PwC to Breakwater of the terms of the sale of the assets of Blue Note Caribou to Maple Minerals Corporation in sufficient detail so as to permit Breakwater to make a determination with respect to the exercise of its Rights of First Refusal. Notwithstanding this, at no time prior to and including the present date has Breakwater received the formal notices contemplated by Articles 14 and 15 of the Joint Venture Agreement which provide as follows:

14.1...(a) The Vendor shall give written notice (hereafter called the "Offering Notice") to the Purchasers of the Vendor's desire to sell. The Offering Notice shall describe the Interest or part thereof that is offered for sale, and shall also state the bona fide consideration and other terms on which the sale is desired to be made by the Vendor ...

...

15.1 At any time during the subsistence of this Agreement during which Blue Note holds a majority Interest in the Properties, Blue Note may sell or transfer the Property to a third party (the "Assignee"), provided that Blue Note gives notice (the "Sale Notice") to Breakwater of its intention to sell or transfer the Property to the Assignee. Such Sale Notice shall set forth the cash price at which Blue Note is prepared to sell or transfer the Property (the "Sale Price"), any other applicable terms and conditions, and the proposed date of the sale (the "Sale Date"). ...

30. The hearing of the motion for the Approval Order was scheduled for December 11, 2009. A pre-motion conference was arranged for December 1, 2009. By e-mail dated November 20, 2009, a copy of which is attached hereto and marked as **Exhibit "AA"**, counsel for Breakwater informed the Court that he would not be in a position to file any documents or motions on behalf of Breakwater prior to the December 1 conference as he would be away from the office the following week in a remote location and would not be able to obtain instructions from Breakwater until he returned on November 30, 2009.

31. On or about November 30, 2009, Breakwater determined that it would exercise its Rights of First Refusal pursuant to Articles 14.1 and 15.1 of the Joint Venture Agreement and would oppose the motion for the Approval Order. During the conference call on December 1, 2009, Mr. Hutchison advised the Court of Breakwater's position in this regard. By e-mail to counsel

for Blue Note Caribou and to Robert C. Smith of PwC dated December 2, 2009, a copy of which is attached hereto as **Exhibit "BB"**, counsel for Breakwater attached a PDF copy of correspondence in which Breakwater signified its intention to exercise its Rights of First Refusal.

32. PwC has taken the position that Breakwater is prohibited or stayed by virtue of the Initial or Extension Orders issued under the CCAA and/or the provisions of the BIA from exercising its Rights of First Refusal pursuant to the Joint Venture Agreement. Accordingly, Breakwater seeks an Order of this Honourable Court declaring that it was entitled to give notice of its intention to exercise its Rights of First Refusal or, alternatively, an order retroactively validating its giving of this notice or, in the further alternative, an order partially lifting the stay so as to enable it to give this notice.

33. In seeking this relief, Breakwater is seeking solely to give notice to PwC and Blue Note Caribou of its intention to exercise its Rights of First Refusal pursuant to Articles 14.1 and 15.1 of the Joint Venture Agreement for the purpose of preserving whatever rights the Court may ultimately determine it has pending a determination thereof at a hearing which is now scheduled for January 12-14, 2010.

34. In the event that the relief sought in the within motion is not granted, Breakwater would be deprived of its rights under the Debenture and Joint Venture Agreement and would thereby be irreparably prejudiced.

35. I make this Affidavit in support of a motion for an order declaring that Breakwater is not prohibited or stayed from exercising its Rights of First Refusal pursuant to Articles 14 and 15 of the Joint Venture Agreement. Alternatively, I make this Affidavit in support of an Order retroactively validating the exercise by Breakwater of its Rights of First Refusal during the period of the stay or, in the further alternative, temporarily or partially lifting any stay which might exist in favour of Blue Note Caribou so as to enable Breakwater to take whatever steps are necessary in order to exercise its Rights of First Refusal.



This is Exhibit "A" to the Affidavit of David Langille sworn to on the 8<sup>th</sup> day of December 2009.

*Joan E. Oset.*

**COPY:**

CANZINCO LTD.

- and -

BLUE NOTE METALS INC.

---

ASSET PURCHASE AGREEMENT

---

DATED July 26, 2006

Jean E Fiset

WITHOUT PRIOR WRITTEN APPROVAL OF THE TSX VENTURE EXCHANGE AND COMPLIANCE WITH ALL APPLICABLE SECURITIES LEGISLATION, THE SECURITIES REPRESENTED BY THIS DEBENTURE AND ANY SHARES ACQUIRED UPON THE CONVERSION OF THE DEBENTURE MAY NOT BE SOLD, TRANSFERRED, HYPOTHECATED OR OTHERWISE TRADED ON OR THROUGH THE FACILITIES OF THE TSX VENTURE EXCHANGE OR OTHERWISE IN CANADA OR TO OR FOR THE BENEFIT OF A CANADIAN RESIDENT UNTIL DECEMBER 2, 2006.

UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE DECEMBER 2, 2006.

BLUE NOTE METALS INC.  
2, Place Alexis-Nihon, 3500 de Maisonneuve West  
Suite 1110  
Montreal, Quebec  
H3Z 3C1

#### UNSECURED SUBORDINATED CONVERTIBLE DEBENTURE

Principal CDN\$15,000,000

August 1, 2006

FOR VALUE RECEIVED, Blue Note Metals Inc. (the "Corporation"), promises to pay to or to the order of Breakwater Resources Ltd. (the "Holder") at 95 Wellington Street West, Suite 950, Toronto, Ontario M5J 2N7, or such other place and/or person as the Holder may by notice in writing to the Corporation direct, the principal sum of FIFTEEN MILLION DOLLARS in lawful money of Canada (CDN\$15,000,000) (the "Principal Amount"). Subject to the provisions of this debenture (this "Debenture"), the Principal Amount shall become due and payable on August 1, 2011 (the "Maturity Date").

This Debenture is subject to the terms and conditions set out below.

#### ARTICLE I

#### INTERPRETATION

##### 1.1 Definitions

As used herein, the following expressions shall have the following meanings:

- (a) "Affiliate" has the meaning attributed to it in the *Canada Business Corporations Act*, as amended.
- (b) "Amendment" has the meaning ascribed thereto in Subsection 8.2(c).
- (c) "Approvals" has the meaning ascribed thereto in Subsection 8.2(c).
- (d) "Assignee" has the meaning ascribed thereto in Section 10.2.

*Jean E. Inset*

*Blakes*

Blake, Cassels & Graydon LLP  
Barristers & Solicitors  
Patent & Trade-mark Agents  
199 Bay Street  
Suite 2800, Commerce Court West  
Toronto ON M5L 1A9 Canada  
Tel: 416-863-2400 Fax: 416-863-2653

February 28, 2008

Michael J. Fabbri  
Dir: 416-863-3054  
michael.fabbri@blakes.com

VIA MESSENGER

Reference: 70010/1

Mr. George E. Pirie  
President and Chief Executive Officer  
Breakwater Resources Ltd.  
95 Wellington Street West  
Suite 950  
Toronto, Ontario  
M5J 2N7

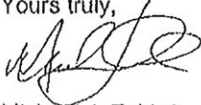
Dear Mr. Pirie:

Reference is made to the convertible debenture dated August 1, 2006 (the "**Convertible Debenture**") issued by Blue Note Mining Inc. ("**Blue Note**") in favour of Breakwater Resources Inc. ("**Breakwater**"). All capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Convertible Debenture.

We are writing to inform you that on June 29, 2007, Blue Note transferred the Caribou and Restigouche mines to Blue Note Caribou Mines Inc. ("**BNC**"), its wholly-owned subsidiary. In accordance with Section 11.1 of the Convertible Debenture, please find enclosed one original executed copy of the agreement between Blue Note and BNC whereby, among other things, BNC acknowledges Breakwater's Property Interest Conversion Option.

Please do not hesitate to contact the undersigned should you have any questions.

Yours truly,



Michael J. Fabbri

Encl.

cc: Frank Guarascio, *Blake, Cassels & Graydon LLP* (via e-mail)  
Jean Mayer, *Blue Note Mining Inc.* (via e-mail)

This is Exhibit "D" to the Affidavit of David Langille sworn to on the 8<sup>th</sup> day of December 2009.

Joan E Inset

**NOTICE OF EXERCISE OF PROPERTY INTEREST**  
**CONVERSION OPTION**


TO: Blue Note Mining Inc. (formerly, Blue Note Metals Inc.)  
AND TO: Blue Note Caribou Mines Inc.

The undersigned, the registered Holder of the Unsecured Subordinated Convertible Debenture issued by Blue Note Metals Inc. (now Blue Note Mining Inc.) on August 1, 2006 (the "Debenture") hereby irrevocably elects to convert the indebtedness outstanding under the Debenture into a 20% interest in the Properties (as defined in the Debenture) in accordance with the terms of the Debenture.

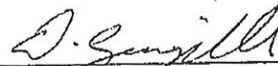
DATED this 29<sup>th</sup> day of August, 2008.

**BREAKWATER RESOURCES LTD.**

Per:

  
Name: George E. Pirie  
Title: President and Chief Executive Officer

Per:

  
Name: David C. Langille  
Title: Vice-President, Finance and Chief  
Financial Officer

*John S. Fiset*

## JOINT VENTURE AGREEMENT

THIS AGREEMENT made the 17<sup>th</sup> day of October, 2008

BETWEEN: **BREAKWATER RESOURCES LTD.**, a corporation incorporated under the laws of Canada and having its executive offices at 95 Wellington Street West, Suite 950, Toronto, Ontario, M5J 2N7;

(hereinafter called "Breakwater")

OF THE FIRST PART

AND: **BLUE NOTE MINING INC.**, a corporation incorporated under the laws of Canada and having its head office at 1 Place Ville-Marie, Suite 2125, Montreal, Québec, H3B 2C6;

(hereinafter referred to as "Blue Note")

OF THE SECOND PART

---

WHEREAS pursuant to a subordinated convertible debenture dated August 1, 2006 (the "Blue Note Debenture"), Blue Note is indebted to Breakwater;

WHEREAS under Section 3.1 of the Blue Note Debenture, Breakwater has an option (the "Property Interest Conversion Option") to convert the Blue Note Debenture in exchange for a twenty percent (20%) Interest in and to the Property;

WHEREAS Breakwater has exercised its Property Interest Conversion Option and, as required under Section 3.2 of the Blue Note Debenture, the parties have agreed to form a joint venture to further explore and develop the Property, all upon and subject to the terms and conditions set out in this Agreement;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

### 1. INTERPRETATION

1.1 In this Agreement the following words, phrases and expressions shall have the following meanings:

(a) "Accounting Procedure" means the procedure attached to this Agreement as Appendix I.

(b) "Additional Environmental Protection Deposit" means any additional environmental protection deposits required by the Department of

*Jean E. Insel.*

Cause No.: S/C/684/08  
Numéro de Cause:

IN THE COURT OF QUEEN'S BENCH OF  
NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF SAINT JOHN

B E T W E E N:

**BREAKWATER RESOURCES LTD.**

Plaintiff

- and -

**BLUE NOTE MINING INC. and BLUE  
NOTE CARIBOU MINES INC.**

Defendants

**NOTICE OF ACTION WITH  
STATEMENT OF CLAIM ATTACHED  
(FORM 16A)**

TO: Blue Note Mining Inc.  
1 Place Ville Marie, Suite 2125  
Montreal, PQ H3B 2C6

TO: Blue Note Caribou Mines Inc.  
9361 Route 180, P.O. Box/C.P. 26  
Bathurst, NB E2A 3Z1

LEGAL PROCEEDINGS HAVE BEEN  
COMMENCED AGAINST YOU BY  
FILING THIS NOTICE OF ACTION WITH  
STATEMENT OF CLAIM ATTACHED

If you wish to defend these  
proceedings, either you or a New Brunswick  
lawyer acting on your behalf must prepare  
your Statement of Defence in the form

COUR DU BANC DE LA REINE DU  
NOUVEAU-BRUNSWICK

DIVISION DE PREMIERE INSTANCE

CIRCONSCRIPTION JUDICIAIRE DE

E N T R E:

demandeur(s)

- et -

**AVIS DE POURSUITE  
ACCOMPAGNÉ D'UN EXPOSÉ DE  
LA DEMANDE  
(FORMULE 16A)**

À:

PAR LE DÉPÔT DU PRÉSENT AVIS DE  
POURSUIITE ACCOMPAGNÉ D'UN  
EXPOSÉ DE LA DEMANDE, UNE  
POURSUIITE JUDICIAIRE A ÉTÉ  
ENGAGÉE CONTRE VOUS.

Si vous désirez présenter une  
défense dans cette instance, vous-même ou  
un avocat du Nouveau-Brunswick chargé  
de vous représenter devrez rédiger un



This is Exhibit "H" to the Affidavit of David Langille sworn to on the 8<sup>th</sup> day of December 2009.

Joan E. Esset.

Cause No.: S/C/684/08  
Numéro de Cause:

IN THE COURT OF QUEEN'S BENCH OF  
NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF SAINT JOHN

B E T W E E N:

**BREAKWATER RESOURCES LTD.**

Plaintiff

- and -

**BLUE NOTE MINING INC. and BLUE  
NOTE CARIBOU MINES INC.**

Defendants

COUR DU BANC DE LA REINE DU  
NOUVEAU-BRUNSWICK

DIVISION DE PREMIERE INSTANCE

CIRCONSCRIPTION JUDICIAIRE DE

E N T R E:

demandeur(s)

- et -

défendeur(s)

**AMENDED NOTICE OF ACTION  
WITH STATEMENT OF CLAIM  
ATTACHED  
(FORM 16A)**

TO: Blue Note Mining Inc.  
1 Place Ville Marie, Suite 2125  
Montreal, PQ H3B 2C6

TO: Blue Note Caribou Mines Inc.  
9361 Route 180, P.O. Box/C.P. 26  
Bathurst, NB E2A 3Z1

LEGAL PROCEEDINGS HAVE BEEN  
COMMENCED AGAINST YOU BY  
FILING THIS NOTICE OF ACTION WITH  
STATEMENT OF CLAIM ATTACHED

If you wish to defend these  
proceedings, either you or a New Brunswick  
lawyer acting on your behalf must prepare  
your Statement of Defence in the form

**AVIS DE POURSUITE  
ACCOMPAGNÉ D'UN EXPOSÉ DE  
LA DEMANDE  
(FORMULE 16A)**

À:

PAR LE DÉPÔT DU PRÉSENT AVIS DE  
POURSUIITE ACCOMPAGNÉ D'UN  
EXPOSÉ DE LA DEMANDE, UNE  
POURSUIITE JUDICIAIRE A ÉTÉ  
ENGAGÉE CONTRE VOUS.

Si vous désirez présenter une  
défense dans cette instance, vous-même ou  
un avocat du Nouveau-Brunswick chargé  
de vous représenter devrez rédiger un

Court File No: S/C/684/08

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK  
TRIAL DIVISION  
JUDICIAL DISTRICT OF SAINT JOHN  
BETWEEN:

This is Exhibit "I" to the Affidavit of  
David Langille sworn to on the 8<sup>th</sup> day of  
December 2009.

*Jean E. Fret*

**BREAKWATER RESOURCES LTD.**

COURT OF QUEEN'S BENCH  
CLERK / SAINT JOHN

**Plaintiff**

REC'D  
REC'D

FEB 6 2009

FILED  
DEPOSE

- and -

**BLUE NOTE MINING INC. and BLUE NOTE  
CARIBOU MINES INC.**

COURT DU BANC DE LA REINE  
CLERK / SAINT-JEAN

**Defendants**

**REPLY AND DEFENCE TO COUNTER-CLAIM**

(Forms 27B and 27D)

**REPLY**

(Form 27B)

1. The Plaintiff admits the allegations contained in paragraphs 1, 5 and 10 of the Statement of Defence.
2. The Plaintiff denies all other paragraphs of the Statement of Defence except to the extent detailed herein.
3. As to the whole of the Statement of Defence, the Plaintiff refers to the allegations set out in its Amended Statement of Claim and utilizing the defined terms as set out in its Amended Statement of Claim, states as follows:

(A) The Alleged Transfer of Obligations under the Debenture, the Marketing Agreement and the Joint Venture Agreement from Blue Note to Blue Note Caribou

- (i) Breakwater denies that the obligations of Blue Note under the Debenture, the Marketing Agreement and the Joint Venture Agreement were transferred to Blue Note Caribou and states that the Transfer Agreement between Blue Note and Blue Note Caribou did not effect a transfer of the obligations of Blue Note to Blue Note Caribou under these agreements;
- (ii) Breakwater repeats the allegations contained in paragraph 13-16 of its Amended Statement of Claim and states that the Transfer Agreement did

26778978  
- 2 FEV. 2009  
9:56.

Court File No.: S/C/684/08

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK  
TRIAL DIVISION  
JUDICIAL DISTRICT OF SAINT JOHN  
BETWEEN:

This is Exhibit "J" to the Affidavit of David Langille sworn to on the 8<sup>th</sup> day of December 2009.

*John E. Inset.*

**BREAKWATER RESOURCES LTD.**

Plaintiff

- and -

**BLUE NOTE MINING INC. and BLUE NOTE  
CARIBOU MINES INC.**

Defendants

**CERTIFICATE OF PENDING LITIGATION  
(FORM 42A)**

I certify that, in this proceeding, some title or interest in the following land is questioned:

Property identified by Parcel Identifier Number (PID) 50252766, which property is more particularly described in Schedule "A" hereto.

Dated at Saint John, New Brunswick this 30<sup>th</sup> day of January, 2009



*J. Benoit*

Deputy CLERK  
Clerk of the Court of Queen's Bench  
of New Brunswick  
Saint John Provincial Building  
110 Charlotte Street  
Saint John, New Brunswick, E2L 1J3

I certify that this instrument  
is registered or filed in the  
Restigouche County Registry  
Office, New Brunswick  
- 2 FEV. 2009

J'atteste que cet instrument est  
enregistré ou déposé au bureau  
d'enregistrement du comté de  
Restigouche, Nouveau-Brunswick

date

26778978

Number - numéro

*Amylaine Benoit*

Deputy Registrar - Conservateur Adjuvé

time-heure

9:56

26778945  
- 2 FEV. 2009  
9:55

Court File No.: S/C/684/08

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK TRIAL DIVISION  
JUDICIAL DISTRICT OF SAINT JOHN  
BETWEEN:

This is Exhibit "K" to the Affidavit of David Langille sworn to on the 8<sup>th</sup> day of December 2009.

*Jean E. Dinet.*

**BREAKWATER RESOURCES LTD.**

Plaintiff

- and -

**BLUE NOTE MINING INC. and BLUE NOTE  
CARIBOU MINES INC.**

Defendants

**CERTIFICATE OF PENDING LITIGATION  
(FORM 42A)**

I certify that, in this proceeding, some title or interest in the following land is questioned:

Property identified by Parcel Identifier Number (PID) 50237924, which property is more particularly described in Schedule "A" hereto.

Dated at Saint John, New Brunswick this 30<sup>th</sup> day of January, 2009



*J. Ripley*  
Deputy / CLERK  
Clerk of the Court of Queen's Bench  
of New Brunswick  
Saint John Provincial Building  
110 Charlotte Street  
Saint John, New Brunswick, E2L 1J3

I certify that this instrument  
is registered or filed in the  
Restigouche County Registry  
Office, New Brunswick

J'atteste que cet instrument est  
enregistré ou déposé au bureau  
d'enregistrement de comté de  
Restigouche, Nouveau-Brunswick

2 FEV. 2009

9:55

date

time-heure

26778945

Number - numéro

*Amelaine Baroet*

Deputy Registrar - Conservateur Adjoint

26778903

- 2 FEB. 2009

9:53

This is Exhibit "L" to the Affidavit of David Langille sworn to on the 8<sup>th</sup> day of December 2009.

**CERTIFICATE OF PENDING LITIGATION**

**FORM 33**

(Land Titles Act, S.N.B. 1981, c. I-1.1, s. 38)

*Jean E. Fiset*

**Parcel Identifier:** 50072032  
**Court:** Court of Queen's Bench of New Brunswick  
Trial Division, Judicial District of Saint John  
**Court File Number:** S/C/684/08  
**Style of Proceeding:** Breakwater Resources Ltd. v. Blue Note Mining Inc. and  
Blue Note Caribou Mines Inc.

I certify that, in this proceeding, some title or interest in the specified parcel is questioned.

Dated at Saint John, New Brunswick this 30<sup>th</sup> day of January, 2009



*J. Bishop*

Deputy CLERK  
Clerk of the Court of Queen's Bench  
of New Brunswick  
Saint John Provincial Building  
110 Charlotte Street  
Saint John, New Brunswick E2L 1J3

*Jean E Inet*

Court File No.: S/M/15/09

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF SAINT JOHN

BETWEEN:

COURT OF QUEEN'S BENCH  
CLERK / SAINT JOHN

REC'D  
REC'D  
FEB 20 2009  
FILED  
DEPOSE

COUR DU BANC DE LA REINE  
GREFFIER / SAINT-JEAN

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

and

IN THE MATTER OF THE  
APPLICATION OF BLUE NOTE  
CARIBOU MINES INC., a body corporate

INITIAL ORDER

UPON APPLICATION of Blue Note Caribou Mines Inc. (the "Applicant") for an Order substantially in the form attached as Schedule "A" to the Notice of Application herein; and

UPON READING the Notice of Application, the Affidavit of Michael Judson sworn February 18, 2009, the Affidavit of Robert Smith sworn February 19, 2009, and the consent of PricewaterhouseCoopers Inc. ("PWC") to act as proposed Monitor of the Applicant; and

UPON HEARING, Frederick A. Welsford and Timothy M. Hopkins, Counsel for the Applicant.

IT IS ORDERED THAT:

1. The time for any required service or notice of the Application herein be and it is hereby abridged and validated such that the Application is properly returnable today and further that any requirement for service of the Application herein upon any interested party is hereby dispensed with.
2. The Applicant is a company to which the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 applies.

*15225*



I certify that this is a true copy of the original on file in the Court Office, Judicial District of Saint John dated this 21<sup>st</sup> day of February, 2009  
*Edward Joas*  
Edward Joas, under written authorization of The Registrar dated the 21<sup>st</sup> day of December 2007

*Jean E. Fiset*

I certify that this document, each page of which has been initiated by me, is a true copy of the original on file in the office of the Court for the Judicial District of Bathurst issued under the seal of the Court.  
Court File Number B-M-06-09  
this 20 day of March 20 09.



IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK  
TRIAL DIVISION  
JUDICIAL DISTRICT OF BATHURST

*Donna Lagace*  
Donna Lagace  
Under written authorization of the Registrar dated the 7<sup>th</sup> day of September 2007

RECEIVED AND FILED  
REÇU ET DÉPOSÉ

MAR 20 2009

COURT SERVICES  
SERVICE AUX TRIBUNAUX  
BATHURST, NB

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

- and -

IN THE MATTER OF THE APPLICATION  
OF BLUE NOTE CARIBOU MINES INC., a  
body corporate

**ORDER**

UPON reading the Notice of Motion of the Applicant filed March 18, 2009, the affidavits of Michael Judson sworn February 18, 2009 and March 16, 2009 and the affidavit of Robert Smith sworn March 16, 2009;

UPON HEARING Frederick A. Welsford and Timothy M. Hopkins, counsel for the Applicant;

UPON HEARING John B. D. Logan, counsel for the Province of New Brunswick;

UPON HEARING Steven L. Graff, counsel for the Senior Secured Noteholders;

UPON HEARING Stephen J. Hutchison, counsel for CanZinco Ltd. and Breakwater Resources Ltd.;

IT IS ORDERED THAT:

1. All terms defined in this Court's Initial Order dated February 20, 2009, (the "Initial Order"), shall have the same meaning when used in this order.
2. The time for any required service or notice of the Motion herein be and it is hereby abridged and validated such that the Motion is properly returnable today.
3. There has been good and sufficient notice, service and delivery of the within Notice of Motion and further service on any interested party is hereby dispensed with.

*Jean E. Frost*

Cause No. B/M/06/09

**IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK  
TRIAL DIVISION  
JUDICIAL DISTRICT OF BATHURST**

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

**-and-**

**IN THE MATTER OF THE APPLICATION OF  
BLUE NOTE CARIBOU MINES INC., a body  
corporate**

**ORDER TO CONTINUE  
(Form 13A)**

Upon the request of Robert C. Smith, Senior Vice President of PricewaterhouseCoopers Inc., and it appearing by the affidavit of Robert C. Smith sworn on the 13<sup>th</sup> day of July, 2009, that on the 3<sup>rd</sup> day of July, 2009 the applicant Blue Note Caribou Mines Inc. made an assignment into bankruptcy;

IT IS ORDERED that this proceeding be continued with PricewaterhouseCoopers Inc., Trustee in Bankruptcy of Blue Note Caribou Mines Inc. as Applicant, and all future documents in this proceeding shall so be styled.

DATED at Bathurst, New Brunswick, this 14<sup>th</sup> day of July, 2009, A.D. 2009.

*R. Robb*  
Deputy - Clerk of the Court

Jean E. Dinet

Court File No. B-M-06-09

IN THE COURT OF QUEEN'S BENCH OF  
NEW BRUNSWICK

COUR DE BANC DE LA REINE DU  
NOUVEAU-BRUNSWICK

TRIAL DIVISION

DIVISION DE PREMIERE INSTANCE

JUDICIAL DISTRICT OF BATHURST

CIRCONSCRIPTION JUDICIAIRE DE  
BATHURST

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

ENTRE:

- and -

Demandeur,

**IN THE MATTER OF THE APPLICATION  
OF PRICEWATERHOUSECOOPERS INC.,  
Trustee in Bankruptcy of BLUE NOTE  
CARIBOU MINES INC.,**

- et -

Defendeur.

**NOTICE OF MOTION  
(FORM 37A)**

**AVIS DE MOTION  
(FORMULE 37A)**

TO: All secured and unsecured creditors of  
Blue Note Caribou Mines Inc., (the  
"Company")

DESTINAIRE:

The Applicant will apply to the Court at 254 St.  
Patrick Street, Bathurst, NB, on the 27th day of  
July, 2009, at 1:30 p.m. for an order,  
substantially in the form attached as Appendix  
"A", providing for, *inter alia*:

Le demandeur (ou selon le cas) demandera à  
..... (lieu précis) ....., le  
..... 20 ....., à ..... h ....., d'ordonner  
(indiquer l'ordonnance demandée, les motifs à  
discuter et les renvois aux dispositions  
législatives ou règles qui seront invoquées);

- (a) if necessary, the abridgement of time for service of this motion, excusing the lack of service of this motion, pursuant to Rules 1.03, 2.01, 2.02 and 3.02 of the Rules of Court;
- (b) approving a plan proposed by the Monitor for liquidation of certain of the assets consisting of personal property;
- (c) approving the proposed distribution of sale proceeds with respect to the

John S. Smith

Court File Number B-M-06-09

**IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK  
TRIAL DIVISION  
JUDICIAL DISTRICT OF BATHURST**

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

- and -

**IN THE MATTER OF THE APPLICATION  
OF PRICEWATERHOUSE COOPERS INC.,  
Trustee in Bankruptcy of BLUE NOTE  
CARIBOU MINES INC.,**

THIRD REPORT OF THE MONITOR  
July 15, 2009

I, ROBERT C. SMITH, of the Town of Rothesay, County of Kings, Judicial District of Saint John, and Province of New Brunswick, MAKE OATH AND REPORT TO THE COURT THAT:

1. I am a Chartered Accountant, licensed Trustee in Bankruptcy, and Senior Vice-President of PricewaterhouseCoopers Inc. ("PWC") and have personal knowledge of the matters hereinafter deposed to, except where otherwise stated, and in such cases I do verily believe the truth of the contents deposed to;
2. PWC was appointed Monitor of Blue Note Caribou Mines Inc. ("BNCM" or the "Company") on February 20, 2009 by Order of the Court issued that date (the "Initial Order");

N

Jean E. Fiset

Court File No. B-M-06-09

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF BATHURST

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

- and -

IN THE MATTER OF THE APPLICATION OF  
PRICEWATERHOUSE COOPERS INC., Trustee  
in Bankruptcy of BLUE NOTE CARIBOU  
MINES INC., a body corporate

ORDER

UPON READING the Notice of Motion of PricewaterhouseCoopers Inc., Trustee in Bankruptcy of Blue Note Caribou Mines Inc. (the "Applicant") filed July 16, 2009 (the "Motion"), and the Third Report of the Monitor dated July 15, 2009;

UPON HEARING Frederick A. Welsford and Timothy M. Hopkins, Counsel for the Applicant;

UPON HEARING John B.D. Logan, Counsel for the Province of New Brunswick;

UPON HEARING Steven L. Graff, Counsel for the Senior Secured Noteholders;

UPON HEARING Stephen J. Hutchison, counsel for CanZinco Ltd. and Breakwater Resources Ltd.;

UPON HEARING Gerald F. Smith, Q.C., counsel for Norat Longyear Canada, and J. S. Redpath Limited;

UPON HEARING Melissa Young, counsel for The Fern Trust;

AND UPON HEARING Robert C. Smith, of PricewaterhouseCoopers Inc., the Court appointed Monitor in this matter;

IT IS ORDERED THAT:

Juan E. Eiset

Court File Number B-M-06-09

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF BATHURST

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

- and -

IN THE MATTER OF THE APPLICATION OF  
PRICEWATERHOUSE COOPERS INC., Trustee  
in Bankruptcy of BLUE NOTE CARIBOU MINES  
INC., a body corporate,

AFFIDAVIT

I, ROBERT C. SMITH, of Rothesay in the County of Kings and Province of New Brunswick, DO HEREBY MAKE OATH AND SAY AS FOLLOWS:

1. I am a chartered accountant, trustee in bankruptcy and senior vice president of PricewaterhouseCoopers Inc., ("PWC"), court appointed Monitor in this matter and trustee in bankruptcy of Blue Note Caribou Mines Inc., ("BNC").
2. I have read the affidavits of Mr. Miller and Ms. Young each dated September 27, 2009.
3. Counsel for the Fern Trust, Melissa Young, participated in the proceedings and made submissions at the hearings in this matter that led to the Court's orders attached to Ms. Young's September 27, 2009 affidavit as Exhibits 24 and 28. I was present at those hearings and Fern Trust's submissions related to changes in the wording of the orders relating to disposition of real property rights. It was my understanding that Fern Trust was otherwise consenting to the orders sought.
4. As will more fully appear by reference to the three Monitor's reports before the Court, substantial efforts were undertaken in the months since the granting of the initial order of February 20, 2009, with a view to selling all of BNC's assets as a going concern. Those efforts did not result in a sale.
5. Accordingly, as an alternative to selling the assets *en bloc*, it was determined that efforts would be made to liquidate the assets on a piecemeal basis.
6. The plan to liquidate the assets was more fully set forth in the material in support of the

R

*Jean S. Eset.*

---

**From:** Tim Hopkins [tmh@gormannason.com]  
**Sent:** Wednesday, September 30, 2009 11:05 AM  
**To:** sgraff@airdberlis.com; john.logan@gnb.ca; gcooper@coxandpalmer.com; MGottlieb@dwpv.com; Stephen J. Hutchison; euclide.dllb@nb.aibn.com; jdelaney@nb.aibn.com  
**Subject:** Monitor's Report  
**Attachments:** Monitor report Sep.30 09.pdf

Counsel,

Attached please find the Monitor's report, dated September 30, 2009, which has been filed with the Court.

Tim Hopkins

\_\_\_\_\_ Information from ESET NOD32 Antivirus, version of virus signature database 4470 (20090930)  
\_\_\_\_\_

The message was checked by ESET NOD32 Antivirus.

<http://www.eset.com>



This is Exhibit "U" to the Affidavit of David Langille sworn to on the 8<sup>th</sup> day of December 2009.

*Joan E. Fiset.*

## FACSIMILE TRANSMISSION

To:	Attention:	Fax number:
Clerk of the Court	Donald C. Arseneau	1-506-547-2966
Cox & Palmer	George L. Cooper	506-856-8150
McInnes Cooper	Thomas G. O'Neil, Q.C.	506-643-6505
Davis Ward Phillips & Vineberg LLP	Matthew P. Gottlieb	416-863-0871
Aird & Berlis LLP	Steven L. Graffe	416-863-1515
Aird & Berlis LLP	Aaron Collins	416-863-1515
PricewaterhouseCoopers Inc.	Robert Smith	(506) 653-8997
Department of Justice	John B.D. Logan	506) 453-3275
Stewart McKelvey	Stephen J. Hutchinson	(506) 634-3579

From: Frederick A. Welsford  
(direct line (506) 636-7325)

Date: October 22, 2009  
Sent from: (506) 634-8685

Re: Blue Note Mining

Pages sent: 83 (including this page)

Fax operator: Kate

**Message:** Please see attached.

121 Germain Street, P.O. Box 7286, Station "A", Saint John, New Brunswick, Canada E2L 4S6

*In the event of transmission problems, please contact the fax operator noted above. This transmission consists of privileged and/or confidential information destined only for the above noted recipient. If you have received this transmission in error, please notify our office immediately and destroy any documents received.*

This is Exhibit "V" to the Affidavit of David Langille sworn to on the 8<sup>th</sup> day of December 2009.

*Joan E Fiset*

---

**From:** Tim Hopkins [tmh@gormannason.com]  
**Sent:** Wednesday, November 04, 2009 3:19 PM  
**To:** sgraff@airdberlls.com; melissa.young@mcinnescooper.com; john.logan@gnb.ca; Stephen J. Hutchison; gcooper@coxandpalmer.com; jmcelman@coxandpalmer.com; euclide.dlib@nb.aibn.com; sslawgs@nb.aibn.com; jdelaney@nb.aibn.com  
**Cc:** 'Fred Welsford'  
**Subject:** Blue Note Caribou Mines  
**Attachments:** Blue Note Third Extension.pdf

Counsel

Attached please find a Notice of Motion and supporting affidavit.

Tim Hopkins

\_\_\_\_\_ Information from ESET NOD32 Antivirus, version of virus signature database 4573 (20091104)  
\_\_\_\_\_

The message was checked by ESET NOD32 Antivirus.

<http://www.eset.com>

12/7/2009

*Jean E Eset*

---

**From:** Tim Hopkins [tmh@gormannason.com]  
**Sent:** Thursday, November 05, 2009 2:23 PM  
**To:** sgraff@airdberlis.com; Stephen J. Hutchison; melissa.young@mcinnescooper.com; john.logan@gnb.ca; gcooper@coxandpalmer.com; sslawgs@nb.aibn.com; jdelaney@nb.aibn.com; euclide.dllb@nb.aibn.com  
**Subject:** Blue Note Caribou Mines  
**Attachments:** Monitor's Fifth Report.pdf

Counsel

Attached please find the Monitor's Fifth Report.

Tim Hopkins

\_\_\_\_\_ Information from ESET NOD32 Antivirus, version of virus signature database 4576 (20091105)  
\_\_\_\_\_

The message was checked by ESET NOD32 Antivirus.

<http://www.eset.com>

This is Exhibit "X" to the Affidavit of David Langille sworn to on the 8<sup>th</sup> day of December 2009.

Joan E. Esler

COURT NO.: 15411  
ESTATE NO.: 51-1228301  
COURT FILE NO.: B-M-06-09

IN THE COURT OF QUEEN'S BENCH OF  
NEW BRUNSWICK

COUR DU BANC DE LA REINE DU  
NOUVEAU-BRUNSWICK

TRIAL DIVISION  
JUDICIAL DISTRICT OF SAINT JOHN

DIVISION DE PREMIERE INSTANCE  
CIRCONSCRIPTION JUDICIAIRE DE

B E T W E E N:

E N T R E:

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

- and -

IN THE MATTER OF THE APPLICATION OF  
BLUE NOTE CARIBOU MINES INC., a body  
corporate

-and-

IN THE MATTER OF THE APPLICATION OF  
PRICEWATERHOUSECOOPERS INC., Trustee  
in Bankruptcy of BLUE NOTE CARIBOU  
MINES INC.

NOTICE OF MOTION  
(FORM 37A)

AVIS DE MOTION  
(FORMULE 37A)

TO:

DESTINAIRE

All secured and unsecured  
creditors of Blue Note Caribou  
Mines Inc. (the "Company")

Joan E Fiset

COURT NO.: 15411  
ESTATE NO.: 51-1228301  
COURT FILE NO.: B-M-06-09

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK  
TRIAL DIVISION  
JUDICIAL DISTRICT OF BATHURST

BETWEEN:                   IN THE MATTER OF THE COMPANIES' CREDITORS  
                                  ARRANGEMENT ACT, R.S.C., Cc-36, AS AMENDED,

AND:                         IN THE MATTER OF THE APPLICATION OF BLUE NOTE  
                                  CARIBOU MINES INC., a body corporate

AND:                         IN THE MATTER OF THE APPLICATION OF  
                                  PRICEWATERHOUSECOOPERS INC., Trustee in  
                                  Bankruptcy of BLUE NOTE CARIBOU MINES INC.

AFFIDAVIT

I, ROBERT C. SMITH, of the Town of Rothesay, Province of New Brunswick,  
MAKE OATH AND SAY:

1. I am a Chartered Accountant, Trustee in Bankruptcy and Senior Vice-President of PricewaterhouseCoopers Inc. ("PWC"), Court appointed Monitor in this matter and Trustee in Bankruptcy of Blue Note Caribou Mines Inc. ("BNC"). As such, I have personal knowledge of the matters to which I herein depose, except where stated to be on information and belief.
2. The within proceeding concerns the application by BNC for creditor protection pursuant to the *Companies' Creditors Arrangement Act* ("CCAA"). A successful reorganization has not been possible and, as of July 14, 2009, BNC made, concurrent with the CCAA proceedings, an assignment in bankruptcy. For ease of reference, I attach the following
  - a) Initial Order, dated February 20, 2009, marked Exhibit "A";
  - b) Order of the Court dated March 20, 2009, marked Exhibit "B";
  - c) Order of the Court, dated May 20, 2009, marked Exhibit "C";
  - d) Order to Continue in Bankruptcy, dated July 14, 2009, marked Exhibit "D"
  - e) Order of the Court, dated July 27, 2009, marked Exhibit "E";
  - f) Order of the Court, dated September 29, 2009, marked Exhibit "F";
  - g) Order of the Court, dated November 13, 2009, marked Exhibit "G"; and
  - h) Order of the Court, dated November 13, 2009, marked Exhibit "H".

R

John E. Enset

## EXTENSION AGREEMENT

This Extension Agreement (this "Agreement") is entered into effective as of October 7, 2009 between PricewaterhouseCoopers Inc. ("PWC"), as court-appointed monitor and trustee in bankruptcy of Blue Note Caribou Mines Inc., 2190776 Ontario Inc. ("219") and 647078 N.B. Ltd. (the "Purchaser").

### RECITALS

**WHEREAS** PWC accepted an Offer to Purchase (the "Offer") made by 219 on September 30, 2009 pursuant to which 219 proposed to purchase (the "Purchase") all equipment related to the Blue Note Caribou Mine (the "Mine") as further described in an auction catalogue prepared by Great American Group (the "Equipment").

**AND WHEREAS** the parties contemplated that the Purchase would be completed on October 6, 2009.

**AND WHEREAS** 219 has requested an extension of time to complete the Purchase, and PWC has agreed to grant an extension of time to October 15, 2009, in order for 219 to assign its rights to a to-be-incorporated New Brunswick company.

**AND WHEREAS** 219 will deliver the funds specified herein to PWC as a further non-refundable deposit in respect of the Equipment.

**AND WHEREAS** 219 wishes to assign all of its right, title and interest as purchaser under the Offer to the Purchaser.

**NOW THEREFORE**, in consideration of the premises and of the mutual agreements herein contained, the parties hereto agree as follows:

1. Extension of Time. Notwithstanding Section 2(a) of Appendix "A" to the Offer, PWC agrees to extend the date of closing of the Purchase to the earlier of (a) the second (2<sup>nd</sup>) day after 219 delivers written notice to PWC identifying the assignee of 219's rights as purchaser under the Offer, and (b) October 15, 2009.

2. Assignment. 219 hereby conveys, transfers and assigns to the Purchaser all of its right, title and interest as purchaser in and to the Offer, which Purchaser hereby agrees to assume, and PWC hereby consents thereto.

3. Deposit. The Purchaser shall deliver to PWC as soon as possible following execution hereof the amount of US\$2,390,000.00 as the balance of the purchaser price against the Equipment, and which shall reduce any remaining amount to be paid by the Purchaser to PWC on the closing of the Purchase to \$0, and it is acknowledged that PWC will be disbursing these funds within 48 hours in accordance with the various Court Orders.

4. No Amendments. Save and except for the extension of time provided for in Section 1 above, the assignment under Section 2 above, and the additional deposit provided in Section 3 above, the Offer remains in full force and effect, unamended.

This is Exhibit "AA" to the Affidavit of David Langille sworn to on the 8<sup>th</sup> day of December 2009.

*Joan E Inset.*

**From:** Stephen J. Hutchison  
**Sent:** Friday, November 20, 2009 5:46 PM  
**To:** charline.murty@gnb.ca  
**Cc:** Cooper, George L. (Moncton); sslawgs@nb.aibn.com; Atkinson, Rebecca (Saint John); Natalie.LeBlanc@gnb.ca; john.logan@gnb.ca; thomas.oneil@mcinnescooper.com; MGottlieb@dwpv.com; tmh@GormanNason.com; melissa.young@mcinnescooper.com; faw@gormannason.com; acollins@airdberlis.com; sgraff@airdberlis.com; robert.smith@ca.pwc.com; McElman, Josh (NB); Lesley Duncan; Jeffrey Parker  
**Subject:** Pricewaterhouse Coopers Inc Trustee in Bankruptcy of Blue Note Caribou Mines Inc. B-M-06-09

Ms Murty,

Further to your fax of today, please be advised that I will participate in the December 1 Pre Motion Conference by Court Call.

I would also request that you inform Mr, Justice Léger that I will not be in a position to file any documents or motions on behalf of my clients prior to the December 1 conference. I am away from the office all next week in a remote location and I will not be able to obtain instructions from my clients until I return to the office on November 30. I do hope to be able to inform the court of my clients' position on December 1 and I expect that we will file our documents/motions as soon as possible thereafter.

Sincerely,

Steve Hutchison

**Stephen J. Hutchison**



Stewart McKelvey | Barristers, Solicitors and Trademark Agents

Suite 1000 | Brunswick House | 44 Chipman Hill | P.O. Box 7289 | Postal Station A | Saint John NB E2L 4S6 | Web: [www.smss.com](http://www.smss.com)

Direct Dial: 506.632.2784 | Main Tel: 506.632.1970 | Fax: 506.652.1989 | Email: [shutchison@smss.com](mailto:shutchison@smss.com)

12/7/2009

This is Exhibit "BB" to the Affidavit of David Langille sworn to on the 8<sup>th</sup> day of December 2009.

*Joan E Inset.*

---

**From:** Stephen J. Hutchison  
**Sent:** Wednesday, December 02, 2009 6:14 PM  
**To:** Cooper, George L. (Moncton); McElman, Josh (NB); robert.smith@ca.pwc.com  
**Cc:** Lesley Duncan; Paul Smith; Dave Langille  
**Subject:** Breakwater Resources Ltd - Blue Note Caribou Mines Inc. CCAA and BIA Proceedings  
**Attachments:** 2Dec2009 Exercise Right of First Refusal.pdf

George, Josh, Bob,

As discussed, please find attached PDF copy of Breakwater's correspondence of today's date signifying its intention to exercise its rights of first refusal. An original copy will be delivered to Mr. Smith's office tomorrow.

Kindly acknowledge receipt on behalf of PricewaterhouseCoopers Inc., Court Appointed Monitor and Trustee in the Bankruptcy of Blue Note Caribou Mines Inc.

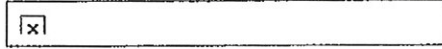
Please contact me to finalize arrangements for completion of the sale of the assets to Breakwater. Please advise me if you have any questions arising out of this correspondence.

Best regards,

Steve Hutchison

---

**Stephen J. Hutchison**



Stewart McKelvey | Barristers, Solicitors and Trademark Agents

Suite 1000 | Brunswick House | 44 Chipman Hill | P.O. Box 7289 | Postal Station A | Saint John NB E2L 4S6 | Web: [www.smss.com](http://www.smss.com)

Direct Dial: 506.632.2784 | Main Tel: 506.632.1970 | Fax: 506.652.1989 | Email: [shutchison@smss.com](mailto:shutchison@smss.com)

12/3/2009