

**ASSIGNMENT AND OPTION AGREEMENT**

THIS ASSIGNMENT AND OPTION AGREEMENT is made as of the 27th day of November, 2008.

AMONG:

**GREAT PACIFIC CAPITAL CORP.**, a corporation having an office in Vancouver, British Columbia

(hereinafter referred to as the "Assignor")

- and -

**1439442 ALBERTA LTD.**, a corporation having an office in Calgary, Alberta

(hereinafter referred to as the "Assignee")

- and -

**TRICAP PARTNERS LTD.**, a corporation having an office in Calgary, Alberta

(hereinafter referred to as "Tricap")

**RECITALS:**

A. The Assignor is the Holder of those 6.0% Convertible Unsecured Subordinated Debentures (the "Unsecured Debentures") issued by Birch Mountain Resources Ltd. (the "Borrower"), due December 31, 2011, in the aggregate principal amount of Cdn. \$29,280,000 (the "Assignor Principal Debt");

B. Tricap is the holder of the Senior Secured Convertible Debenture (the "Senior Secured Debenture") dated December 21, 2007 issued by the Borrower in the aggregate principal amount of Cdn. \$34,500,000 (the "Senior Principal Debt"), which Senior Secured Debenture was issued pursuant to a Loan Agreement (the "Senior Loan Agreement") dated December 21, 2007 between Tricap and the Borrower;

• The Pattison Agreement was not disclosed to the Receivership Court as part of the receivership disclosure and the Pattison Agreement raises numerous questions.

• This private agreement was made 1(one) day after the acquiring party created 1439442 Alberta Ltd.

• As of this agreement date there was an active market for the debentures on the TSX. This agreement violate approval and disclosure requirements from the TSX concerning this special purchase per the TSX Company Manual Sec. 6-401. Purchases During A Substantial Issuer Bid.

• Misleading - The Assignor is James Pattison, an individual owner of the Unsecured Debentures, as reported in his 13-G filings with the SEC on 8-1-2008. His identity is concealed throughout the document.

Was this an attempt to cover-up the real ownership and insider transaction?

Was Pattison in compliance with the various material change notification rules and the various insider trading rules in view of the fact that he was a director of Brookfield and was assigning his Convertible Unsecured Subordinated Debentures to 1439442, a wholly-owned subsidiary of Tricap, which is a wholly-owned subsidiary of Brascan, which is a wholly-owned subsidiary of Brookfield in exchange for various options not available to other shareholders, creditors and debenture holders?

• Is James Pattison in violation of National Instrument 51-201 3.1 (2) covering insider trading which prohibits anyone in a special relationship with a reporting issuer from purchasing or selling securities of the reporting issuer?

C. On October 31, 2008 Tricap demanded repayment of its loan under the Senior Loan Agreement, and a receiver was appointed by the Court of Queen's Bench of Alberta in respect of the Borrower on November 5, 2008;

D. The Assignee is a wholly owned subsidiary of Tricap; and

E. Subject to and in accordance with the terms and conditions herein, the Assignor has agreed to assign and transfer to the Assignee all of its right, title, estate and interest in and to, or otherwise relating to, the Unsecured Debentures and the Indenture (the "Indenture") dated December 6, 2006 between the Borrower and Computershare Trust Company of Canada, as trustee respecting inter alia the Unsecured Debentures.

NOW THEREFORE, in consideration of the premises, the payment and option grant by the Assignee to the Assignor as provided for herein, the parties hereby agree as follows:

1. Interpretation

- (a) Capitalized terms used but not defined in this Agreement shall have the meanings ascribed to them in the Indenture.
- (b) The division of this Agreement into Articles, Sections, paragraphs and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.
- (c) In this Agreement:
  - (i) the terms "this Agreement", "hereof", "herein", "hereunder" and similar expressions refer, unless otherwise specified, to this Assignment Agreement taken as a whole and not to any particular section, subsection or paragraph;
  - (ii) words importing the singular number or masculine gender shall include the plural number or the feminine or neuter genders, and vice versa; and
  - (iii) words and terms denoting inclusiveness (such as "include" or "includes" or "including"), whether or not so stated, are not limited by their context or by the words or phrases which precede or succeed them.
- (d) This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein. The parties hereby irrevocably submit to the non-exclusive jurisdiction of the courts of the Province of Alberta, without prejudice to the rights of the parties to take proceedings in any other jurisdictions.
- (e) If any provision of this Agreement shall be invalid, illegal or unenforceable in any respect in any jurisdiction, it shall not affect the validity, legality or enforceability of any such provision in any other jurisdiction or the validity, legality or enforceability of any other provision of this Agreement.

• Confirms in writing that Pattison knew that Tricap was a wholly owned subsidiary of Brookfield of which he is a director.

• Considering that this entire agreement violates securities regulations and TSX rules and was not reported in the receivership proceedings, is any part of this agreement valid?

## 2. Assignment of Assigned Interest

- (a) The Assignor hereby assigns and transfers to the Assignee, and the Assignee hereby purchases and acquires, all of the Assignor's right, interest and benefit in and to the Unsecured Debentures, the Indenture, and all rights and interests arising thereunder or otherwise relating thereto (collectively, the "Assigned Interests"), such that, without limiting the generality of the foregoing, all amounts (including principal, interest and other amounts) owing to the Assignor under or in connection with the Unsecured Debentures and the Indenture immediately prior to the date hereof shall be, from and after the date hereof, owing to the Assignee. The Assignor shall without further consideration do all things as may be necessary or advisable from time to time under the Unsecured Debentures and the Indenture to effect the assignment of the Assigned Interests contemplated herein, including the prompt execution, delivery and registration of the transfer form contemplated by Exhibit A to the Indenture and any other documentary requirements.
- (b) As consideration for the transfer of the Assigned Interests the Assignee has paid the Assignor the sum of Cdn \$10 and has granted the Option to the Assignor as set forth in clause 3 below.

## 3. Grant of Option

- (a) Subject to clause 3(b), for the period commencing on the date hereof and ending November 7, 2011 (the "Option Period"), the Assignor shall have the option (the "Option") to:
- (i) acquire 30% of the aggregate amount of the Assignor Principal Debt and the Senior Principal Debt (such aggregate amount equaling \$63,780,000, and which aggregate amount is referred to herein as the "Total Principal Debt"), that is outstanding at the time the Option is validly exercised; or
- (ii) if at the conclusion of the Borrower receivership proceedings the Assignee acquires the Borrower or substantially all of the Borrower's assets, acquire 30% of the shares in the capital of the Assignee.
- (b) In the event the Assignor wishes to exercise the Option, it shall do so by providing written notice to the Assignee prior to the expiry of the Option Period. Such exercise of the Option shall not be valid or effective unless and until:
- (i) the Assignor pays the Option Price to Tricap by way of certified cheque or bank draft. The Option Price shall be:
- from the date hereof until November 5, 2009 (the "First Option Period"), the sum of Cdn. \$11,812,500 (the "2008 Base Amount");

• This Option was offered exclusively to James Pattison and not to other Unsecured Debenture holders.

• Pursuant to 3 (a) (i) Pattison is able to acquire 30% Birch Mountain's Convertible Unsecured Subordinated Debenture and Convertible Secured Senior Debenture for the option price defined in paragraph 3 (b) which would result in a potential **net loss** of between \$21,958,490 - \$28,603,661 based on the value of his assignment plus the additional investment he would have to make versus the value of his 30% of the Total Principal Debt.

• Pursuant to paragraph 3 (a) (ii) Pattison is able to acquire 30% of 1439442's shares outstanding after the Birch Mountain asset's, estimated at \$1.6 Billion, was transferred to 1439442 for the option price defined in paragraph 3 (b) which would result in a potential **net profit** of between \$438,907,510 - \$432,262,339 based on the value of his assignment plus the additional investment he would have to make versus the value of the shares in the new private company with an asset value estimated at \$1.6 Billion.

• Is this evidence of an undisclosed contingency PLAN for take-over contrary to the "investment" purposes stated in the EWR's and 13D and G filings. FAIT ACCOMPLI?

2. from and after November 5, 2009 until November 5, 2010 (the "Second Option Period"), the sum of Cdn \$11,812,500 (the "2009 Base Amount") plus the product of the 2009 Base Amount multiplied by 25% and by a fraction the numerator of which is the number of days between November 5, 2009 and the date the exercise of the Option becomes valid and effective, and the denominator of which is 365; and
3. from and after November 5, 2010 until November 7, 2011 (the "Third Option Period"), the sum of Cdn \$14,765,625 (the "2010 Base Amount") plus the product of the 2010 Base Amount multiplied by 25% and by a fraction the numerator of which is the number of days between November 5, 2010 and the date the exercise of the Option becomes valid and effective, and the denominator of which is 365,

• Strangely enough, the yearly option period exercise and anniversary dates coincide with the date Tricap put Birch in receivership and not with the date of the agreement.

• The longer Pattison takes to exercise the option, the value of the asset increases and so does the 30% buy in. Tricap is factoring in appreciation of the asset.

provided that if any additional financing (whether debt, equity or otherwise) is provided by Tricap, the Assignee, or any affiliate of Tricap or the Assignee during the Option Period, then the 2008 Base Amount shall be deemed increased effective as of the commencement of the First Option Period by 125% of a 30% share of the gross amount of all such financings that are completed in the First Option Period and prior to the effective date of the Option exercise, the 2009 Base Amount shall be deemed increased effective as of the commencement of the Second Option Period by 125% of a 30% share of the gross amount of all such financings that are completed in the First Option Period and by a 30% share of the gross amount of all such financings that are completed in the Second Option Period and prior to the effective date of the Option exercise, and the 2010 Base Amount shall be deemed increased effective as of the commencement of the Third Option Period by 156.25% of a 30% share of the gross amount of all such financings that are completed in the First Option Period, 125% of a 30% share of the gross amount of all such financings that are completed in the Second Option Period, and by a 30% share of the gross amount of all such financings that are completed in the Third Option Period and prior to the effective date of the Option exercise; and

(ii) the parties enter into a mutually agreeable:

1. assignment agreement, if the Option is exercised pursuant to clause 3(a)(i); or
2. unanimous shareholders agreement respecting the Assignee having regard to the nature of the contemplated transaction, if the Option is exercised pursuant to clause 3(a)(ii).

• Consideration for the shareholders of the new private company 1439442? Where was the consideration for the common shareholders of Birch Mountain and the Shareholders Rights Plan and disclosure at the receivership proceedings?



- (c) If the Option is exercised pursuant to clause 3(a)(i), the Assignor shall be entitled to interest or other fees that accrue in respect of the Total Principal Debt only after, and not before, the date the Option exercise becomes valid and effective.
- (d) The Option can be exercised only once. No partial exercise of the Option is permitted. Any exercise of the Option is irrevocable.

• More cover-up? Is this another way to offset Pattison's losses if there is no take-over? What constitutes "fees?" If no take-over, Pattison gets CDN \$10.00 for the assigning the debenture plus ~million in interest and fees?

#### 4. Receivership Proceedings

Tricap will, before and after any exercise of the Option by the Assignor, retain full decision-making authority in its sole and absolute discretion with respect to receivership proceedings pertaining to the Borrower, and the Total Principal Debt and all interest, fees and other amounts which may have accrued or which may accrue in the future from time to time on or in respect thereof. However, Tricap will communicate regularly with the Assignor regarding the status of such proceedings. If the Senior Secured Debenture is repaid in full as a result of the receivership proceedings, the Assignee shall provide the Assignor with notice as soon as commercially possible with a view to providing the Assignor with sufficient notice so that it can assess whether it wishes to exercise its Option.

• Who was controlling the Receivership Proceedings?

Mr. Eng's affidavit sworn November 04, 2008 in support of the Receivership Order does not disclose the Pattison Agreement and the preferential treatment afforded Pattison.

#### 5. Management and other Matters

During the period when the Assignor has the right to exercise the Option pursuant to clause 3(a)(ii), the Assignor shall use its commercially reasonable efforts to assist the Assignee in securing a qualified and experienced management team and to assist the Assignee in connection with other corporate and operational matters as the Assignee may reasonably request, provided that nothing in this clause 5 shall require the Assignor to incur any material expense, and further provided that any breach of this clause by the Assignor shall not entitle the Assignee to make any claim for damages, to terminate the Option or otherwise restrict the ability of the Assignor to exercise the Option in accordance with this Agreement, or to any other remedy.

Wasn't PWC de facto management with the full rights and responsibilities for the receivership as reported in the press release on November 6, 2008?: "*Among other powers, the Receiver is authorized to take possession and control of the Property; to receive, preserve, protect and maintain control of the Property; to manage, operate and carry on the business of the Corporation; to receive and collect all monies and accounts now owed or hereafter owing to the Corporation and to exercise all remedies of the Corporation in collecting such monies, including, without limitation, to enforce any security held by the Corporation; and to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business (subject to the approval of the court with respect to certain sales).*"

#### 6. Mutual Representations and Warranties

The Assignor, the Assignee and Tricap each hereby represents and warrants to the other as of the date hereof as follows:

- (a) it is validly subsisting under the laws of its governing jurisdiction;
- (b) it has all necessary power and authority to enter into this Agreement and to perform its obligations hereunder;
- (c) the execution, delivery, observance and performance on its part of this Agreement has been duly authorized by all necessary action and this Agreement constitutes a legal, valid and binding obligation of such party enforceable against it in accordance with its terms; and
- (d) all consents, authorizations and approvals of any governmental authority or other person, if any, required for the execution, delivery, observance and performance by it of this Agreement, have been obtained and remain in full force and effect, all

• Management of the new 1439442 Ltd.? Is Pattison responsible for creating 1439442 and putting Jim Reid, Rick Eng, and Terry Owen in place?

• Illegal?

• Not according to the Canadian and US securities laws and the TSX manual with rules protecting minority shareholders.

• What Canadian governmental authority would have authorized or approved a non-disclosed, insider trading agreement of this nature?

conditions have been duly complied with and no action by, and no notice to or other filing with any governmental authority is required for such execution, delivery, observance or performance.

#### 7. Assignor Representations and Warranties

The Assignor represents and warrants to the Assignee that as of the date hereof:

- (a) it has the right to sell to the Assignee the Assigned Interests and that the same are free and clear of all liens, charges, security interests, mortgages, adverse claims and encumbrances created by, through or under the Assignor;
- (b) the Assignor has not previously transferred to any other person, whether by syndication, grant of participation right, assignment, negotiation, or otherwise, any of its right, interest or benefit in and to any of the Assigned Interests;
- (c) the Assignor has not terminated, amended, released or discharged the Indenture or any of the Unsecured Debentures; and
- (d) the principal amount of the indebtedness owing to the Assignor by the Borrower under the Indenture and the Unsecured Debentures is no less than Cdn. \$29,280,000.

#### 8. Assignee Representations and Warranties

The Assignee represents and warrants to the Assignor that as of the date hereof:

- (a) it is not a non-resident of Canada for the purposes of the Income Tax Act (Canada); and
- (b) it is an "accredited investor" within the meaning of Multilateral Instrument 45-106 adopted by the Alberta Securities Commission.

#### 9. Survival of and Limitations on Representations and Warranties

- (a) The representations and warranties set out in this Agreement shall survive the execution and delivery of this Agreement for a period of 6 months thereafter, notwithstanding any examinations or investigations which may be made by the parties or their respective legal counsel.
- (b) Except for the representations and warranties expressly provided herein, the Assignee confirms that this Agreement is entered into by the Assignee without any representations or warranties by the Assignor on any matter whatsoever, including: the effectiveness, validity, legality, enforceability, adequacy or completeness of the Assigned Interests; or the financial condition, creditworthiness, condition, affairs, status or nature of the Borrower.

Then why was there a December 10, 2008 Early Warning Report after the fact?

The preferential treatment afforded Pattison because of his status as a director of Brookfield breaches the material change rules and the insider trading rules and is an act of oppression and should merit a severe sanction.

The Pattison Agreement was not disclosed to the Receivership Court as part of the receivership disclosure and the Pattison Agreement raises numerous questions:

- a. Was Pattison in compliance with the various sections of the Receivership Order that prevented various persons from dealing with the assets of Birch Mountain?
- b. Was Pattison in compliance with the various material change notification rules and the various insider trading rules in view of the fact that he was a director of Brookfield and was assigning his Convertible Unsecured Subordinated Debentures to Tricap/1439442 and in return receiving various options not available to other shareholders, creditors and debenture holders? and
- c. Was the Early Warning Report dated December 10, 2008 a cover up of the failure to disclose material changes and the insider trading and an effort to mislead the general public and more specifically the common shareholders of Birch Mountain?

Then how does Great Pacific Capital have rights to the Unsecured Debenture shares originally owned by Pattison?

Pattison's 13G filing disclosure reported individual ownership of the Unsecured Debenture. Pattison would have had to assign (etc.) the rights to Great Pacific at some point for this clause to be valid.

How does this deal get reported to the Canadian Revenue Agency. Has Tricap and Pattison met all the appropriate guidelines for tax avoidance or does this agreement provide tax evasion opportunities?

**10. Assignee Credit Decision**

The Assignee acknowledges to the Assignor that the Assignee has itself been, and will continue to be, solely responsible for making its own independent appraisal of and investigations into the financial condition, creditworthiness, condition, affairs, status and nature of the Borrower.

**11. Payments**

The Assignor and the Assignee acknowledge and agree that, subject to the exercise of the Option as provided for herein, all payments from and after the date hereof under or in connection with the Indenture and Unsecured Debentures shall be the property of the Assignee.

**12. Amendments and Waivers**

Any amendment or modification or waiver of any right under any provision of this Agreement shall be in writing (in the case of an amendment or modification, signed by the parties) and any such waiver shall be effective only for the specific purpose for which given and for the specific time period, if any, contemplated therein. No failure or delay by any party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof and any waiver of any breach of the provisions of this Agreement shall be without prejudice to any rights with respect to any other or further breach.

**13. Confidentiality**

No party shall, without the prior written consent of each other party, disclose or permit any of its affiliates, agents, representatives, advisors, controlling persons, directors, officers or employees to disclose, in any manner, the fact that this Agreement has been entered into or that discussions or negotiations are taking place or have taken place with respect to the subject matter of this Agreement, or any of the terms of this Agreement or any of the conditions or other facts with respect to the foregoing; provided, however, that:

• What does this speak to? INSIDER TRADING?

- (a) if a party becomes legally compelled or is required by regulatory authorities having appropriate jurisdiction to disclose any such information: (i) that party shall promptly provide each other party with written notice thereof so that such other party (or its affiliates) may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement; (ii) that party shall cooperate with each other party and its affiliates on a reasonable basis to obtain such protective order or other remedy; and (iii) in the event that such protective order or other remedy is not obtained or each other party waives compliance with the provisions of this Agreement, the disclosing party shall furnish only that portion of such information which it is legally required and will exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded such information so furnished; and

• Is this standard language for a legitimate private agreement? And, why the emphasis on protective order?

- (b) nothing herein shall restrict the Assignee, Tricap or any of its affiliates, agents, representatives, advisors, controlling persons, directors, officers or employees from disclosing any of such information in connection with: (i) any proceeding, step or act that is required to implement the transaction contemplated herein, including the registration of any transfer or assignment; (ii) any proceeding (court or otherwise), bidding, negotiation or creditor vote relating to the Borrower or any of its assets, including without limiting the generality of the foregoing any notification or other release of any such information to the court handling the receivership of the Borrower or any receiver or trustee in bankruptcy that may be appointed from time to time in respect of the Borrower; or (iii) compliance with disclosure requirements under applicable securities laws in Canada and the United States.

• With no restrictions on disclosure then why wasn't the receivership court informed? Because it would immediately be recognized as insider trading? Doesn't this contradict the need for a protective order clause in previous section?

#### 14. General Provisions

- (a) The parties hereto shall from time to time and at all times do all such further acts and things and execute and deliver all such documents as are required in order to fully perform and carry out the terms of this Agreement.
- (b) The provisions of this Agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.



- (c) Any notice required or permitted to be given hereunder shall be in writing and may be given by delivering same personally or by fax to the following addresses:

If to the Assignor:

Great Pacific Capital Corp.  
c/o 1800, 1067 West Cordova Street  
Vancouver, British Columbia  
Attention: David G. Bell  
Fax: (604) 687-2601

If to the Assignee or Tricap:

Tricap Partners Ltd.  
Suite 1700, 335 - 8th Avenue S.W.  
Calgary, Alberta T2P 1C9  
Attention: Jim Reid, Managing Partner, Energy  
Fax: (403) 770-7221

and to:

c/o Suite 2050, 1055 West Georgia Street  
Vancouver, British Columbia V6E 3R5  
Attention: Rick Eng, Vice President  
Fax: (604) 687-3419

Any communication as aforesaid will:

- (i) if personally delivered, be deemed to have been given or made at the time of delivery; and
- (ii) if sent by facsimile, be deemed to have been given or made on the day it was sent if confirmation of receipt is obtained during normal business hours on that day, or on the next day if confirmation is received after normal business hours.

~~Any party may give written notice of change of address in the same manner, in which event such notice will thereafter be given to it as above provided at such changed address.~~

- (d) This Agreement may be executed in one or more counterparts by the parties hereto and may be delivered by facsimile, each of which shall be deemed an original but all of which together shall constitute one agreement.

• Add another insider. According to The Pattison Group's website, David G. Bell is Managing Director, Corporate Finance in The Jim Pattison Real Estate Group division of The Pattison Group, *not* Great Pacific Capital which is in the Financial Services division of The Jim Pattison Group.

The Jim Pattison Group and all of its divisions are wholly owned by Jim Pattison.



IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by its duly authorized representative(s) as of the date first above written.

**GREAT PACIFIC CAPITAL CORP., as Assignor**

Per: \_\_\_\_\_

**1439442 ALBERTA LTD., as Assignee**

Per:  \_\_\_\_\_

**TRICAP PARTNERS LTD.**

Per:  \_\_\_\_\_