



This is the 5th Affidavit of William E. Aziz in this case and was made on December 2, 2016

NO. S-1510120  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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

AND

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

AND

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
WALTER ENERGY CANADA HOLDINGS, INC. AND THE OTHER  
PETITIONERS LISTED ON SCHEDULE "A"

PETITIONERS

**AFFIDAVIT**

I, **WILLIAM E. AZIZ**, Chief Restructuring Officer, of the Town of Oakville, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am the President of BlueTree Advisors Inc. ("**BlueTree**"), which has been retained by Walter Energy Canada Holdings, Inc. ("**Walter Energy Canada**") to provide my services as Chief Restructuring Officer ("**CRO**") to Walter Energy Canada, its direct and indirect subsidiaries and affiliates listed on Schedule "A" (collectively with Walter Energy Canada, the "**Canadian Petitioners**") and the partnerships listed on Schedule "C" to the Order of this Honourable Court made on December 7, 2015 (the "**Initial Order**") (collectively with the Canadian Petitioners, the "**Walter Canada Group**"). As such I have personal knowledge of the facts hereinafter deposed, except where such facts are stated to be based upon information and belief and where so stated I do verily believe the same to be true.
2. This Affidavit is made in support of a motion by the Canadian Petitioners under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**") seeking (i) the approval of this Honourable Court for an agreement to sell the Walter Canada Group as part of a series of

transactions that would (a) transfer all but certain Residual Assets (defined below) of the Walter Canada Group to new entities established to substantially replicate the Walter Canada Group corporate structure and (b) deem substantially all claims against the Walter Canada Group to be claims against the new entities; and (ii) permission to take steps necessary to give effect to that agreement. Specifically, the Canadian Petitioners request the following (collectively the "**New Walter Group Procedure Order**"):

- (a) An Order abridging the time for service of the notice of application and the materials referred to therein;
- (b) An Order approving the proposed sale (the "**Transaction**") contemplated by the Term Sheet among Walter Energy Canada for and on behalf of the Walter Canada Group, as subject, 1098138 B.C. Ltd., as purchaser (the "**Purchaser**"), and Amacon Land Corporation, as guarantor (the "**Purchaser Guarantor**"), made November 28, 2016 (the "**Term Sheet**"), a redacted copy of which is attached hereto as **Exhibit "A"**;
- (c) An Order
  - (i) authorizing the incorporation of new entities under the British Columbia *Business Corporations Act*, S.B.C. 2002, c. 57, to consist of a new corporation ("**New Walter**") as a wholly owned subsidiary of Walter Energy, Inc. ("**WEI**"), a new corporation ("**New WCCP**") as a wholly owned subsidiary of New Walter, and new corporations ("**New Wolverine**", "**New Brule**", and "**New Willow**") as wholly owned subsidiaries of New WCCP (these five new corporations collectively comprising the "**New Walter Group**");
  - (ii) from and after the date of the formation of the members of the New Walter Group,
    - A. deeming each member of the New Walter Group to be a debtor company as defined in the CCAA,
    - B. to be subject to these CCAA proceedings, and
    - C. to be added as a Petitioner in these CCAA proceedings;
  - (iii) from and after the date of the formation of the members of the New Walter Group, extending all the provisions of the Initial Order and the Order of this Honourable Court made on January 5, 2016 (the "**SISP Order**") to the members of the New Walter Group and extending the appointment of the Monitor to the New Walter Group;
  - (iv) appointing BlueTree as CRO of the New Walter Group and providing that the powers, responsibilities and protections set out in the SISP Order shall apply and continue to apply in respect of such appointment; and
  - (v) causing the Administration Charge, the Directors' Charge, and the Success Fee Charge to attach to all property of the New Walter Group (including for greater certainty any after acquired property);
- (d) An Order authorizing but not directing the members of the Walter Canada Group to make an assignment in bankruptcy at such time as the Walter Canada Group determines, in its sole discretion, that it is necessary or advisable to do so;

- (e) An Order terminating the engagement of the CRO with respect to a member of the Walter Canada Group at the last moment of time before the assignment in bankruptcy of such member of the Walter Canada Group becomes effective; and
  - (f) An Order that the confidential affidavit of William E. Aziz sworn the date hereof (to be filed) and the exhibits thereto (the "**Confidential Affidavit**") and the Confidential Supplemental Report of the Monitor and the appendices thereto, to be filed, (the "**Confidential Report**" and, collectively with the Confidential Affidavit, the "**Confidential SISP Materials**") be sealed, kept confidential and not form part of the public record.
3. If this Honourable Court grants the New Walter Group Procedure Order outlined above, the proposed Transaction contemplates that the following steps will be taken:
- (a) Assignment into bankruptcy by all members of the Walter Canada Group, currently anticipated to occur on or before December 12, 2016.
  - (b) An application to the Court (in bankruptcy and insolvency) for an Order, among other things, abridging certain time, notice and other formalities required under the Bankruptcy and Insolvency Act ("**BIA**"), each to be more fully set out in an Order served on the service list in advance (the "**Bankruptcy Procedural Order**"). The application is currently anticipated to be heard on or about December 12, 2016.
  - (c) Filing a joint proposal (the "**Proposal**") for the Walter Canada Group under s. 50 of the BIA as soon as possible following the issuance of the Bankruptcy Procedural Order.
  - (d) A meeting of creditors of the Walter Canada Group to approve the Proposal to occur immediately following the filing of the Proposal. The meeting is currently expected to be held on or about December 13, 2016.
  - (e) An application to the Court for an Order under the BIA approving the Proposal (the "**Proposal Approval Order**"). The application is currently anticipated to be heard on or about December 14, 2016.
  - (f) An application to the Court for an approval and vesting order to compliment the provisions of the Proposal and the Proposal Approval Order, to be heard on the same day as the application for the Proposal Approval Order.
4. I was retained pursuant to an engagement letter dated December 30, 2015 (the "**BlueTree Engagement Letter**"), as amended in response to certain requests made by Walter Canada Group stakeholders. BlueTree was appointed as CRO of the Walter Canada Group pursuant to paragraph 9 of the SISP Order.
5. As the CRO of the Walter Canada Group, in accordance with the SISP Order, I have the authority to direct the Walter Canada Group's Sales and Investment Solicitation Process ("**SISP**"), to engage in consultation and negotiation with stakeholders regarding the SISP, and to engage in such other matters as are set out in the BlueTree Engagement Letter.

6. Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Term Sheet, the SISP, the SISP Order, the first affidavit of William G. Harvey, sworn December 4, 2015 (the “**First Harvey Affidavit**”) and the other pleadings filed herein.

7. The information in this affidavit is arranged under the following headings:

I.	<b>Introduction – Overview Of The Restructuring Process .....</b>	<b>4</b>
II.	<b>Structure of the New Walter Group.....</b>	<b>5</b>
III.	<b>The Proposed Transaction .....</b>	<b>6</b>
IV.	<b>Sealing the Confidential SISP Materials .....</b>	<b>14</b>
V.	<b>Proposed Bankruptcy Proceedings.....</b>	<b>14</b>
VI.	<b>Other Matters .....</b>	<b>17</b>

I. **INTRODUCTION – OVERVIEW OF THE RESTRUCTURING PROCESS**

8. The New Walter Group Procedure Order is being sought as the first step in a process to facilitate a restructuring of the Walter Canada Group required to implement the Transaction. This restructuring will preserve all Claims against the Walter Canada Group (other than a very limited number of claims, as described below) by causing the members of the New Walter Group to become liable for all such claims. If approved and consummated, the Transaction will permit the monetization of the remaining value in the Walter Canada Group for the benefit of all persons with Claims in the CCAA proceedings and, potentially, other stakeholders of the Walter Canada Group.

9. To achieve this goal, the Transaction will be completed by way of a Proposal made on behalf of the Walter Canada Group to cause the transfer of substantially all of the assets of the Walter Canada Group (as more fully set out in the Term Sheet, the “**Transferred Assets**”), including cash and sale proceeds, to the New Walter Group and to cause all of the Claims against the Walter Canada Group, with some exceptions, to be deemed claims against the New Walter Group (the “**Deemed Claims**”). The Deemed Claims will not include (i) claims that have already been barred under the terms of the order of the Court granted August 16, 2016 (the “**Claims Process Order**”), and (ii) claims against Walter Energy Canada under the secured promissory note issued April 1, 2011 by Walter Energy Canada to WEI (the “**Promissory Note**”).

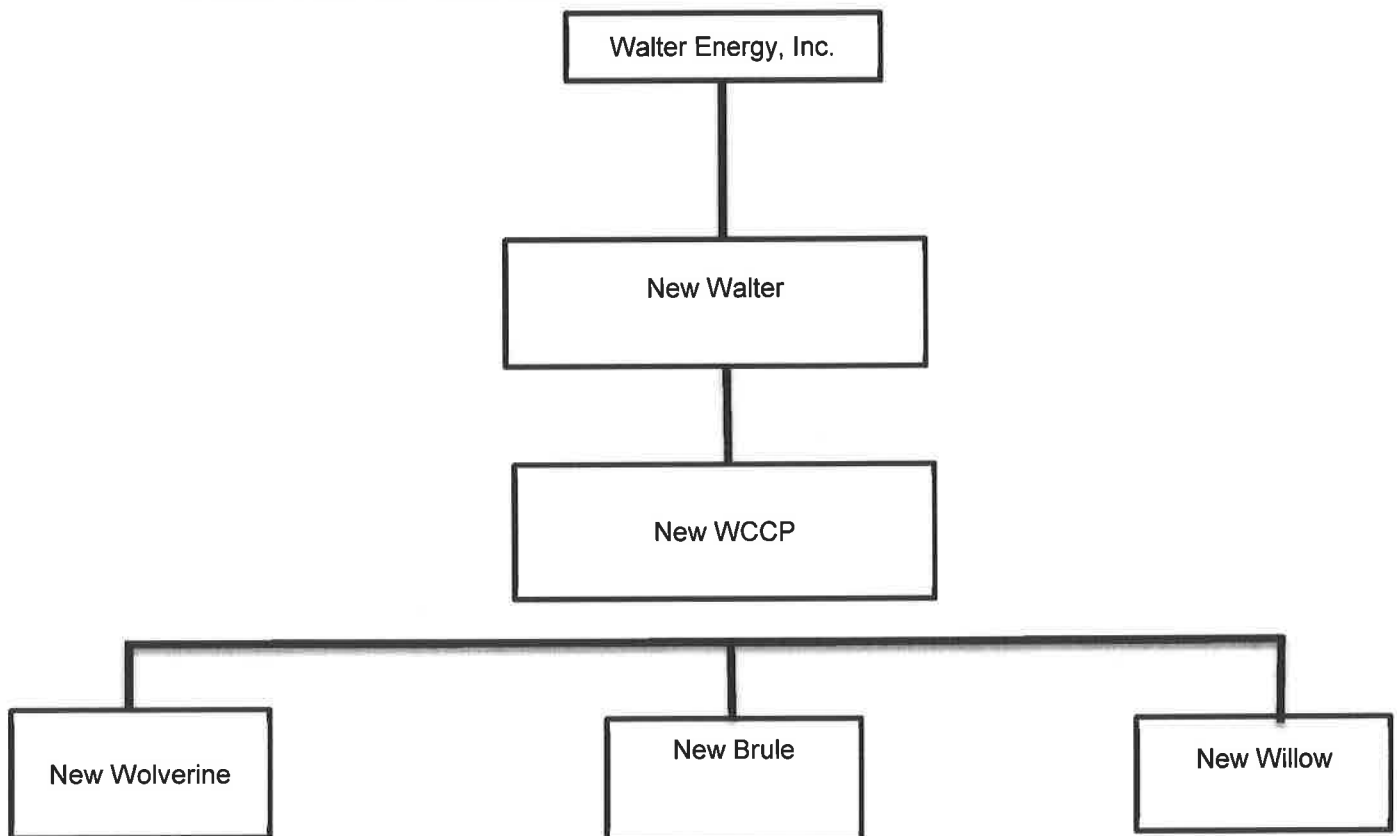
10. The transfer of the Transferred Assets to the New Walter Group and the creation of the Deemed Claims against the New Walter Group will preserve the claims and the interests of other stakeholders in and to the Transferred Assets and permit the resolution of such claims and interests pursuant to the CCAA. Among other things, the New Walter Group will continue the adjudication of

the UMWA 1974 Pension Plan Claim pursuant to the Claims Process Order and subsequent orders of the Court.

11. The Transaction contemplates each member of the Walter Canada Group other than Cambrian Energybuild Holdings ULC making an assignment into bankruptcy and subsequently completing the Proposal. For greater certainty, Belcourt Saxon Coal Ltd. and Belcourt Saxon Coal Limited Partnership, which are not members of the Walter Canada Group, will not be making an assignment in bankruptcy. All claims against the Walter Canada Group (other than the Residual Liabilities (defined below)) shall be compromised, extinguished and released pursuant to the terms of the Proposal, but the claims will be preserved because each member of the New Walter Group will become liable for the Deemed Claims and such Deemed Claims will continue against the New Walter Group, unaffected by the Proposal.
12. If the Transaction is consummated, creditors and other stakeholders of the Walter Canada Group will be able to seek recovery from the Purchase Price as well as from the other Transferred Assets. If the Transaction is not consummated, the Purchase Price will not be available and there will be significantly less value available for distribution to the creditors of the Walter Canada Group when their claims are finally determined pursuant to the Claims Process Order.

**II. STRUCTURE OF THE NEW WALTER GROUP**

13. The New Walter Group is proposed to be formed to replicate (in a slightly simplified manner) the existing Walter Canada Group structure. The following chart is the proposed organizational structure of the New Walter Group:



14. Cambrian Energybuild Holdings ULC, Belcourt Saxon Coal Ltd. and Belcourt Saxon Coal Limited Partnership will be owned by New WCCP.

### III. THE PROPOSED TRANSACTION

#### A. The SISP

15. As described in my third affidavit sworn on August 9, 2016 in these proceedings (the "**Third Aziz Affidavit**"), following approval by the SISP Order, the Walter Canada Group, as vendors, and Conuma Coal Resources Limited, as purchaser, entered into an agreement for the sale of a majority of Walter Energy Canada's assets (the "**Conuma Transaction**").
16. That agreement and the transaction contemplated therein was approved by an Order of this Honourable Court made on August 16, 2016, and the transaction closed on September 9, 2016. After that transaction closed, the mandate of the Walter Canada Group's financial advisor, PJT Partners LP, was completed and PJT's engagement was terminated (with the exception of the Success Fee as defined in the engagement letter among PJT and the Walter Canada Group dated April 1, 2015).
17. It was determined that substantial value could be generated, leading to greater recoveries for creditors, by selling certain assets remaining within the Walter Canada Group (the "**Remaining Assets**"). In particular, it became evident that it was possible to monetize the Remaining Assets by marketing the financial attributes that would benefit a potential purchaser by permitting a potential purchaser to acquire all of the shares of Walter Energy Canada and its interests in any other members of the Walter Canada Group.
18. The Monitor and I, in consultation with our advisors, concluded that the SISP Order permitted the adoption of ancillary rules for a SISP for the Remaining Assets. Paragraph 9(b) of the SISP Order provides that I "shall be responsible for directing the SISP." The SISP also provides that the Monitor and I can amend the procedures approved in the SISP Order: paragraph 49 states that the SISP can be amended if both the Monitor and I, acting reasonably, give our written consent, and paragraph 39 provides that I, after consulting with the Financial Advisor and Monitor, can "adopt such ancillary and procedural rules not otherwise set out herein (*including rules that may depart from those set out herein*) that in the [my] judgment will better promote the goals of the SISP" (emphasis added).
19. In consultation with the Monitor and our respective advisors, I determined that the ancillary rules adopted under the SISP for sale of the Remaining Assets, described below, were consistent with and would advance the goals of the SISP Order. The ancillary rules were a commercially

reasonable method to generate interest in and to obtain value from the Remaining Assets. The ancillary rules were also based on and consistent with Phase 1 of the original SISP which, as this Honourable Court noted when approving the Conuma Transaction, was "a comprehensive process" and included substantial steps taken to invite potential bidders. I did not consult with the Financial Advisor because the Financial Advisor's engagement had come to an end.

20. Further, as noted in paragraph 19 of the Third Aziz Affidavit, the Walter Canada Group intended to obtain value from the Remaining Assets when going through the SISP, and this Honourable Court, when approving the Conuma Transaction, anticipated that I would remain involved to "arrange for the sale of assets that are not being purchased by Conuma."
21. The Monitor organized a sales process for the Remaining Assets and established the following deadlines:
  - (a) Restarting of SISP Process: October 26, 2016.
  - (b) Deadline for submitting Letter of Intent ("LOI"): November 7, 2016.
  - (c) Deadline for submitting a definitive bid: November 16, 2016.
  - (d) Completion of SISP: December 31, 2016.
22. I am advised by the Monitor of the following facts regarding the SISP:
  - (a) The Monitor contacted 18 potentially interested parties between October 26 and October 28, 2016. A targeted approach was appropriate in the circumstances because the market for the Remaining Assets was a small and sophisticated one.
  - (b) 15 potential bidders executed a non-disclosure agreement ("NDA"). These potential bidders were provided with a confidential information memorandum (the "CIM") inviting them to submit an LOI, and were given access to a data room.
  - (c) 8 LOIs were received by the November 7, 2016 submission deadline. One party submitted its LOI shortly after the time of day at which LOIs were due. Pursuant to paragraphs 33 and 39 of the SISP, as CRO, I have the discretion to, after consulting with the Monitor, consider LOIs submitted after the deadline. In this case, I decided to consider the LOI submitted after the submission deadline.
  - (d) All 8 parties who submitted an LOI were invited to participate in Phase 2 of the SISP, which commenced on November 8, 2016. During Phase 2, the Monitor, the Walter Canada Group, I, and our collective advisors negotiated with potential bidders and assisted them with due diligence. We engaged in numerous calls, meetings and email exchanges with bidders to respond to their inquiries. In addition, the Monitor collected and posted many additional documents to the data room in response to requests from the bidders.
  - (e) The interested parties were asked to remove any diligence conditions and provide a binding bid by November 15, 2016 (which was earlier than the deadline originally set out in the CIM).

- (f) 4 bids were received on or before the November 15, 2016, deadline. I reviewed the bids with the Monitor.
- (g) The 3 highest bidders were selected to move on to the next phase of the process. On November 17, 2016, they were provided with the steps of the proposed Transaction and, on November 18, 2016, they were given a draft of the binding term sheet setting out the principal terms. They were asked to provide a definitive mark-up of the proposed term sheet by November 22, 2016.
- (h) Two of the bidders provided revised term sheets by the November 22, 2016 deadline. The third bidder did not provide a term sheet by the deadline, but advised that it was still interested and provided its mark-up of the term sheet after close of business on November 24, 2016.

**B. Selecting the Successful Bid**

- 23. The Monitor and I reviewed the bids received for the Remaining Assets to assess which bid or bids would maximize value for the Walter Canada Group's stakeholders. In my opinion, and that of the Monitor, the bid submitted by the Purchaser (the "**Successful Bid**") is the most executable bid received for the Remaining Assets. Although the Successful Bid did not provide the highest value, it provides significant value for the Residual Assets (defined below) that are the subject of the Transaction. In addition, in this case it is crucial that the proposed transaction be completed before December 31, 2016, and, in my opinion, and that of the Monitor, the Successful Bid is the most likely to be successfully consummated by December 31, 2016.
- 24. In selecting the Successful Bid, we considered the following factors:
  - (a) the purchase price and net value of the bids (including all assumed liabilities and other obligations to be performed by the bidder);
  - (b) the guarantee given in respect of the obligations in respect of the Transaction;
  - (c) factors affecting the speed, certainty and value of the transaction, including evidence of financial wherewithal; and
  - (d) the likelihood and timing of the consummation of the transaction.
- 25. After extensive arms-length negotiations, the parties finalized the Term Sheet on November 28, 2016. A redacted copy of the Term Sheet is attached to this affidavit as **Exhibit "A"**. An unredacted copy of the Term Sheet is attached as an Exhibit to the Confidential Affidavit. As discussed below, to maximize the value obtained for the Residual Assets as well as to protect certain commercially sensitive information in the Term Sheet, it is proposed that the Confidential SISP Materials should be sealed and remain sealed until further order of this Court.
- 26. The successful bid is superior to the other bids received in a number of ways, including but not limited to:



- (a) The overall purchase price in the Successful Bid provides significant value for the Residual Assets. Although the Successful Bid was not the highest of the three bid we received, it contemplates payment of significant proceeds to the estate.
- (b) The obligations of the Purchaser under the Term Sheet are guaranteed by the Purchaser Guarantor.
- (c) A transaction with the Purchaser was viewed as being the most likely to be consummated by December 31, 2016. That factor was particularly significant as the proposed Transaction must be completed by December 31, 2016; otherwise, much of the value of the financial attributes of the Residual Assets will be lost.
- (d) The Successful Bid was not highly conditional.

**C. Key Terms of the Transaction**

27. The Purchaser is an acquisition vehicle that is affiliated with the Purchaser Guarantor, one of Canada's leading real estate development and construction firms. The obligations of the Purchaser under the Term Sheet are fully guaranteed by the Purchaser Guarantor.
28. The conditions precedent to closing include the following:
- (a) no evidence of Walter Energy Canada not owning directly or indirectly 100% of the other entities in the Walter Canada Group;
  - (b) along with the equity interests (shares and partnership interests) in the Walter Canada Group, the Residual Assets shall include the Retained Business Assets (as defined in the Term Sheet), consisting of certain investments with a value of approximately \$200,000;
  - (c) from the date of the Term Sheet until the earlier of the date the Proposal is implemented and the date the Term Sheet is terminated in accordance with its terms:
    - (i) no special resolution to dissolve any of Walter Canadian Coal Partnership, Wolverine Coal Partnership, Brule Coal Partnership or Willow Creek Coal Partnership (the "**Partnerships**") shall be passed, and
    - (ii) no steps shall be taken to change the membership of the Partnerships nor any member's interest in any of the Partnerships;
  - (d) no jurisprudence or change in law from the date of the Term Sheet until the date the Transaction is completed that would have a material adverse effect on the tax attributes of the Walter Canada Group or tax impact of the Transaction;
  - (e) the closing date for the Transaction is no later than December 30, 2016;
  - (f) on or before December 28, 2016, the Court shall have granted the BIA Proposal Approval Order and no motion to set aside, vary or stay such order shall be outstanding; and
  - (g) The Proposal shall have been accepted by the requisite majority of affected creditors present in person or by proxy and voting at the meeting convened pursuant to the Bankruptcy Procedural Order.

29. In the Term Sheet, the parties had also agreed to and provided conditions based on the Walter Canada Group putting forth a joint plan of arrangement under the CCAA. Subsequent to the signing of the Term Sheet, the parties agreed not to pursue that plan of arrangement, notwithstanding those provisions of the Term Sheet, in light of the time constraints under which the Transaction must be completed.
30. Based on the information available on the date this affidavit is sworn, I anticipate that the closing date for the Transaction will be before December 30, 2016.
31. The Term Sheet is subject to limited termination rights. The parties can terminate the Term Sheet by giving mutual written consent. In addition, the Term Sheet may be terminated if either party breaches any material covenant in the Term Sheet or in a Definitive Document (as defined in the Term Sheet).
32. The Purchaser has paid a deposit that is slightly greater than 15% of the purchase price contemplated in the Term Sheet.

**D. The Purchased Assets and Proposed Transaction**

33. It is the intention of the parties that the Purchaser acquire all of the shares of Walter Energy Canada, and its interests in Wolverine Coal Partnership, Walter Canadian Coal ULC, Wolverine Coal Partnership, Wolverine Coal ULC, Brule Coal ULC, Brule Coal Partnership, Willow Creek Coal ULC, Willow Creek Coal Partnership, Pine Valley Coal Ltd. and 0541237 B.C. Ltd.
34. The Purchaser will not acquire Walter Energy Canada's interests in Cambrian Energybuild Holdings ULC, Belcourt Saxon Coal Ltd. and Belcourt Saxon Coal Limited Partnership.
35. To effect the transfer of the assets being acquired by the Purchaser, the Proposal will provide that the following steps shall occur in the following order:
  - (a) BlueTree's engagement as CRO of the Walter Canada Group is deemed terminated.
  - (b) Each entity in the Walter Canada Group makes an assignment into bankruptcy.
  - (c) The directors and officers of all of the entities in the Walter Canada Group resign.
  - (d) The Trustee of each entity in the Walter Canada Group files a joint Proposal.
  - (e) The Purchaser subscribes for 200,000,000 common shares in the capital of Walter Energy Canada for a subscription price equal to the purchase price in the Term Sheet and the Purchaser pays that purchase price.
  - (f) All equity (shares) of Walter Energy Canada held by WEI are repurchased, but not cancelled, for no consideration and such shares shall continue to be held by Walter Energy Canada.

- (g) Any issued and outstanding shares of Walter Energy Canada not recorded on the Central Securities Register of Walter Energy Canada shall be repurchased for no consideration and cancelled, and any option or other right to acquire shares or securities of Walter Energy Canada held by any person shall be cancelled for no consideration.
- (h) The Purchaser shall become the sole shareholder of Walter Energy Canada.
- (i) All obligations under the Promissory Note, pursuant to which Walter Energy Canada promised to pay WEI \$2 billion, are released, extinguished and discharged.
- (j) All known priority claims that must be paid under the BIA are paid in full and in cash.
- (k) Each entity in the New Walter Group shall be deemed liable for all Deemed Claims (which, for greater certainty, exclude the Residual Liabilities) of the corresponding Walter Canada Group entity, as follows (which is designed to reflect the fact that most of the members of the Walter Canada Group are general partnerships):
  - (i) All Claims against Wolverine Coal ULC and Wolverine Coal Partnership (other than the Residual Liabilities) are deemed to be Deemed Claims against New Wolverine, New WCCP, and New Walter;
  - (ii) All Claims against Brule Coal ULC and Brule Coal Partnership (other than the Residual Liabilities) are deemed to be Deemed Claims against New Brule, New WCCP, and New Walter;
  - (iii) All Claims against Willow Creek Coal ULC, Willow Creek Coal Partnership, and Pine Valley Coal Ltd. (other than the Residual Liabilities) are deemed to be Deemed Claims against New Willow, New WCCP, and New Walter;
  - (iv) All Claims against Walter Canadian Coal Partnership, Walter Canadian Coal ULC, and 0541237 B.C. Ltd. (other than the Residual Liabilities) are deemed to be Deemed Claims against New WCCP and New Walter; and
  - (v) All Claims against Walter Energy Canada (other than the Residual Liabilities and any liabilities in respect of the and the obligations under the Promissory Note released, extinguished and discharged in paragraph (i) above) are deemed to be Deemed Claims against New Walter.
- (l) The Transferred Assets, including the purchase price and any other cash, but excluding the Residual Assets, shall be deemed transferred as follows:
  - (i) All Transferred Assets of Wolverine Coal ULC and Wolverine Coal Partnership (other than the Residual Assets) are transferred to New Wolverine;
  - (ii) All Transferred Assets of Brule Coal ULC and Brule Coal Partnership (other than the Residual Assets) are transferred to New Brule;
  - (iii) All Transferred Assets of Willow Creek Coal ULC, Willow Creek Coal Partnership, and Pine Valley Coal Ltd. (other than the Residual Assets) are transferred to New Willow;
  - (iv) All Transferred Assets of Walter Canadian Coal Partnership, Walter Canadian Coal ULC, and 0541237 BC Ltd. (other than the Residual Assets) are transferred to New WCCP;

- (v) All Transferred Assets of Walter Energy Canada (other than the Residual Assets) are transferred to New Walter; and
  - (vi) The shares of Cambrian Energybuild Holdings ULC and Walter Canadian Coal Partnership's interests (if any) in Belcourt Saxon Coal Ltd. and Belcourt Saxon Coal Limited Partnership shall transfer to New WCCP.
- (m) The following assets are retained by the applicable Walter Canada Group entity and do not transfer to New Walter or its subsidiaries (collectively, the "**Residual Assets**"):
- (i) The shares of Walter Canadian Coal ULC, Wolverine Coal ULC, Brule Coal ULC, Willow Creek Coal ULC, Pine Valley Coal Ltd., and 0541237 B.C. Ltd.;
  - (ii) The partnership interests in Walter Canadian Coal Partnership, Brule Coal Partnership, Wolverine Coal Partnership and Willow Creek Coal Partnership;
  - (iii) Securities of mining and/or mining related businesses held by Walter Canadian Coal Partnership having a value of approximately \$50,000 to be acquired after the date of the Term Sheet and prior to the day the Proposal is completed and which, for greater certainty, shall not include the capital stock of Cambrian Energybuild Holdings ULC or Belcourt Saxon Coal Ltd., or any partnership interest in Belcourt Saxon Coal Limited Partnership;
  - (iv) All short term liquid investments affording an appropriate safety of principal held by Wolverine Coal Partnership having a value of approximately \$50,000;
  - (v) All short term liquid investments affording an appropriate safety of principal held by Brule Coal Partnership having a value of approximately \$50,000;
  - (vi) All short term liquid investments affording an appropriate safety of principal held by Willow Creek Coal Partnership having a value of approximately \$50,000; and
  - (vii) The Walter Canada Group's corporate and partnership minute books, financial and accounting records, taxation records and such other documents (including banking records and other evidence of fund transfers) as may be necessary to substantiate the share capital of Walter Energy Canada.
- (n) The following liabilities are retained by the applicable Walter Canada Group entity and do not become Deemed Claims against New Walter or its subsidiaries (collectively, the "**Residual Liabilities**"):
- (i) All liabilities for any taxes due or accruing due from and after the Plan Implementation Date (as defined in the Term Sheet); and
  - (ii) All liabilities and claims that are not claims that can be compromised pursuant to the CCAA or the BIA.
- (o) All directors and officers of Walter Energy Canada and each of its direct and indirect subsidiaries are deemed to resign (unless such directors have already resigned).
- (p) New Purchaser appointee director appointed.
- (q) All debts, liabilities, obligations and contracts of the Walter Canada Group of any kind (other than those that cannot be compromised under the CCAA/BIA) are released,

extinguished and discharged, including those of any present or former directors and officers.

- (r) The bankruptcies of all applicable entities of the Walter Canada Group are annulled.

**E. The Proposed Transaction Should Be Approved**

36. The Transaction is similar to a transaction that would be completed pursuant to an approval and vesting order, and will result in the New Walter Group acquiring all of the Transferred Assets and being deemed liable for all of the Deemed Claims.
37. The factors listed in Section 36 of the CCAA, among others, support the approval of the Transaction as follows:
- (a) The sales process leading to the proposed Transaction was reasonable in the circumstances. It included exposing the Residual Assets to the market as part of the initial SISP and, in a more targeted way, as part of the ancillary rules adopted pursuant to the SISP.
  - (b) The Walter Canada Group has proceeded in good faith and with due diligence throughout the process and has received advice from legal and financial advisors and from the Monitor and the CRO.
  - (c) The Transaction has been approved by the Board of Directors of the members of the Walter Canada Group in exercising their business judgement, that the Transaction is the best outcome available to the Walter Canada Group in the circumstances.
  - (d) The Monitor conducted the SISP in accordance with the ancillary rules that were adopted by the Monitor and the CRO, and will comment on the SISP in the Monitor's Sixth report, to be filed.
  - (e) I am informed by the Monitor and believe that it will be filing its Sixth Report stating that the Monitor supports the Transaction and that the Transaction would be more beneficial to the Walter Canada Group's creditors than a sale or disposition under a bankruptcy.
  - (f) The Purchaser is not related to any member of the Walter Canada Group.
  - (g) The proposed Transaction will monetize the Residual Assets and improve creditors' recoveries.
  - (h) The consideration to be received in respect of the assets subject to the Transaction is reasonable and fair, taking into account their market value.
38. For the purposes of determining the nature and priority of any Deemed Claims, the applicable member of the New Walter Group (and the Transferred Assets transferred to such member) are proposed to stand in the place and stead of the member of the Walter Canada Group formerly liable for such claim. From and after the day the Proposal is completed, all claims against such member of the Walter Canada Group and any encumbrances in respect of such claims are proposed to be Deemed Claims against the corresponding member of the New Walter Group and be deemed encumbrances on the applicable Transferred Assets. Such Deemed Claims and deemed

encumbrances shall have the same priority with respect to the applicable member of the New Walter Canada Group and the applicable Transferred Assets as they had with respect to the corresponding member of the Walter Canada Group and the Transferred Assets immediately prior to the day the Proposal is completed, as if the applicable member of the New Walter Canada Group was in all respects the corresponding member of the Walter Canada Group and as if the Transferred Assets had not been transferred and had remained in the possession or control of the member of the Walter Canada Group having that possession or control immediately prior to the implementation of the Proposal.

39. As such, all the claims (other than certain limited claims described above) against the Walter Canada Group are arranged under the Transaction, but they are not compromised. They are preserved as claims against the New Walter Group and the stakeholders will have the right to seek recovery from the Transferred Assets, which includes additional value consisting of the Purchase Price.

#### **IV. SEALING THE CONFIDENTIAL SISP MATERIALS**

40. The Purchase Price and certain other terms of the Term Sheet are commercially sensitive and should not be disclosed at any point before the Transaction successfully closes.
41. Similarly, the terms of the remaining bids are commercially sensitive, and it is not necessary to disclose the details of those bids. But for the CCAA proceedings, the remaining bids would not be filed with the Court or otherwise made public. In my view, the sealing order requested is necessary to maximize recoveries for creditors, particularly if the Transaction does not close.
42. The Confidential SISP Materials, which contain the foregoing information, should be sealed until further order of this Court.

#### **V. PROPOSED BANKRUPTCY PROCEEDINGS**

43. The Walter Canada Group, as part of the steps contemplated in the Transaction and the Proposal, will be seeking the procedural (but not substantive) consolidation of the bankruptcies of the members of the Walter Canada Group.
44. The Proposal, which gives effect to the Transaction, contemplates identical steps, which have been conceived and will be implemented on a group-wide basis, in respect of the entities in the Walter Canada Group. In the absence of the requested order, each of the entities in the Walter Canada Group would be required to prepare and file materials and carry out processes that would be largely identical. Permitting a joint Proposal would reduce the expenditure incurred by the Walter Canada Group.

45. In addition, the Walter Canada Group will be seeking an order exempting the Bankruptcy Trustee or the Proposal Trustee from certain requirements imposed by the BIA, abridging the manner in which those requirements need to be satisfied, and/or providing that the requirements have been satisfied as a result of steps taken in the CCAA proceeding.
46. In particular the Walter Canada Group will be seeking an Order providing (among other things) for the following:
- (a) The Posting of the Bankruptcy Procedural Order and all notices given in the CCAA proceedings (collectively with the Bankruptcy Procedural Order, the "**Notices**") will be deemed sufficient notice for holding the first meeting of the creditors and the holding of the meeting to consider the Proposal.
  - (b) The requirements that the Trustee publish a notice of the first meeting of creditors under s. 104(2) of the BIA, report on the affairs of the debtors under ss. 50(5) and (10) of the BIA, file a statement of affairs under s. 50(2) of the BIA, and file a cash flow statement under s. 50(6) of the BIA will be satisfied by
    - (i) the Notices; and
    - (ii) the Trustee making available on its website and providing a copy to the Superintendent of Bankruptcy/Official Receiver of the certificates of appointment issued by the Superintendent of Bankruptcy in respect of the Debtors, all reports issued in the CCAA Proceedings, a copy of the Bankruptcy Procedural Order, and a copy of a consolidated statement of all claims in the CCAA Proceeding and all assets.
  - (c) Abridging and amending the requirement under s. 51(1) of the BIA that the Trustee send the documents listed in that section, and instead providing that that the posting by the Trustee of the Proposal, the Trustee's report on the Proposal and a voting letter and proxy form on the Trustee's website (the "**Proposal Materials**") and delivery of the Proposal Materials by e-mail or fax to the creditors of the Debtors for which the Trustee has e-mail addresses or fax numbers will be good and sufficient delivery and notice of the documents to be provided pursuant to s. 51(1) of the BIA.
  - (d) Dispensing with the requirement of approval of the Proposal by inspectors of the Debtors pursuant to s. 50(3) of the BIA.
  - (e) Abridging the time for holding the application for the Court's approval of the Proposal such that the application would be heard by the Court on or about December 14, 2016.
  - (f) Abridging the requirement under s. 58 of the BIA that the Trustee send a notice of the hearing of the application to sanction the Proposal at least 15 days before the date of such hearing to the Debtors and to every creditor of the Debtors. Instead, the Trustee would be required to post the notice on the Trustee's website on the day prior to the hearing, and deliver such notice of application and report by e-mail or fax to the creditors of the Debtors for which the Trustee has e-mail addresses or fax numbers.
47. These formal steps simply duplicate the work and reporting KPMG has already completed in its capacity as Monitor in these CCAA proceedings. For example, as a part of the Claims Process in these CCAA proceedings, the Monitor has provided a claims package to all known creditors of the

Walter Canada Group, and has provided information about the CCAA proceedings on the Monitor's website and through notices in a number of newspapers. Creditors of the Walter Canada Group have been identified through that Claims Process.

48. Similarly, under ss. 50(5) and 50(6) of the BIA, the Proposed Trustee would be required to prepare a report on the Walter Canada Group's business and prepare a cash-flow statement. However, the Monitor provided information about the Walter Canada Group's business in its Pre-filing Report, dated December 6, 2015. That report included information such as an overview of the Walter Canada Group's business, its ownership structure, the Group's Canadian operations, and its financial position at the time of the report. The Pre-filing report also contained a cash-flow forecast, which has been updated with information based on the actual receipts and disbursements in subsequent reports. In addition, an updated cash flow forecast was contained in the Monitor's Fourth Report, made on August 11, 2016.
49. In addition, the Monitor and the Walter Canada Group have been taking active steps to ensure that no prejudice will result to the creditors as a result of the abridged timelines and exemptions contemplated in the Bankruptcy Procedural Order:
  - (a) The Monitor sent a notice on November 29, 2016 to all creditors of the Walter Canada Group who had not previously provided the Monitor with email addresses: (i) advising the creditors that the Walter Canada Group may be entering into a transaction in the near future, and that the transaction may be of interest to the claimants; (ii) informing the creditors that the transaction would likely proceed quickly and that any steps would occur as expeditiously as possible; (iii) asking the creditors to provide the Monitor with an email address or fax number at which they could be reached by December 5, 2016, to ensure that the Monitor was able to provide timely notice of any transaction; (iv) warning the creditors that the transaction may proceed without any further notice to them if they chose not to provide their contact information before December 5, 2016; and (v) encouraging all creditors to regularly check the Monitor's website, where the details of any transaction would be posted. A copy of this notice is attached as **Exhibit "B"**.
  - (b) The Monitor intends to send another notice early in the week of December 5, 2016 to provide creditors notice of the transaction and orders being sought, the date that (if the attached order is granted) the meetings will be held and the proposal approval application, where to find materials and a contact person at the Monitor's office, and again reminding people to get an email and fax number to the Monitor if they want to receive the materials.
  - (c) The Walter Canada Group, Monitor and the Monitor's counsel have engaged in discussions with representatives of the Superintendent of Bankruptcy to ensure that it does not have any material objections regarding the Bankruptcy Procedural Order. A draft of the Bankruptcy Procedural Order was provided to the representatives of the Superintendent of Bankruptcy in advance. A copy of an email sent to the representatives of the Superintendent of Bankruptcy on December 2, 2016 is attached as **Exhibit "C"**.
50. The requested relief would preserve the resources of the Walter Canada Group and avoid expending resources or time duplicating efforts already completed and notices already provided.



51. In these unusual circumstances, dispensing with the requirements noted above will not prejudice creditors as the information at issue has been provided on other occasions. Instead, their claims will be transferred to a new entity but preserved in every other way. In addition, by conserving the resources and efforts of both the Walter Canada Group and the creditors, the Order requested will ultimately benefit the creditors by conserving the resources of the debtor estates.

**VI. OTHER MATTERS**

52. The Walter Canada Group has been proceeding in good faith and with due diligence to effect a restructuring under the CCAA, including by continuing the SISP to maximize value for all stakeholders. In addition to the activities outlined above and in my previous affidavits, since my appointment as CRO I have, among other things:
- (a) Continued to engage with representatives of the Ministry of Energy and Mines and other government representatives to discuss the ongoing transfer of the Water Canada Group's permits to Conuma. It is currently anticipated that the permit transfer will be complete in mid-December 2016;
  - (b) Attended to other post-closing matters in respect of the sale of the principal assets of the Walter Canada Group to Conuma, including regarding the transfer of the Walter Canada Group's interests in Belcourt Saxon Coal Ltd. and Belcourt Saxon Coal Limited Partnership;
  - (c) Met with other creditors and interested parties to discuss the status of the CCAA proceedings and the sale of the Residual Assets and certain outstanding claims;
  - (d) Oversaw the conduct of the claims process established pursuant to the Claims Process Order, including the issuance of various notices of revision or disallowance pursuant to the terms thereof;
  - (e) Instructed counsel regarding the dispute with the UMWA 1974 Pension Plan in the Court proceedings established pursuant to the Claims Process Order and subsequent orders of the Court;
  - (f) Attended to governance matters relating to the Walter U.K. Group (as defined in the SISP Order);
  - (g) Continued to examine options to maximize the value of the Walter U.K. assets; and
  - (h) Negotiated the Term Sheet.



**SCHEDULE "A"**

**Petitioners**

1. Walter Canadian Coal ULC
2. Wolverine Coal ULC
3. Brule Coal ULC
4. Cambrian Energybuild Holdings ULC
5. Willow Creek Coal ULC
6. Pine Valley Coal, Ltd.
7. 0541237 B.C. Ltd.

This is Exhibit "A" referred to in Affidavit #5 of **William E. Aziz** sworn December 2, 2016 at Toronto, Ontario.



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

*Patricia Kieker*

## Term Sheet

November 28, 2016

### CONFIDENTIAL

#### BINDING AGREEMENT REGARDING TERMS AND CONDITIONS FOR ACQUISITION OF WALTER ENERGY CANADA HOLDINGS, INC. RESIDUAL ASSETS

**WHEREAS** Walter Energy Canada Holdings, Inc. (“**WECH**”) and the other entities that form the Walter Canada Group (as defined below) are subject to proceedings under the *Companies’ Creditors Arrangement Act* (“**CCAA**”) pursuant to an Initial Order of the Supreme Court of British Columbia (the “**Court**”) pronounced on December 7, 2015 (the “**Initial Order**”), KPMG Inc. has been appointed monitor of the Walter Canada Group (the “**Monitor**”) and BlueTree Advisors Inc. has been appointed Chief Restructuring Officer of the Walter Canada Group (the “**CRO**”).

**AND WHEREAS** the Walter Canada Group sold its principal assets to Conuma Coal Resources Limited on September 9, 2016 pursuant to an asset purchase agreement dated August 8, 2016 (the “**Conuma APA**”) that was approved by the Court pursuant to an Approval and Vesting Order pronounced August 16, 2016 in the CCAA proceedings.

**AND WHEREAS** the Walter Canada Group and the Monitor continued the sale process under the ancillary rules adopted pursuant to the Sale and Investment Solicitation Process (“**SISP**”) approved by order of the Court pronounced January 5, 2016 in the CCAA proceedings (the “**SISP Order**”) relating to the residual assets and the transaction proposed by the Purchaser was selected as the winning bid thereunder.

**AND WHEREAS** the Purchaser and the Walter Canada Group have agreed to enter into a series of transactions to effect the acquisition of WECH and the other entities that form the Walter Canada Group and to complete a restructuring of the Walter Canada Group in accordance with the terms and conditions set out herein (the “**Transaction**”).

**AND WHEREAS** it is anticipated that the Transaction will be completed by way of a Plan of Compromise or Arrangement under the CCAA (the “**CCAA Plan**”), which shall include the following procedures: (i) certain members of the Walter Canada Group shall make an assignment into bankruptcy and (ii) certain members of the Walter Canada Group shall complete a *Bankruptcy and Insolvency Act* (“**BIA**”) proposal (the “**BIA Proposal**”), each as described below and in Schedule “A” hereto.

**NOW THEREFORE**, the parties, in consideration of the foregoing and the mutual agreements contained herein (the receipt and sufficiency of which are hereby acknowledged) agree as follows:

## Parties

Purchaser: 1098138 B.C. Ltd. (the “**Purchaser**”)

Walter Canada Group: WECH, Walter Canadian Coal ULC, Wolverine Coal ULC, Brule Coal ULC, Willow Creek Coal ULC, Pine Valley Coal Ltd., 0541237 B.C. Ltd., Walter Canadian Coal Partnership, Wolverine Coal Partnership, Brule Coal Partnership and Willow Creek Coal Partnership (the “**Walter Canada Group**”)

## Basic Terms

Transaction: Subject to the terms and conditions of this Term Sheet, Purchaser shall make an investment in WECH equal to the amount of the Purchase Price.

In consideration of the Purchase Price and the other covenants and undertakings to be set out in the Definitive Documents (as defined below):

- a) a new corporation shall be incorporated under the *Canada Business Corporations Act* (Canada) or the *Business Corporations Act* (British Columbia) (“**New Walter**”) pursuant to an Order of the Court and New Walter shall be deemed under that order to issue shares to WEI;
- b) New Walter shall form or cause to be formed such subsidiaries as may be required to mirror the material subsidiaries of WECH (such new group of entities, the “**New Walter Group**”), as more fully set out in Schedule “A” hereto;
- c) WECH and other members of the Walter Canada Group shall make an assignment in bankruptcy;
- d) the Purchaser shall subscribe for shares of WECH for a subscription price equal to the Purchase Price;
- e) all of the existing equity of WECH held by Walter Energy, Inc. (“**WEI**”) or any other person shall be repurchased by WECH (but not cancelled) for no consideration;
- f) the obligations under the secured promissory note issued by WECH to WEI shall be extinguished;
- g) The New Walter Group shall be deemed liable for all of the liabilities and obligations of the Walter Canada

Group (other than the Residual Liabilities and the obligations under the secured promissory note extinguished in step (f) above) in a manner that preserves and replicates the Claims (as defined herein) as against the Walter Canada Group;

- h) the Transferred Assets (as defined below), including the Purchase Price and any other cash, but excluding the Residual Assets, shall be deemed transferred to the New Walter Group in a manner that replicates the ownership structure of the Transferred Assets in all material respects;
- i) all of the Walter Canada Group's liabilities (other than such liabilities that cannot be compromised under the CCAA or the BIA) shall be extinguished, released and discharged as against the applicable member of the Walter Canada Group and, for greater certainty, such liabilities shall continue to be liabilities as against the applicable member of the New Walter Group,

in each case as more fully set out in **Schedule "A"** hereto and the Definitive Documents.

Purchase Price:

██████████ plus the value of the Retained Assets (which, in the case of the Retained Business Assets, shall be valued based on quoted market price).

Transferred Assets:

All of the Walter Canada Group's right, title and interest in, to, under or relating to the assets, property and undertaking owned or used or held by the Walter Canada Group on the date set for such transfer in the CCAA Plan and the BIA Proposal, including the following properties, assets and rights:

- a) the Purchase Price;
- b) all rights of the Walter Canada Group under this Term Sheet and any Definitive Documents, unless specified therein;
- c) all records, documents and information in the possession of the Walter Canada Group, including any records prepared in connection with this Transaction, the Conuma APA, the CCAA proceedings or any other matter, and all records, documents and information in the possession of the Walter Canada Group but not owned by the Walter Canada Group;
- d) copies of any book, record, literature, list and any other written or recorded information of the Walter Canada

Group as at or prior to the Plan Implementation Date to which the New Walter Group, the CRO or the Monitor in good faith determine are reasonably likely to be needed to access for bona fide tax or legal purposes, including in respect of any matter arising in the CCAA proceedings;

- e) all information, materials, documents, reports and/or records, whether written or electronic, prepared by the Walter Canada Group's legal counsel and the Monitor and the Monitor's legal counsel, whether or not prepared before or after Plan Implementation Date, that is attorney-client privileged and any and all attorney work product (provided however that no material prepared by legal counsel of the Purchaser, who may become legal counsel to the Walter Canada Group after the Plan Implementation Date, is intended to be included in this paragraph);
- f) all information, materials, documents, reports and/or records, whether written or electronic, in the possession of the CRO or the Monitor;
- g) any deposits held on behalf of the Walter Canada Group, including any deposits held in trust accounts to secure payment of the reasonable fees and disbursements of the Monitor and any professional advisors of the Walter Canada Group and of the Monitor, any deposits provided to any government entity in respect of tax liabilities, and any amounts paid by or on behalf of the Walter Canada Group in respect of any employment liabilities;
- h) all cash, cash equivalents, bank balances, and moneys in possession of banks, the Monitor and other depositories;
- i) marketable shares, notes, bonds, debentures or other securities of or issued by corporations, partnerships or other persons and all certificates or other evidences of ownership thereof owned or held by or for the account of the Walter Canada Group, including the shares in the capital stock of Cambrian Energybuild Holdings ULC and Belcourt Saxon Coal Ltd., and including any partnership interest in Belcourt Saxon Coal Limited Partnership, but excluding all other shares and partnership interests of other Walter Canada Group entities that constitute Residual Assets;
- j) the accounts receivable, bills receivable, trade accounts, book accounts, and any other amount due or



deemed to be due to the Walter Canada Group or any of them including any payments, refunds and rebates receivable relating to the Transferred Assets;

- k) refunds in respect of reassessments for taxes paid by any member of the Walter Canada Group prior to Plan Implementation Date;
- l) refundable taxes;
- m) amounts owing to the Walter Canada Group or any of them from any director, officer, former director or officer, shareholder, employee or any member of the Walter Canada Group;
- n) director and officer insurance policies and the right to receive insurance recoveries under (i) any insurance policies for losses that occurred prior to Plan Implementation Date and (ii) any director and officer insurance policies in respect of any matters at any time;
- o) all rights and interests under or pursuant to all warranties, representations, indemnities and guarantees, express, implied or otherwise, of or made by suppliers or others in connection with the Transferred Assets, the Conuma APA or any Deemed Liabilities; and
- p) all other rights, properties and assets of the Walter Canada Group or any of them as at the Plan Implementation Date of whatsoever nature or kind and wherever situated,

other than the Residual Assets (the “**Transferred Assets**”). For greater certainty and notwithstanding the foregoing, the Transferred Assets shall not include the Walter Canada Group’s corporate and partnership minute books, financial and accounting records, taxation records and such other documents (including banking records and other evidence of fund transfers) as may be necessary to substantiate the share capital of WECH and provided further that the New Walter Group shall be permitted to retain a copy of any such minute books, financial and accounting records, taxation records and other documents.

On the day and in accordance with the steps to be set out in the CCAA Plan and the BIA Proposal, all of the Transferred Assets shall be deemed transferred to the New Walter Group in a manner that preserves and replicates the ownership structure of the Transferred Assets in all

material respects. The Transferred Assets shall be subject to the Charges (as defined in the Order of the Court pronounced on January 5, 2016 and as amended by the Order of the Court pronounced March 30, 2016 and any subsequent order of the Court).

- Deemed Liabilities:** On the day and in accordance with the steps to be set out in the CCAA Plan and the BIA Proposal, the New Walter Group shall be deemed to be liable for all Claims in respect of the Walter Canada Group other than the Residual Liabilities (the “**Deemed Liabilities**”) on an entity by entity basis as more particularly described in Schedule “A”.
- Claim:** “**Claim**” has the meaning given in section 2(1) of the CCAA and for greater certainty includes any “Claims” as defined in the Claims Process Order dated August 16, 2016 and includes any person’s entitlement to seek recourse pursuant to sections 38 and 95-101 of the BIA and any equivalent provincial statute as against the Walter Canada Group *mutatis mutandis* and as if the CCAA Plan had not been implemented. For greater certainty, the New Walter Group shall not assume any Claim that has already been barred pursuant to the Claims Process Order.
- Residual Assets:** The following assets shall be retained by the Walter Canada Group following the Plan Implementation Date:
- a) the shares of Walter Canadian Coal ULC, Wolverine Coal ULC, Brule Coal ULC, Willow Creek Coal ULC, Pine Valley Coal Ltd. and 0541237 B.C. Ltd.;
  - b) the partnership interests in Walter Canadian Coal Partnership, Brule Coal Partnership, Wolverine Coal Partnership and Willow Creek Coal Partnership;
  - c) securities of mining and/or mining related businesses held by Walter Canadian Coal Partnership having a value of approximately \$50,000 to be acquired after the date hereof and prior to the Plan Implementation Date and which, for greater certainty, shall not include the capital stock of Cambrian Energybuild Holdings ULC or Belcourt Saxon Coal Ltd., or any partnership interest in Belcourt Saxon Coal Limited Partnership;
  - d) all short term liquid investments affording an appropriate safety of principal held by Wolverine Coal Partnership having a value of approximately \$50,000;
  - e) all short term liquid investments affording an appropriate safety of principal held by Brule Coal

Partnership having a value of approximately \$50,000;

- f) all short term liquid investments affording an appropriate safety of principal held by Willow Creek Coal Partnership having a value of approximately \$50,000,

(the investments set out in paragraphs (c) through (f) are collectively referred to herein as the “**Retained Business Assets**”); and

- g) the Walter Canada Group’s corporate and partnership minute books, financial and accounting records, taxation records such other documents (including banking records and other evidence of fund transfers) as may be necessary to substantiate the share capital of WECH,

(collectively, the “**Residual Assets**”)

**Residual Liabilities:**

The following liabilities shall be retained by the Walter Canada Group following the Plan Implementation Date:

- a) all liabilities for any taxes due or accruing due from and after the date the BIA Proposal Approval Order is pronounced; and
- b) all liabilities and claims that are not Claims that can be compromised pursuant to the CCAA or the BIA

(collectively, the “**Residual Liabilities**”)

**Plan Implementation Date:**

Subject to the terms and conditions of this Term Sheet and the Definitive Documents, the transactions contemplated herein and therein shall close and be completed on the days in the sequence specified in the CCAA Plan and the BIA Proposal (the “**Plan Implementation Date**”).

**Deposit:**

WECH acknowledges receipt from the Purchaser of a deposit of [REDACTED] (such amount minus \$5, the “**Deposit**”), being just over 15% of the Purchase Price, all but \$5 of which is to be held by the Monitor in an interest bearing account with a bank.

If Plan Implementation Date takes place, the Deposit and all interest accrued thereon shall be credited against the Purchase Price in accordance with the CCAA Plan and the BIA Proposal.

If the Plan Implementation Date does not occur by reason of any action or inaction of the Purchaser, including any action or inaction that results in the failure of the parties to

achieve any of the conditions set out in the section titled “Mutual Conditions”, the full amount of the Deposit, (plus accrued interest), less any applicable withholding tax, shall become the property of and be retained by the Monitor on behalf of the Walter Canada Group as liquidated damages and not as a penalty.

If the Plan Implementation Date does not occur by reason of any action or inaction of the Walter Canada Group or the New Walter Group including any action or inaction that results in the failure of the parties to achieve any of the conditions set out in the sections titled “Mutual Conditions” and “Purchaser’s Conditions”, or if the Court refuses to grant any of the orders necessary to implement the Transaction other than by reason of any action or inaction of the Purchaser, or this Term Sheet is terminated by mutual written consent of the Purchaser and the Walter Canada Group, the Monitor shall refund the full amount of the Deposit (plus accrued interest), less any applicable withholding tax, to the Purchaser within 5 business days of the day the parties know that the Transaction will not be completed.

“As is, where is”:

The Purchaser acknowledges and agrees that it is entering into this Term Sheet and completing the Transaction on an “as is, where is basis” (except that the Walter Canada Group has no knowledge that the information provided regarding the ownership of each entity in the Walter Canada Group is inaccurate and no knowledge that financial and accounting records are inaccurate) and will be acquiring the Walter Canada Group with all known and unknown faults. The Purchaser expressly acknowledges that it:

- a) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or assets to be acquired; and
- b) did not rely upon any written or oral statements, representations, promises, warranties or guarantees whatsoever, whether express or implied (by operation of law or otherwise) by the Walter Canada Group, the CRO, the Monitor or any of their respective advisors, regarding the Transaction, the completeness of any information provided in connection therewith or any other matter relating thereto.

Purchaser Acknowledgements: Purchaser acknowledges and agrees that no internal approvals are required for it to execute this Term Sheet, any Definitive Documents or to proceed with Transaction.

The Purchaser represents and warrants that the Purchaser's sole activities from and after the Plan Implementation Date shall be to hold the shares of WECH.

Financing:

The Purchaser has now, and at all times from the date hereof through and after the Plan Implementation Date, will have, sufficient funds available to pay the Purchase Price and all other amounts payable in respect of the Transaction and to otherwise consummate the transactions contemplated hereby and thereby. The Purchaser acknowledges that its obligations under this Term Sheet are not subject to any conditions regarding its ability to obtain financing for any portion of the foregoing amounts.

Records:

After the Plan Implementation Date, the Purchaser and the New Walter Group will make available to the other and to the Monitor, as reasonably requested, and to any tax authority, all non-privileged information, records or documents relating to liability for taxes with respect to the Residual Assets, the Transferred Assets, the Deemed Liabilities and the Residual Liabilities for all periods prior to or including the Plan Implementation Date, and will preserve such information, records or documents until the expiration of any applicable statute of limitations or extensions thereof. In the event that one party needs access to non-privileged records in the possession of the other party relating to any of the Residual Assets, the Transferred Assets, the Deemed Liabilities and the Residual Liabilities for purposes of preparing tax returns or complying with any tax audit request, subpoena or other investigative demand by any tax authority, or for any other legitimate tax-related purpose not injurious to the other party, the other party will allow representatives of the first party and the Monitor, at the first party's sole expense, access to such non-privileged records during regular business hours at the other party's place of business for the sole purpose of obtaining non-privileged information for use as aforesaid and will permit the other party to make extracts and copies thereof as may be necessary or convenient.

The Purchaser shall take all reasonable steps to preserve and keep the books and records delivered to it in connection with the completion of the Transaction, including in respect of the period prior to the date of the Initial Order, for a period of six years from the Plan Implementation Date, or for any longer period as may be required by any law or government entity, and shall make such records available to the New Walter Group, the Monitor, the CRO or any trustee in bankruptcy of the New

Walter Group on a timely basis, as may be required by it, including in connection with the CCAA proceedings and the claims process being conducted thereunder and with any administrative or legal proceeding that may be initiated by, on behalf of, or against the New Walter Group.

**Cooperation:**

The parties shall use all commercially reasonable efforts to complete the various transactions required to complete the Transaction on an expeditious basis including, without restriction, the prompt circulation and delivery of draft documents to the working group for review, consideration and comment, the prompt execution and delivery of all agreements and other documents or instruments, the giving of consents, and the making of such applications to the Court or taking such proceedings, as may be necessary or desirable in furtherance of the completion of the Transaction.

Each party acknowledges and agrees that time is of the essence of the Transaction and the execution and delivery of any documentation or taking of any action required in connection with the completion of the Transaction will not be unreasonably withheld or delayed.

**Court Officers & Releases**

**Monitor:**

The Monitor shall be the trustee in bankruptcy and the proposal trustee for the applicable members of the Walter Canada Group for all matters contemplated by this Term Sheet.

The Purchaser acknowledges and agrees that the Monitor, in its capacity as Monitor and in its capacity as trustee in bankruptcy and proposal trustee have certain duties and obligations that are owed to the Court and that the Monitor, acting in its capacity as the Monitor of the Walter Canada Group and the New Walter Group in the CCAA proceedings, or in its capacity as trustee in bankruptcy or proposal trustee under the BIA, will have no liability in connection with this Term Sheet or the Definitive Documents whatsoever in its capacity as Monitor, trustee in bankruptcy or proposal trustee, in its personal capacity or otherwise.

**CRO:**

The Purchaser acknowledges and agrees that the CRO has certain duties and obligations that are owed to the Court and that, in executing this Term Sheet and making any representation, warranty or certification hereunder, the CRO has made such inquires as the CRO deemed appropriate and has informed itself through and relied

upon the results of such inquiry. The CRO has not examined any other person, reviewed any other document, or otherwise attempted to verify the accuracy or completeness of the information that has been provided to the CRO through the inquiries made. All representations, warranties, covenants and certifications made in respect of this Term Sheet are expressly qualified by the actual knowledge of the CRO based on the inquiries made to date by the CRO, and it is acknowledged by the Purchaser that the CRO and any of its directors, officers or agents shall have no liability whatsoever for the execution of this Term Sheet, any matter contained in this Term Sheet or the Definitive Documents or any of the representations, warranties, covenants or certifications made herein; provided however that the CRO shall exercise the powers granted to the CRO under the SISP Order and any other order in the CCAA proceedings, as applicable, to cause the Walter Canada Group and the New Walter Group to perform their respective obligations under this Term Sheet.

Release:

On the Plan Implementation Date or upon termination of this Term Sheet, the Purchaser releases the CRO, the Monitor, in its capacity as Monitor, bankruptcy trustee and proposal trustee and any of their affiliates and any partner, employee, officer, director, accountant, agent, financial, legal or other representative of any of the Walter Canada Group and the New Walter Group, the Monitor or the CRO, from any and all claims known or unknown, that the Purchaser may have against such person relating to, arising out of, or in connection with the negotiation and execution of this Term Sheet and the Definitive Documents, the transactions contemplated herein and therein and any proceedings commenced with respect to or in connection therewith, except where such persons have been engaged in fraud, fraudulent misrepresentation, gross negligence or willful misconduct.

### **Certain Conditions**

Court Approval:

Upon the execution of this Term Sheet and the completion of the negotiation of the Definitive Documents, the Walter Canada Group shall promptly seek to obtain from the Court (i) an order (the “**CCAA Process Order**”) approving this Term Sheet and authorizing the formation of the New Walter Group and (ii) an order (the “**CCAA Meeting Order**”) convening a meeting of the creditors of the Walter Canada Group or deeming a meeting of the creditors of the Walter Canada Group to have been held to obtain the approval of the CCAA Plan by the Walter Canada Group’s creditors.

After obtaining the approval of the CCAA Plan that is required under the CCAA Meeting Order, the Walter Canada Group shall promptly seek to obtain from the Court: (i) an order (the “**CCAA Sanction Order**”) sanctioning the CCAA Plan and authorizing the assignment of the Walter Canada Group into bankruptcy, the commencement of the BIA process, including the filing by the trustee in bankruptcy of the BIA Proposal; and (ii) an order (the “**BIA Procedure Order**”) abridging certain timelines set in the BIA, dispensing with certain requirements under the BIA and authorizing the holding of a meeting of the creditors of the Walter Canada Group to obtain the approval of the BIA Proposal.

After obtaining the approval of the BIA Proposal that is required under the BIA Procedure Order, the proposal trustee shall promptly seek to obtain from the Court an order (the “**BIA Proposal Approval Order**”) approving the BIA Proposal.

The Purchaser shall provide the Walter Canada Group with such commercially reasonable assistance as the Walter Canada Group may request with respect to obtaining any of the foregoing orders.

The Walter Canada Group shall provide the Purchaser with drafts of all materials to be submitted to the Court in connection with the application for the foregoing orders as far in advance of the applicable hearing date as is practical in the circumstances.

Written notification of the application for the orders described in the foregoing paragraphs shall be given to such persons as shall be required by the Walter Canada Group and the Purchaser, each acting reasonably. The Purchaser shall provide reasonable assistance to the Walter Canada Group by providing such information and assistance within the Purchaser’s power in support of the Walter Canada Group’s application for the foregoing orders, including such information as may be required to reasonably evaluate the Purchaser’s financial ability to perform the obligations under this Term Sheet.

**Purchaser’s Conditions:**

The Purchaser’s obligations to complete the transactions contemplated hereunder are subject to the following conditions being fulfilled, performed or otherwise satisfied as at or prior to the Plan Implementation Date:

- a) no evidence of WECH not owning directly or indirectly 100% of Walter Canadian Coal Partnership, Walter Canadian Coal ULC, Wolverine Coal



Partnership, Wolverine Coal ULC, Brule Coal Partnership, Brule Coal ULC, Willow Creek Coal Partnership and Willow Creek Coal ULC;

- b) along with the equity interests (shares and partnership interests) in the Walter Canada Group, the Residual Assets shall include the Retained Business Assets;
- c) from the date hereof until the earlier of the Plan Implementation Date and the date this Term Sheet is terminated in accordance with its terms:
  - i. no special resolution to dissolve any of Walter Canadian Coal Partnership, Wolverine Coal Partnership, Brule Coal Partnership or Willow Creek Coal Partnership (the “Partnerships”) shall be passed, and
  - ii. no steps shall be taken to change the membership of the Partnerships nor any member’s interest in any of the Partnerships;
- d) no jurisprudence or change in law from the date hereof until the Termination Date (defined below) that would have a material adverse effect on the tax attributes of the Walter Energy Entities or tax impact of the Transaction;

Mutual Conditions:

The respective obligations of the parties to complete the transactions contemplated hereunder are subject to the following conditions being fulfilled, performed or otherwise satisfied as at or prior to the Plan Implementation Date:

- a) there shall be in effect no law or order prohibiting the consummation of the Transactions contemplated hereby, unless such law or order has been withdrawn or terminated;
- b) on or before December 28, 2016, the Court shall have granted the BIA Proposal Approval Order and no appeal or motion to set aside, vary or stay the BIA Proposal Approval Order shall be outstanding; and
- c) the Plan Implementation Date shall have occurred on or before December 30, 2016.

Termination by Mutual Consent: This Term Sheet shall terminate by mutual written consent of the Purchaser and the Walter Canada Group.

Termination by the Purchaser: This Term Sheet may be terminated by the Purchaser if the Walter Canada Group has breached any material covenant of the Walter Canada Group hereunder or in the Definitive Documents, provided however that the Purchaser may not terminate this Term Sheet in circumstances where it is in breach of its obligations or where it has caused the Walter Canada Group to be in breach of this Term Sheet.

Termination by the Walter Canada Group: This Term Sheet may be terminated by the Walter Canada Group if the Purchaser has breached any material covenant of the Purchaser hereunder or in the Definitive Documents, including any failure to pay the Purchase Price, provided however that the Walter Canada Group may not terminate this Term Sheet in circumstances where it is in breach of its obligations or where it has caused the Purchaser to be in breach of this Term Sheet.

Definitive Documents: The transactions contemplated hereby are conditional on the Purchaser and the Walter Canada Group having negotiated the CCAA Plan, the BIA Proposal and the documents incidental thereto, setting out the full terms and conditions of the Transaction contemplated by this Term Sheet (collectively, the “**Definitive Documents**”) in form and substance satisfactory to the Purchaser and the Walter Canada Group and consistent with the terms of this Term Sheet on or before December 2, 2016.

### **Exclusivity**

Each of the parties to this Term Sheet agree that it will not, directly or indirectly, through any representative or otherwise, solicit or entertain offers from, negotiate with or in any manner encourage, accept or consider any proposal from any other person relating to a transaction similar in nature to the transactions contemplated in this Term Sheet (or otherwise involving the sale of all or any substantial part of the assets of WECH, except as specifically contemplated by this Term Sheet) until the date (the “**Release Date**”) which is the earlier of:

- a) January 1, 2017; and
- b) the Plan Implementation Date.

In addition to the foregoing, between the date hereof and the Release Date, if WECH receives any unsolicited offer or proposal, or has actual knowledge of any unsolicited offer or proposal, relating to any of the above, WECH shall immediately notify the Purchaser of the details thereof.

### **Miscellaneous**

## Notices:

Any notice, request or other communication hereunder to any of the parties shall be in writing and be well and sufficiently given if delivered personally or by fax or electronic mail to the person as set forth below.

## If to the Purchaser:

Jeff Shickele  
Director  
1098138 B.C. Ltd.  
Suite 500, 856 Homer Street  
Vancouver, BC V6B 2W5

Facsimile: 604.602.7110  
Email: [jshickele@amacon.com](mailto:jshickele@amacon.com)

## and a copy to counsel to the Purchaser:

Randy Morphy  
BORDEN LADNER GERVAIS LLP  
Suite 1200 – 200 Burrard Street  
PO Box 48600  
Vancouver, BC V7X 1T2

Facsimile: 604.622.5006  
Email: [rmorphy@blg.com](mailto:rmorphy@blg.com)

## If to the Walter Canada Group or the New Walter Group:

William E. Aziz  
Chief Restructuring Officer  
WALTER ENERGY CANADA HOLDINGS, INC.  
Email: [baziz@bluetreadvisors.com](mailto:baziz@bluetreadvisors.com)

## And to:

Marc Wasserman and Patrick Riesterer  
OSLER, HOSKIN & HARCOURT LLP  
Box 50, 1 First Canadian Place  
Toronto, Ontario, M5X 1B8

Facsimile: 416.862.6666  
Email: [mwasserman@osler.com](mailto:mwasserman@osler.com) and [priesterer@osler.com](mailto:priesterer@osler.com)

## And to:

Mary Buttery and Lance Williams  
DLA Piper LLP  
Suite 2800, Park Place  
666 Burrard St

Vancouver, British Columbia V6C 2Z7

Facsimile: 604-605-3768

Email: mary.buttery@dlapiper.com and  
lance.williams@dlapiper.com

With a copy to the Monitor:

Philip J. Reynolds and Anthony Tillman  
KPMG INC.

Bay Adelaide Centre  
333 Bay Street, Suite 4600  
Toronto, ON M5H 2S5

Facsimile: 416.777.3364 and 604.691.3036

Email: pjreynolds@kpmg.ca and atillman@kpmg.ca

and a copy to counsel to the Monitor:

Wael Rostom and Caitlin Fell

MCMILLAN LLP

181 Bay Street, Suite 440  
Toronto, ON M5J 2T3

Facsimile: 416.865.7048

Email: wael.rostom@mcmillan.ca and  
caitlin.fell@mcmillan.ca

**Governing Law:**

This Term Sheet and the Definitive Documents shall be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein (excluding any conflict of law rule or principle of such laws that might refer such interpretation or enforcement to the laws of another jurisdiction). Each Party hereto irrevocably agrees to submit to the exclusive jurisdiction of the Court with respect to any matters arising herein or relating hereunder.

**Counterparts:**

The parties may execute and deliver this Term Sheet in two or more counterparts (no one of which need contain the signatures of all parties), including facsimile or scanned PDF document, with the same effect as if all parties had executed and delivered the same copy, each of which will be deemed an original and all of which together will constitute one and the same instrument.

**Amendments and Waivers:**

No waiver or delay on the part of any party in exercising any right or privilege hereunder or under any other Definitive Document will operate a waiver hereof and thereof unless made in writing.


- Entire Agreement; Conflict:** This Term Sheet currently constitutes the entire agreement between the parties relating to the subject matter hereof and is binding on the parties in accordance with its terms. To the extent that there is any inconsistency between this Term Sheet and any of the Definitive Documents once executed, this Term Sheet shall govern unless such Definitive Document specifically states otherwise.
- Costs:** All costs and expenses including legal fees and disbursements incurred in connection with the Transaction, including negotiation and preparation of this Term Sheet and the Definitive Documents and the consummation of the Transactions contemplated hereby and thereby shall be borne by the party that incurred such cost or expense.
- Confidentiality:** The terms of the Confidentiality Agreement between Amacon Management Services Corp. and WECH dated November 2, 2016 will survive the execution of this Term Sheet.
- Binding Effect:** The Purchaser agrees that this Term Sheet legally binding and enforceable against the Purchaser beginning on the date on which this Term Sheet is executed and delivered by the last party to do so. The Walter Canada Group agrees that the provisions of this Term Sheet set out under “Exclusivity” “Cost” and “Confidentiality” are legally binding and enforceable against the Walter Canada Group beginning on the date on which this Term Sheet is executed and delivered by the last party to do so and the remaining provisions of this Term Sheet shall become binding and enforceable against the Walter Canada Group when this Term Sheet is approved by the Court.
- Guarantee** Amacon Land Corporation unconditionally guarantees the performance by the Purchaser of all of its obligations under this Term Sheet.

**SIGNATURE PAGE FOLLOWS**

**IN WITNESS HEREOF**, the parties hereby execute this Term Sheet as at the date above mentioned.

**1098138 B.C. LTD.**

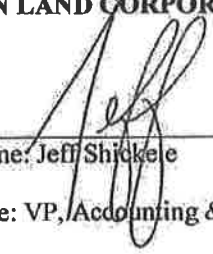
By:

  
Name: Jeff Shickele

Title: Director

**AMACON LAND CORPORATION**

By:

  
Name: Jeff Shickele

Title: VP, Accounting & Tax

**WALTER ENERGY CANADA  
HOLDINGS, INC. for and on behalf of the  
Walter Canada Group**

By:

\_\_\_\_\_  
Name:

Title:

**IN WITNESS HEREOF**, the parties hereby execute this Term Sheet as at the date above mentioned.

**1098138 B.C. LTD.**

By:

\_\_\_\_\_  
Name: Jeff Shickele

Title: Director

**AMACON LAND CORPORATION**

By:

\_\_\_\_\_  
Name: Jeff Shickele

Title: VP, Accounting & Tax

**WALTER ENERGY CANADA  
HOLDINGS, INC. for and on behalf of the  
Walter Canada Group**

By:

*William E. Aziz*

\_\_\_\_\_  
Name: William E. Aziz

Title: Chief Restructuring Officer

## Schedule "A"

### Walter CCAA Plan / BIA Proposal – Procedural and Transaction Steps

#### Pre-CCAA Plan Implementation Steps

1. Bank accounts and brokerage accounts opened for each of Walter Canadian Coal Partnership, Wolverine Coal Partnership, Brule Coal Partnership and Willow Creek Coal Partnership
2. New Walter incorporated under the *Canada Business Corporations Act* or the *British Columbia Business Corporations Act* and issues shares to WEI
  - a. \$5 of deposit paid by the Purchaser to New Walter as agent and on behalf of WEI as subscription price for shares
  - b. New Walter deemed to be insolvent and subject to the CCAA proceedings; Monitor appointed
  - c. CCAA Charges attach to all present and after acquired property of New Walter
3. New WCCP incorporated as wholly owned subsidiary of New Walter
  - a. \$4 paid by New Walter as subscription price for shares
  - b. New WCCP deemed to be insolvent and subject to the CCAA proceeding; Monitor appointed
  - c. CCAA Charges attach to all present and after acquired property of New WCCP
4. New Wolverine, New Brule and New Willow each incorporated as wholly owned subsidiaries of New WCCP
  - a. \$1 each paid by new WCCP as subscription price for shares
  - b. New Wolverine, New Brule and New Willow deemed to be insolvent and subject to the CCAA proceeding; Monitor appointed
  - c. CCAA Charges attach to all present and after acquired property of New Wolverine, New Brule and New Willow
5. BlueTree deemed to be CRO of New Walter, New WCCP, New Wolverine, New Brule and New Willow (collectively, the "New Walter Group")

#### CCAA Plan / BIA Proposal Provisions

1. CCAA Plan and BIA Proposal are, collectively, a joint plan of the New Walter Group and the historical Walter Canada Group
2. Affected Creditors are all creditors of the historical Walter Canada Group other than (i) creditors to the extent of their Priority Claims; (ii) any creditor to the extent that such creditor's claim is barred by the Claims Process Order and (iii) any creditor to the extent such creditor's claim is a Residual Liability



3. Priority Claims are claims that must be satisfied to obtain the approval of the CCAA Plan / BIA Proposal
4. All Affected Creditors who are given the right to vote shall vote in a single class of creditors for each entity
5. CCAA Plan and BIA Proposal to provide that the Claims of all Affected Creditors shall be deemed to be Claims against the applicable member(s) of New Walter and their assets as if such member(s) of New Walter were the applicable member of the historical Walter Canada Group and shall have be a Claim for the same amount and with the same priority as if no transfer occurred
  - a. The CCAA Plan mirrors an approval and vesting order in this respect
  - b. Claims are not compromised, but they are arranged
  - c. The CCAA Plan permits the New Walter Group to stand in the place and stead of the historical Walter Canada Group to determine Claims pursuant to the Claims Process Order
6. Corporate and transactional steps shall occur in the order set out in the CCAA Plan / BIA Proposal, as summarized below

**Plan/Proposal Transactional Steps**

1. BlueTree deemed terminated as CRO of WECH and all other members of the Walter Canada Group
2. Each entity in the Walter Canada Group makes an assignment in bankruptcy
3. Director(s) and officer(s) of each entity in the Walter Canada Group resign
4. The Walter Canada Group files a joint BIA Proposal within the CCAA Plan
5. The Purchaser subscribes for shares of WECH for a subscription price equal to the Purchase Price and the Purchaser pays the Purchase Price
6. All equity (shares) of WECH held by WEI or any other person are repurchased (but not cancelled) for no consideration
7. all obligations under the secured promissory note dated April 1, 2011 pursuant to which WECH promised to pay WEI \$2 billion are released, extinguished and discharged
8. All Priority Claims are paid in full and in cash
9. Each New Walter entity shall be deemed liable for all liabilities and obligations (other than the Residual Liabilities) of the corresponding Walter Canada Group entity as follows:
  - a. All liabilities and obligations of Wolverine Coal ULC and Wolverine Coal Partnership (other than the Residual Liabilities) are deemed to be liabilities and obligations of New Wolverine, New WCCP and New Walter

- b. All liabilities and obligations of Brule Coal ULC and Brule Coal Partnership (other than the Residual Liabilities) are deemed to be liabilities and obligations of New Brule, New WCCP and New Walter
  - c. All liabilities and obligations of Willow Creek Coal ULC, Willow Creek Coal Partnership and Pine Valley Coal Ltd (other than the Residual Liabilities) are deemed to be liabilities and obligations of New Willow, New WCCP and New Walter
  - d. All liabilities and obligations of Walter Canadian Coal Partnership, Walter Canadian Coal ULC and 0541237 BC Ltd (other than the Residual Liabilities) are deemed to be liabilities and obligations of New WCCP and New Walter
  - e. All liabilities and obligations of WECH (other than the Residual Liabilities and any liabilities in respect of the and the obligations under the secured promissory note released, extinguished and discharged in paragraph 7 above) are deemed to be liabilities and obligations of New Walter
10. The Transferred Assets, including the Purchase Price and any other cash, but excluding the Residual Assets, shall be deemed transferred as follows:
- a. All assets of Wolverine Coal ULC and Wolverine Coal Partnership (other than the Residual Assets) are transferred to New Wolverine
  - b. All assets of Brule Coal ULC and Brule Coal Partnership (other than the Residual Assets) are transferred to New Brule
  - c. All assets of Willow Creek Coal ULC, Willow Creek Coal Partnership and Pine Valley Coal Ltd (other than the Residual Assets) are transferred to New Willow
  - d. All assets of Walter Canadian Coal Partnership, Walter Canadian Coal ULC and 0541237 BC Ltd (other than the Residual Assets) are transferred to New WCCP
  - e. All assets of WECH (other than the Residual Assets) are transferred to New Walter
  - f. The shares of Cambrian Energybuild ULC and Walter Canadian Coal Partnership's interests (if any) in Belcourt Saxon Coal Ltd and Belcourt Saxon Coal Limited Partnership shall transfer to New WCCP
11. The following assets are retained by the applicable Walter Canada Group entity and do not transfer to New Walter or its subsidiaries:
- a. the shares of Walter Canadian Coal ULC, Wolverine Coal ULC, Brule Coal ULC, Willow Creek Coal ULC, Pine Valley Coal Ltd. and 0541237 B.C. Ltd.;
  - b. the partnership interests in Walter Canadian Coal Partnership, Brule Coal Partnership, Wolverine Coal Partnership and Willow Creek Coal Partnership;
  - c. securities of mining and/or mining related businesses held by Walter Canadian Coal Partnership having a value of approximately \$50,000 to be acquired after the date hereof and prior to the Plan Implementation Date and which, for greater

certainty, shall not include the capital stock of Cambrian Energybuild Holdings ULC or Belcourt Saxon Coal Ltd., or any partnership interest in Belcourt Saxon Coal Limited Partnership;

- d. all short term liquid investments affording an appropriate safety of principal held by Wolverine Coal Partnership having a value of approximately \$50,000;
  - e. all short term liquid investments affording an appropriate safety of principal held by Brule Coal Partnership having a value of approximately \$50,000;
  - f. all short term liquid investments affording an appropriate safety of principal held by Willow Creek Coal Partnership having a value of approximately \$50,000, and
  - g. such other interests as are specified by the Purchaser
12. All directors and officers of Walter Canada and each of its direct and indirect subsidiaries are deemed to resign (unless already complete)
13. New Purchaser appointee directors appointed
14. All historical Walter Canada Group debts, liabilities, obligations and contracts of any kind (other than those that cannot be compromised in the CCAA/BIA) are released, extinguished and discharged, including those of any present or former directors and officers.
15. WECH and other Walter Canada Group bankruptcies are annulled

This is Exhibit "B" referred to in Affidavit #5 of **William E. Aziz** sworn December 2, 2016 at Toronto, Ontario.



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

*Patrick Riestee*



**KPMG Inc.**  
PO Box 10426 777 Dunsmuir Street  
Vancouver BC V7Y 1K3  
Canada

Telephone (604) 691-3000  
Fax (604) 691-3036  
Internet www.kpmg.ca

November 29, 2016

## NOTICE TO CREDITORS

**Re: Claims Against Walter Energy Canada Holdings, Inc.; Walter Canadian Coal ULC;  
Wolverine Coal ULC; Brule Coal ULC; Cambrian Energybuild Holdings ULC;  
Willow Creek Coal ULC; Pine Valley Coal Ltd.;  
and 0541237 B.C. Ltd. (collectively, the "Petitioners")  
together with Walter Canadian Coal Partnership; Wolverine Coal Partnership;  
Brule Coal Partnership; and Willow Creek Coal Partnership  
(the "Partnerships", collectively with the Petitioners, "Walter Canada")**

You are receiving this Notice because you are a Claimant in the *Companies' Creditors Arrangement Act* ("CCAA") proceedings of Walter Canada. KPMG Inc. was appointed as monitor (the "Monitor") of Walter Canada.

We are writing to advise you that there may be a transaction involving Walter Canada in the near term that may be of interest to you in light of your Claim. If this transaction proceeds, it will move forward very quickly and all steps to complete the matter will occur as expeditiously as possible in the circumstances. You are receiving this message because Walter Canada and the Monitor request that you provide the Monitor with an email address or fax number at which you can be reached so that you can receive timely notice of any such transaction. Please respond to this message as soon as possible and in any event prior to **DECEMBER 5, 2016** or the transaction may move forward with **NO FURTHER NOTICE TO YOU.**

Please provide the Monitor with an email address or a fax number by delivering the message to the Monitor at the following address:

KPMG Inc.  
Court-appointed Monitor of Walter Energy Canada Holdings, Inc. *et al.*  
Attention: Mark Kemp-Gee or Mike Clark  
Email: mkempgee@kpmg.ca or maclark@kpmg.ca  
Phone: 1 604 691 3468  
Fax: 1 604 691 3036



In any event, you are encouraged to visit the website of the Monitor, [www.kpmg.com/ca/walterenergycanada](http://www.kpmg.com/ca/walterenergycanada), where details regarding Walter Canada's CCAA proceedings are posted.

**If a transaction proceeds, details regarding the transaction will be posted to the Monitor's website. PLEASE CHECK THE MONITOR'S WEBSITE REGULARLY.**

Yours very truly,

**KPMG Inc.,**  
In its capacity as Court Appointed Monitor  
of Walter Energy Canada Holdings, Inc. et al

Per: Philip J. Reynolds  
*Senior Vice President*

Per: Anthony Tillman  
*Senior Vice President*

This is Exhibit "C" referred to in Affidavit #5 of **William E. Aziz** sworn December 2, 2016 at Toronto, Ontario.



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

*Patricia Prestige*

## Riesterer, Patrick

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**From:** Tillman, Anthony J <atillman@kpmg.ca>  
**Sent:** Friday, December 2, 2016 9:11 PM  
**To:** Buksh, Zaeed (IC/IC); Lee, Spencer (IC)  
**Cc:** Peter Reardon; Williams, Lance; Riesterer, Patrick  
**Subject:** Walter Energy Canada Holdings Inc. - CCAA  
**Attachments:** Walter - BIA Procedure Order.docx

Spencer and Zaeed,

Thank you for taking the time to speak with us yesterday. As discussed, attached is the form of order that it is proposed the Trustee will seek on December 12. We are hoping to serve this very early next week in order to ensure the most notice possible.

In order to ensure that creditors have as much notice as possible, notwithstanding the tight timelines, the Monitor sent a notice earlier this week advising creditors to ensure the Monitor had their current e-mail or fax number to get notice of a pending transaction, and to regularly check the Monitor's website. In addition to this, it is proposed that a further notice be sent early next week providing creditors notice of the transaction and orders being sought, the date that (if the attached order is granted) the meetings will be held and the proposal approval application, where to find materials and a contact person at the Trustee's office, and again reminding people to get an email and fax # to the Trustee if they want to receive the materials. We believe this reduces any potential prejudice from the shortened timelines.

In terms of the order, the main provisions:

1. Procedurally (and not substantively) consolidate the proceedings;
2. Utilise the claims in the CCAA as claims under the BIA, which we think is reasonable given the extensive CCAA claims process was court ordered and followed a process similar to the BIA (including the ability to dispute and the final determination by the court) and that the definition of a claim under the CCAA is a claim provable under the BIA;
3. Abridge the notices for the meetings and the delivery of the reports, and provide alternatives to mailing; and
4. Allow the CCAA materials to stand in place of certain of the BIA materials that contain the same information (i.e. the cash flow and statement of affairs).

It is still anticipated that the Trustee will prepare a report on the Proposal/its recommendation.

We have inserted a provision dispensing with the electronic filing of the Joint Proposal (by up to 11 entities) in order to facilitate the filing. If that does not work for the OSB and the system can accept a Joint filing by all of the debtors please do let us know.

We are happy to discuss the above/attached to ensure that it does not raise any objection from the OSB. If you have any questions or concerns, we are happy to discuss at your convenience.

Regards,

**Anthony Tillman, CPA, CA, CIRP**

Senior Vice President

KPMG Inc.



PO Box 10426, 777 Dunsmuir Street  
Vancouver, BC V7Y 1K3  
T 604.646.6332  
F 604.691.3036  
[atillman@kpmg.ca](mailto:atillman@kpmg.ca)

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This email was sent to you by **KPMG** (<http://info.kpmg.ca>). To sign up to receive event invitations and other communications from us (we have some informative publications that may be of interest to you), or to stop receiving electronic messages sent by KPMG, visit the **KPMG Online Subscription Centre** (<http://subscribe.kpmg.ca>).

At KPMG we are passionate about earning your trust and building a long-term relationship through service excellence. This extends to our communications with you.

Our lawyers have recommended that we provide certain disclaimer language with our messages. Rather than including them here, we're drawing your attention to the following links where the full legal wording appears.

- **[Disclaimer concerning confidential and privileged information/unintended recipient](http://disclaimer.kpmg.ca)** (<http://disclaimer.kpmg.ca>).
- **[Disclaimer concerning tax advice](http://taxdisclaimer.kpmg.ca)** (<http://taxdisclaimer.kpmg.ca>).

*If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.*

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No.:  
Vancouver Registry  
Estate No.:

**IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT,  
R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF THE BANKRUPTCY OF  
WALTER ENERGY CANADA HOLDINGS, INC.

**ORDER MADE AFTER APPLICATION**  
**(Bankruptcy Procedure Order)**

BEFORE THE HONOURABLE )  
MADAM JUSTICE FITZPATRICK ) **[MONDAY]**, THE **[12]** DAY OF  
 ) DECEMBER 2016

ON THE APPLICATION of KPMG Inc., in its capacity as trustee-in-bankruptcy (the "**Bankruptcy Trustee**") of Walter Energy Canada Holdings, Inc., Walter Canadian Coal ULC, Wolverine Coal ULC, Brule Coal ULC, Willow Creek Coal ULC, Pine Valley Coal, Ltd., 0541237 B.C. Ltd., Walter Canadian Coal Partnership, Wolverine Coal Partnership, Brule Coal Partnership and Willow Creek Coal Partnership (collectively, the "**Debtors**") coming on for hearing at Vancouver, British Columbia, on the **[12]** day of December, 2016;

AND ON HEARING Peter Reardon and Wael Rostom, counsel for the Bankruptcy Trustee, and Mary I.A. Buttery, H. Lance Williams, Marc Wasserman and Patrick Riesterer, counsel for the Debtors and **[●list entities in the New Walter Canada Group (the "New Walter Canada Group")]** and those other counsel listed on **Schedule "A"** hereto;

AND UPON READING the material sworn or filed herein and all other materials sworn and filed in connection with the Supreme Court of British Columbia Action No. S-1510120 (the "**CCAA Proceedings**") under *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended;

AND pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

**SERVICE AND DEFINITIONS**

1. The time for service of the notice of application for this order is hereby abridged and deemed good and sufficient and this application is properly returnable today.

## CONSOLIDATED BANKRUPTCY PROCEEDINGS

2. The Bankruptcy Trustee is entitled to administer the procedural matters relating to the bankruptcy proceedings of the Debtors on a consolidated basis (the "**Consolidated Bankruptcy Proceedings**"). A copy of this order will be filed in the court file for each of the Debtor's respective estate, but any other document required to be filed in the Consolidated Bankruptcy Proceedings shall be filed in this proceeding.
3. The Consolidated Bankruptcy Proceeding will be in relation to procedural matters only and do not:
  - (a) affect the separate legal status and corporate structure of the Debtors; or
  - (b) cause the Debtors to be liable for any claim for which it is otherwise not liable, or cause the Debtors to have an interest in an asset to which it otherwise would not have.
4. Without limiting the generality of the foregoing, the Bankruptcy Trustee is authorised to carry out its administrative duties and responsibilities as trustee-in-bankruptcy and as proposal trustee (the "**Proposal Trustee**") under the BIA as if the Consolidated Bankruptcy Proceedings were a single proceeding under the BIA, including without limitation:
  - (a) the meetings of creditors of the Debtors may be convened and conducted jointly;
  - (b) the Bankruptcy Trustee and the Proposal Trustee, as applicable is authorised to issue consolidated reports in respect of the Debtors; and
  - (c) the Bankruptcy Trustee is authorised to deal with all filings and notices relating to the bankruptcy and the Proposal Trustee is authorized to deal with all filings and notices relating of the proposal proceedings of the Debtors, each as required under the BIA on a consolidated basis.

## BANKRUPTCY OF THE DEBTORS AND BANKRUPTCY TRUSTEE

5. The Bankruptcy Trustee shall not take possession of the property of the Debtors or make an inventory of such property pursuant to section 16.3 of the BIA and the Bankruptcy Trustee shall not be required to give security to the Official Receiver pursuant to section 16 of the BIA in respect of the Consolidated Bankruptcy Proceedings.
6. The First Meeting of Creditors (the "**First Meeting of Creditors**") will be held on December **[13]**, 2016 at 10 o'clock a.m. (Vancouver time) at the offices of the Bankruptcy Trustee, 777 Dunsmuir Street, Vancouver, or such later date as required by the Bankruptcy Trustee and notice of such later date shall be posted on the Bankruptcy Trustee's website.

7. The posting of this Order and all notices given by the Debtors in the CCAA Proceeding (the "**Notices**") on the Bankruptcy Trustee's website at <http://www.kpmg.com/ca/walterenergycanada> is deemed sufficient notice for the holding the First Meeting of Creditors and the holding of the meeting to consider the Proposal.

8. The following requirements under the BIA are abridged with and amended:

- (a) the requirement of the Bankruptcy Trustee to provide any notice or information in respect of the First Meeting of Creditors pursuant to section 102 of the BIA;
- (b) publication by the Bankruptcy Trustee of the notice of the First Meeting of Creditors pursuant to s. 102(4) of the BIA;
- (c) for the Proposal Trustee to report as to the appraisal and investigation of the affairs of the Debtors pursuant to section 50(10) of the BIA; and
- (d) for the Proposal Trustee to file a cash flow statement and corresponding Debtor's representations and Trustee reports pursuant to section 50(6) of the BIA;
- (e) to file a statement of affairs pursuant to section 50(2) of the BIA;

and any notice requirements under the BIA are satisfied by the Notices and the Bankruptcy Trustee making available on its website and providing a copy to the Superintendent of Bankruptcy/Official Receiver of the following:

- (f) the certificates of appointment issued by the Superintendent of Bankruptcy in respect of the Debtors;
- (g) all Monitor's reports issued in the CCAA Proceedings, including the most current cash flow statement;
- (h) a copy of this Order; and
- (i) a copy of a consolidated statement of all claims in the CCAA Proceeding and all assets.

9. All claims filed or deemed to be filed pursuant to the claims process order pronounced August 16, 2016 (the "**Claims Process Order**") or otherwise in the CCAA Proceedings will continue in the Consolidated Bankruptcy Proceedings and all proofs of claim filed in respect of such claims and all notices of revision or disallowance issued in the CCAA Proceedings claims process and the Claims Bar Date (as defined in the Claims Process Order) continue to apply, *mutatis mutandis*, in these

proceedings. The creditors of the Walter Canada Group shall not be required to further prove their claims pursuant to section 124 of the BIA.

10. The Bankruptcy Trustee is hereby authorized to file a joint proposal of the Debtors under the BIA in the form attached as **Schedule "B"**, or as amended in accordance with its terms (the **"Proposal"**).

#### **THE PROPOSAL AND THE PROPOSAL TRUSTEE**

11. The requirement that the Proposal Trustee send the documents listed in section 51(1) of the BIA to every known creditor is hereby abridged and amended such that the posting by the Proposal Trustee of the Proposal, the Proposal Trustee's report on the Proposal and a voting letter and proxy form (the **"Proposal Materials"**) on the Proposal Trustee's website at <http://www.kpmg.com/ca/walterenergycanada> and delivery of the Proposal Materials by e-mail or fax to the creditors of the Debtors for which the Proposal Trustee has e-mail addresses or fax numbers will be good and sufficient delivery and notice of the documents to be provided pursuant to section 51(1) of the BIA.
12. The meeting to approve the Proposal of the Debtors (the **"Proposal Meeting"**) will be held on December **[13]**, 2016 at 2:00 o'clock p.m. (Vancouver time) at the offices of the Proposal Trustee, 777 Dunsmuir Street, Vancouver or such later date as required by the Proposal Trustee and notice of such later date shall be posted on the Proposal Trustee's website.
13. BlueTree Advisors Inc., as chief restructuring officer of the Debtors in the CCAA Proceedings shall be authorized but not directed to be an inspector in the Consolidated Bankruptcy Proceedings.
14. The requirement that the Proposal Trustee file the Proposal electronically with the Official Receiver is hereby dispensed with, and such filings may be made manually with the Official Receiver.
15. The time for holding the application for the Court's approval of the Proposal (the **"Sanction Hearing"**) is hereby abridged such that the Sanction Hearing will be heard by the Court on December **[14]**, 2016.
16. The requirement that the Proposal Trustee send a notice (the **"Proposal Notice"**) pursuant to section 58 of the BIA of the hearing of the Sanction Hearing at least 15 days before the date of such hearing, to the Debtors and to every creditor of the Debtors who has a proven claim is hereby abridged and amended such that the posting by the Proposal Trustee of the Proposal Notice on the Proposal Trustee's website will be good and sufficient notice of the Sanction Hearing. On the day prior to the Sanction Hearing, the Trustee will post a copy of the notice of application and report of the Trustee to be filed in connection with the Sanction Hearing (the **"Sanction Hearing**

**Materials**”), on the Trustee’s website and will deliver such notice of application and report by e-mail or fax to the creditors of the Debtors for which the Trustee has e-mail addresses or fax numbers, and such delivery will constitute sufficient delivery and notice of the Sanction Hearing Materials.

## GENERAL

17. The Proposal Trustee is authorized and directed to take any steps or execute any conveyances, contracts, assignments or other documents reasonably necessary or advisable to complete the Proposal and the transactions contemplated thereby.
18. The Bankruptcy Trustee, the Proposal Trustee or any other interested person may rely on the materials filed in the CCAA Proceedings at the application for the Proposal Approval Order or any other order in these proceedings.
19. Each of the Bankruptcy Trustee, the Proposal Trustee and the New Walter Canada Group be and are at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and the Bankruptcy Trustee or the Proposal Trustee, as applicable is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as a foreign representative of the Debtors to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended.
20. Endorsement of this Order by counsel appearing, other than counsel for the Petitioners, is hereby dispensed with.

THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunals, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or state court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Trustee, as an officer of this Court, and to the New Walter Canada Group as may be necessary or desirable to give effect to this Order, to grant representative status to the Trustee in any foreign proceeding, or to assist the Trustee and the New Walter Canada Group and their respective agents in carrying out the terms of this Order.

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

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Lawyers for the Trustee

McMillan LLP  
(Peter Reardon and Wael Rostom)

BY THE COURT

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REGISTRAR-IN-BANKRUPTCY

**SCHEDULE "A"**

<b>COUNSEL LIST</b>	
<b>NAME</b>	<b>PARTY REPRESENTED</b>



NO. S-1510120  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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

AND

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

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND  
ARRANGEMENT OF WALTER ENERGY CANADA HOLDINGS,  
INC. AND THE OTHER PETITIONERS LISTED ON  
SCHEDULE "A"

PETITIONERS

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**AFFIDAVIT #5 OF WILLIAM E. AZIZ**

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**DLA Piper (Canada) LLP**  
Barristers & Solicitors  
2800 Park Place  
666 Burrard Street  
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Client Matter No. 15375-00001

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