



**File 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**

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

**AND**

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

**PETITIONERS**

**SIXTH REPORT OF THE MONITOR, KPMG INC.**

**December 5, 2016**

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## INTRODUCTION AND PURPOSE OF THE MONITOR'S REPORT

1. KPMG Inc. (“**KPMG**” or the “**Monitor**”) was appointed as Monitor pursuant to the order (the “**Initial Order**”) issued by this Honourable Court on December 7, 2015 (the “**Filing Date**”) in respect of the motion (the “**Application**”) filed by Walter Energy Canada Holdings, Inc. (“**WECH**”), Walter Canadian Coal ULC (“**WCC**”), Wolverine Coal ULC (“**WC**”), Brule Coal ULC (“**BC**”), Cambrian Energybuild Holdings ULC (“**CEH**”), Willow Creek Coal ULC (“**WIC**”), Pine Valley Coal Ltd. (“**PVC**”) and 0541237 BC Ltd. (collectively, the “**Petitioners**”) under the *Companies’ Creditors Arrangement Act*, R.S.C 1985, c. C-36, as amended (the “**CCAA**”) granting, *inter alia*, a stay of proceedings (the “**Stay**”) until January 6, 2016. Pursuant to the Initial Order, the Stay and certain other relief was extended to certain of the Petitioners’ partnerships and affiliates listed on Schedule “**A**” hereto (collectively with the Petitioners, “**Walter Canada**”). The proceedings brought by the Petitioners under the CCAA will be referred to herein as the “**CCAA Proceedings**”.
2. On December 7, 2015, KPMG filed the Pre-Filing Report of the Proposed Monitor (the “**Pre-Filing Report**”) which, amongst other things, described certain of Walter Canada’s background information, its cash flow forecast and the current status of its operations.
3. On December 31, 2015, KPMG filed the First Report of the Monitor (the “**First Report**”) which, amongst other things, described the Monitor’s activities to date, Walter Canada’s actual receipts and disbursements against forecast as well as its updated cash flow forecast for the 16-week period ending April 9, 2016, the proposed Sale and Investment Solicitation Process (the “**SISP**”), the proposed retention of PJT Partners LP as financial advisor and investment banker (the “**Financial Advisor**”), the proposed retention of BlueTree Advisors Inc. as Chief Restructuring Officer (the “**CRO**”) and the proposed Key Employee Retention Plan (the “**KERP**”).
4. On January 5, 2016, this Honourable Court granted an order (the “**January 5 Order**”) which, amongst other things, extended the Stay to April 5, 2016 and approved the SISP, the KERP and the retention of both the Financial Advisor and the CRO.

5. On March 24, 2016, KPMG filed the Second Report of the Monitor (the “**Second Report**”) which, amongst other things, described the Monitor’s activities to date, Walter Canada’s actual receipts and disbursements against forecast as well as its updated cash flow forecast for the 16-week period ending July 2, 2016, a status update on the SISP and updates in respect of various other matters.
6. On March 30, 2016, this Honourable Court granted an order which, amongst other things, extended the Stay to June 24, 2016.
7. On June 22, 2016, KPMG filed the Third Report of the Monitor (the “**Third Report**”) which, amongst other things, provided a status update on the SISP and the Liquidation RFP Process, information regarding Walter Canada’s actual receipts and disbursements against forecast as well as its updated cash flow forecast for the 18-week period ending October 15, 2016 and updates in respect of certain other matters.
8. On June 24, 2016, this Honourable Court granted an order which, amongst other things, extended the Stay to August 19, 2016.
9. On August 11, 2016, KPMG filed the Fourth Report of the Monitor (the “**Fourth Report**”) which, amongst other things, provided a status update on the SISP as well as information in respect of Walter Canada’s proposed transaction (the “**Conuma Transaction**”) with Conuma Coal Resources Limited (“**Conuma**”), its proposed claims process (the “**Claims Process**”), an amendment to the FA Engagement Letter, information regarding Walter Canada’s actual receipts and disbursements against forecast, its updated cash flow forecast for the 26-week period ending January 28, 2017 (the “**Previous Cash Flow Forecast**”) and updates in respect of various other matters.
10. Also on August 11, 2016, the Monitor prepared its Confidential Supplemental Report to the Fourth Report (the “**Confidential Report**”) in which it provided certain additional details in respect of the Bids and Liquidation Proposals, along with the Monitor’s corresponding analysis.

11. On August 15, 2016, on application by the Petitioners, this Honourable Court granted an order (the “**Sealing Order**”) sealing the Confidential Report, as well as the Affidavit #4 of Mr. William E. Aziz sworn August 9, 2016, until further order of this Honourable Court.
12. On August 16, 2016, this Honourable Court granted the following orders:
  - a) the Approval and Vesting Order (the “**Sale Approval Order**”) which, amongst other things, approved the Conuma Transaction and authorized and directed Walter Canada to take such additional steps and execute such additional documents as may be necessary or desirable to complete the Conuma Transaction;
  - b) the Claims Process Order which, amongst other things, approved the Claims Process; and
  - c) an order (the “**August 16 Order**”) which, amongst other things, extended the Stay to January 17, 2017 (the “**Extended Stay Period**”), approved the amendment to the FA Engagement Letter, and expanded the powers of the Monitor.
13. On October 24, 2016, KPMG filed the Fifth Report of the Monitor (the “**Fifth Report**”) that provided a status update on the closing of the Conuma Transaction, a status update with respect to the Claims Process, information regarding Walter Canada’s actual receipts and disbursements against forecast and updates in respect of various other matters.
14. Terms not specifically defined herein shall have the meanings as defined in the First Report, the Second Report, the Third Report, the Fourth Report and the Fifth Report (collectively, the “**Previous Reports**”), the SISP or the Claims Process Order.
15. Copies of the Previous Reports, as well as further information regarding these CCAA Proceedings, can be found on the Monitor’s website at [www.kpmg.com/ca/walterenergycanada](http://www.kpmg.com/ca/walterenergycanada) (the “**Monitor’s Website**”).

16. The purpose of this sixth report of the Monitor (the “**Sixth Report**”) is to provide this Honourable Court with information regarding the following:
- a) A discussion of the marketing activities undertaken by Walter Canada, the CRO and the Monitor subsequent to the date of the Fifth Report with a view to obtaining one or more Investment Proposals or Sale Proposals in respect of Walter Canada’s remaining assets (the “**Remaining Assets**”) after the closing of the Conuma Transaction (the “**Remaining Asset Sale Process**”);
  - b) A discussion in respect of the CRO’s selection of the Successful Bid (as subsequently defined) for certain of the Remaining Assets in the Remaining Asset Sale Process, and Walter Canada’s application to this Honourable Court for approval to enter into the proposed transaction (the “**Proposed Restructuring Transaction**”) with the Successful Bidder on the terms set out in the Successful Bid;
  - c) Details regarding the proposed steps, under both the CCAA and the *Bankruptcy and Insolvency Act* (“**BIA**”), to be undertaken to complete the Proposed Restructuring Transaction; and
  - d) The Monitor’s observations and recommendations in respect of Walter Canada’s motion returnable December 7, 2016 seeking approval of the Proposed Restructuring Transaction, the formation of the New Walter Group, the creation of the various CCAA charges on the assets of the New Walter Group (including any assets acquired as a result of the Proposed Restructuring Transaction) and authorization for certain members of Walter Canada to make an assignment in bankruptcy, as well as certain other relief.

## REPORT RESTRICTIONS AND SCOPE LIMITATIONS

17. In preparing this report, the Monitor has been provided with, and has relied upon, unaudited financial information, books and records and financial information prepared by Walter Canada and/or certain of its affiliates, discussions with management of Walter Canada (“**Management**”) and information from other public third-party sources (collectively, the “**Information**”). The Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Monitor expresses no opinion or other form of assurance in respect of the Information.
18. The information contained in this report is not intended to be relied upon by any prospective purchaser or investor in any transaction with Walter Canada.
19. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

## REMAINING ASSET SALE PROCESS

20. As noted in the Fifth Report, certain Remaining Assets continued to be held by Walter Canada after completion of the Conuma Transaction, including the following:
  - a) The share interests of WECH and its interests in Wolverine Coal Partnership, WCC, Wolverine Coal Partnership, WC, BC, Brule Coal Partnership, WIC, Willow Creek Coal Partnership, Pine Valley Coal Ltd. and 0541237 B.C. Ltd (the “**Walter Share Interests**”);
  - b) Walter Canada’s interest in Walter UK and its underground anthracite mine in South Wales (the “**UK Interest**”); and
  - c) Potentially, Walter Canada’s 50% interest in the Belcourt Saxon Coal Limited Partnership (the “**Belcourt Interest**”), depending upon the outcome of ongoing discussions between Conuma and the co-venturer, as discussed in the Fifth Report.



21. The CRO and the Monitor believed that additional realizations from the Remaining Assets could be achieved for the benefit of the estate. Therefore, Walter Canada and the Monitor developed and commenced the Remaining Asset Sale Process in late October 2016 under the authority ascribed by the SISP to obtain one or more Investment Proposals or Sale Proposals.
22. The Remaining Asset Sale Process was developed as a two-stage process as summarized in the table below:

<b>Remaining Asset Sale Process Steps and Timeline</b>	
<b>Step</b>	<b>Key Dates</b>
Commence Phase One marketing and due diligence period	October 26, 2016
Letter of Intent (“ <b>LOI</b> ”) submission deadline	November 7, 2016
Invite certain Bidders to enter Phase Two process	November 8, 2016
Deadline for submission of definitive bids (“ <b>Bids</b> ”)	November 16, 2016
Completion of SISP	December 31, 2016

23. The Monitor contacted 18 potentially interested parties at the commencement of Phase One beginning on October 26, 2016, of which 17 parties expressed interest in participating in the Remaining Asset Sale Process.
24. Those 17 parties were sent a Non-Disclosure Agreement (“**NDA**”) by the Monitor, and 15 Prospective Bidders executed NDA’s with Walter Canada and were provided with access to an electronic data-room populated with various documents as well as a Confidential Information Memorandum.
25. During the period up to the November 7, 2016 LOI submission deadline, the Monitor and Walter Canada’s counsel engaged in discussions and other communications with a number of the Prospective Bidders and their advisors to address their due diligence inquiries and document requests, and posted additional documents to the data-room pursuant to such requests.

26. Eight non-binding LOI's were received at the end of Phase I of the Remaining Asset Sale Process and, following an initial analysis of those LOI's by the CRO, Walter Canada's counsel and the Monitor and its counsel, a number of Prospective Bidders were invited on November 8, 2016 to participate in Phase Two ("**Bidders**"), with a revised deadline of November 15, 2016 to submit Bids (being one day earlier than had originally been communicated to Prospective Bidders). The Bidders were instructed that the Bids were required to exclude any further due diligence requirements as conditions to closing.
27. During Phase Two, Walter Canada's counsel, the Monitor and its counsel engaged in numerous calls and other communications with Bidders and their advisors, including dealing with due diligence request lists received from Bidders and obtaining additional documents to post to the data-room pursuant to such requests.
28. At the end of Phase Two, four Bids were received from Bidders who were each interested in completing a transaction to acquire the Walter Share Interests with only one of the Bidders expressing interest in the UK Interest and no Bidders expressing an interest in the Belcourt Interest.
29. Three of the Bidders were selected to move into the next phase of the Remaining Asset Sale Process and were provided with a draft term sheet prepared by Walter Canada. These Bidders were asked to provide a definitive draft of that term sheet.

#### **SELECTION OF THE SUCCESSFUL BID**

30. Submissions from the final three Bidders were reviewed and several factors were considered by the CRO, Walter Canada and its counsel, and the Monitor and its counsel (collectively, the "**Review Team**") in reviewing the bids, including:
  - a) Perceived ability and wherewithal of the Bidder to complete a transaction for the sale of the Walter Share Interests on an expedited timeframe and on terms and structure acceptable to Walter Canada; and
  - b) The value estimated to be generated for the stakeholders of Walter Canada.

31. Ultimately, on November 25, 2016, the CRO, in consultation with the Monitor, selected the Bid (the “**Successful Bid**”) submitted by 1098138 B.C. Ltd. and guaranteed by Amacon Land Corporation (the “**Successful Bidder**”) and, with Walter Canada’s counsel, proceeded to finalize for execution, a term sheet with the Successful Bidder (the “**Term Sheet**”, a copy of which is attached hereto as Schedule “**B**”) which was executed on November 28, 2016 and is subject to approval by this Honourable Court.
32. The CRO and the Monitor are of the view that, although the Successful Bid was not the highest price relative to the other competing Bids, the Successful Bid represents the best combination of price and certainty as to: (i) the specific transaction steps to effect the sale of the Walter Share Interests; and (ii) the closing of the transaction by December 31, 2016. Walter Canada’s Board of Directors approved the Successful Bid on November 27, 2016.
33. The Monitor’s Confidential Supplemental Report to the Sixth Report (the “**Second Confidential Report**”) includes a more detailed discussion of the reasons for the CRO’s selection of the Successful Bid over the other Bids, the Monitor’s support for the selection, and certain financial details about the LOIs and Bids. As a result Walter Canada is seeking to have the Second Confidential Report filed with this Honourable Court under a sealing Order to preserve the confidentiality of that discussion and the other Bids and LOIs.

#### **Terms of the Successful Bid**

34. The Successful Bid, as set out in the Term Sheet, contemplates the completion of a series of transactions to effect the acquisition by the Successful Bidder of WECH and its interest in each of the other Walter Canada entities listed on Schedule “**A**” except for Cambrian Energybuild Holdings ULC, Belcourt Saxon Coal Ltd. and Belcourt Saxon Coal Limited Partnership (the “**Old Walter Group**”), and the completion of a restructuring of Walter Canada pursuant to an assignment in bankruptcy and BIA proposal proceedings in respect of the Old Walter Group.
35. The key terms of the Term Sheet are as follows:
  - a) The Successful Bidder is to purchase the Walter Share Interests;

- b) The Successful Bid will not acquire Walter Energy Canada's interests in Cambrian Energybuild Holdings ULC, Belcourt Saxon Coal Ltd. or Belcourt Saxon Coal Limited Partnership;
- c) The purchase price is \$17,350,000 plus the market value of specific investments (collectively, the "**Purchase Price**") which are to remain with the Old Walter Group and will have an aggregate book value of approximately \$200,000;
- d) Payment of a deposit of 15% of the Purchase Price, which is only refundable in certain limited circumstances, including if Walter Canada breaches certain covenants in the Term Sheet. The Monitor received the deposit for approximately 15% of the Purchase Price on November 28, 2016;
- e) A series of transaction steps shall occur to effect the transfer of the Walter Share Interests:
  - i. A new corporation shall be incorporated ("**New Walter**") if the Successful Bid is approved by this Honourable Court and, pursuant to that Order, shall be deemed to have issued shares to Walter Energy U.S. to replace the shares it holds in WECH which are to be repurchased by WECH for no consideration at a later step;
  - ii. New Walter shall form or cause to be formed certain subsidiaries to replicate WECH's existing material subsidiaries (which are referred to, collectively with New Walter, the "**New Walter Group**");
  - iii. WECH and certain of the other Old Walter Group will each make an assignment in bankruptcy and subsequently file a joint BIA proposal (the "**Proposal**" or the "**Proposal Proceeding**"), as subsequently discussed;
  - iv. The Successful Bidder shall subscribe for shares of WECH for a subscription price equal to the amount of the Purchase Price;
  - v. WECH's obligations under the Promissory Note in respect of the US\$2.0 billion Hybrid Debt Structure (which was discussed in the Fifth Report) between Walter Energy U.S. and WECH are to be extinguished and discharged;

- vi. The New Walter Group shall be deemed liable for all of the liabilities and obligations of the Old Walter Group (the “**Deemed Liabilities**”) in a manner which preserves and replicates such existing claims filed against Walter Canada in the Claims Process, other than:
- certain liabilities which shall continue to be liabilities of the Old Walter Group for the benefit of the Purchaser (those being the “**Residual Liabilities**”). Residual Liabilities retained by the Old Walter Group will include taxes due or accruing from the Proposal Proceedings approval date and claims that cannot be compromised pursuant to the CCAA or the BIA; and
  - liabilities for any priority claims, including Crown Claims and all Priority Employee Claims that have been allowed in the Claims Process and all claims against any member of the Walter Canada Group or a trustee in bankruptcy for obligations incurred after the date of bankruptcy (the “**Priority Claims**”). The Priority Claims shall be paid by the Monitor to claimants with Priority Claims following the consummation of the Proposal;
- vii. Certain assets of the Old Walter Group, including the Purchase Price, the UK Interest, the Belcourt Interest, cash on hand, accounts receivable, deposits, retainers, refundable taxes, certain records and information (collectively, the “**Transferred Assets**”) shall be deemed to be transferred to the New Walter Group in a manner that replicates the existing ownership structure of those assets in all material respects;
- viii. Certain assets of the Old Walter Group shall remain in the Old Walter Group including the shares of WCC, WC, BC, WIC, Pine Valley Coal Ltd., and 0541237 B.C. Ltd, the partnership interests, securities of mining related businesses and certain investment certificates having a total value of approximately \$200,000 and the corporate and minute books of the Old Walter Group; and

- ix. Subject to the Priority Claims, which shall be paid by the Monitor, and the Residual Liabilities, which shall remain with the Old Walter Group, all liabilities other than the Deemed Liabilities of the Old Walter Group which are not transferred to or assumed by the New Walter Group shall be extinguished, released and discharged in the Proposal Proceedings.
- f) On the implementation of the Proposal, the Successful Bidder releases the CRO, the Monitor, the bankruptcy trustee, the Old Walter Group and the New Walter Group for and all claims known or unknown;
- g) The Successful Bidder acknowledges that it is completing the Proposed Restructuring Transaction on an “as is, where is basis”;
- h) The conditions to closing of the transaction in favour of the Successful Bidder include: (i) no evidence of WECH not owning its share or partnership interests; (ii) the Old Walter Group retaining the Residual Assets; (iii) there being no special resolution to dissolve the partnerships or to change its membership requirements; and (iii) no law that would have a material adverse impact on the tax attributes;
- i) The mutual conditions to closing of the transaction in favour of the Successful Bidder and the Walter Canada Group include: (i) no law prohibiting the consummation of the transaction; (ii) on or before December 28, 2016, the Court shall have granted an Order approving the Proposal and (iii) the closing of the transaction shall have occurred on or before December 30, 2016;
- j) The Term Sheet may be terminated by: (i) mutual written consent of the parties; (ii) the Successful Bidder if Walter Canada has breached any material covenant in the Term Sheet; or (iii) by Walter Canada if the Successful Bidder has breached any material covenant in the Term Sheet; and
- k) The Term Sheet provides for an exclusivity clause in favour of the Successful Bidder.

## PROPOSED RESTRUCTURING TRANSACTION PROCEDURAL STEPS

36. The Proposed Restructuring Transaction facilitates the transfer of the Walter Share Interests. An integral component of the transaction is that New Walter will be formed to replicate the existing Walter Canada Group. As the New Walter Group will be liable for all Deemed Claims, no existing claims against the Walter Canada Group are compromised, rather they are preserved with the same priority against the Transferred Assets as claims against the New Walter Group. Affected Claimants with proven claims pursuant to the Claims Process will have the right to seek recovery from the Transferred Assets, which includes additional value consisting of the Purchase Price. The New Walter Group will continue in the place and stead of the Walter Canada Group for all purposes in the CCAA Proceedings, including for the purposes of finally determining all Claims pursuant to the Claims Process Order and for the ultimate distribution to Affected Claimants.
37. The Term Sheet contemplated the filing of a CCAA Plan of Compromise or Arrangement (the “**Plan**”). In further discussions with the Successful Bidder, Walter Canada has decided that a Plan was unnecessary and the Proposed Restructuring Transaction will proceed with an assignment in bankruptcy of certain members of Walter Canada, followed by the filing of the Proposal and, ultimately, the annulment of the bankruptcy proceedings.
38. As at the date of this report, Walter Canada and the Successful Bidder are continuing to negotiate the terms of the Proposal and feedback is being sought from the Superintendent of Bankruptcy regarding a draft form of Order that would shorten certain BIA timeframes and permit the usage of certain materials filed in the CCAA Proceedings to be utilized for the Proposal Proceeding.
39. The Monitor expects to file a subsequent report commenting on the Proposal in due course. The Proposal will be voted on by all Affected Claimants of the Old Walter Group which will include any claim against the Old Walter Group other than a claimant with: (i) an excluded claim (including the fees of the CRO, legal counsel to the Old Walter Group and the New Walter Group, the Monitor and its legal counsel and claims secured by the CCAA charges), Priority Claims or any claim under the Promissory Note due to Walter Energy U.S.

## **Communicating with Stakeholders and Creditors**

40. In advance of filing its application, Walter Canada engaged in discussions with certain of its key stakeholders to apprise them of the Proposed Restructuring Transaction to seek to address any of their preliminary concerns. This consultation includes ongoing discussions with counsel for both the 1974 Pension Plan and the USW, as representative for approximately 300 former Wolverine Mine employees, and counsel for Warrior Met Coal, LLC, in respect of its disputed claim and the potential extinguishment of the Hybrid Debt in the Proposal.
41. On November 29, 2016, the Monitor mailed a notice to all creditors of the Walter Canada Group for whom it did not already have an email address or fax number to advise them that a transaction may be proceeding quickly in the near future and requesting that they provide the Monitor with an email address or fax number by December 5, 2016 in order for information to be sent to them should such a transaction proceed. Additionally, all creditors were advised to review the Monitor's Website frequently. A copy of the Monitor's letter is attached as Schedule "C". Out of approximately 280 former employees of Walter Canada for whom the Monitor did not originally have their email address, 118 responded with additional contact details by December 4, 2016.

## **Additional Relief Sought by Walter Canada**

42. In addition to the relief noted above to approve the Successful Bid, and authorize certain elements of the transaction steps to effect the Proposed Restructuring Transaction, including the creation of the New Walter Group and assignment in bankruptcy of most of Walter Canada, the 5th Affidavit of Mr. William E. Aziz (the "**5<sup>th</sup> Aziz Affidavit**") sets out additional relief required to continue the CCAA Proceedings including:
  - a) New Walter Group being declared a debtor company in the CCAA and being subject to the CCAA Proceedings;
  - b) The BlueTree Advisors Inc. appointment as CRO of the New Walter Group on the same terms and with the same protections as is currently in place with Walter Canada;



- c) The attachment of all charges granted in the CCAA Proceedings to the assets of the New Walter Group;
  - d) The termination and discharge of BlueTree Advisors Inc. as CRO prior to the assignment in bankruptcy of the Old Walter Group; and
  - e) The appointment of KPMG Inc. as Monitor of the New Walter Group on the same terms and protections that are currently in place with Walter Canada.
43. In addition, Walter Canada is requesting that this Honourable Court grant certain additional powers to the Monitor in respect of opening new bank and brokerage accounts required for Walter Canada and the New Walter Group, and to transfer signing authority, all in support of facilitating the completion of the Proposed Restructuring Transaction. The Monitor supports the foregoing relief in order to be able to effect the Proposed Restructuring Transaction.

#### **OTHER MATTERS**

44. Conuma and Walter Canada are continuing to work with the various Ministries of the Province of British Columbia to complete the transfer of mining permits and water rights and certain other permits to Conuma. At this stage, Walter Canada has been advised by representatives of the Ministry of Energy and Mines that the transfers should be completed by as soon as December 9, 2016 but it is not certain that the transfers will all be completed on that date. Walter Canada is investigating how this could impact its ability to close the Proposed Restructuring Transaction.
45. Further to discussion in the Fifth Report, the Conuma Transaction included the sale of the Belcourt Interest, subject to the co-venturer waiving its tag-along rights and not exercising its right of first refusal to purchase this interest. As at the date of this report, discussions were continuing between the co-venturer, Conuma and Walter Canada to determine the process leading to the ultimate disposition of the Belcourt Interest.
46. In the Fifth Report it was noted that the British Columbia Provincial Sales Tax (“PST”) was outstanding from the Conuma Transaction. Since the date of the Fifth Report Conuma has finalized its PST calculation, which has been reviewed by Walter Canada and the Monitor, and the PST calculated as owing has been remitted.

## **THE MONITOR'S OBSERVATIONS AND RECOMMENDATIONS**

47. In the Monitor's opinion, Walter Canada is continuing to act in good faith and with due diligence in an effort to realize on its remaining assets and further its restructuring efforts.
48. The Monitor is of the view that the Remaining Asset Sale Process, which resulted in the Proposed Restructuring Transaction was reasonable in the circumstances, and also that completion of the Proposed Restructuring Transaction will increase the total pool of cash available for distribution to Walter Canada's creditors and is a better outcome than a bankruptcy in which no further proceeds would be anticipated.
49. The Monitor is monitoring the progress of the transfer of Walter Canada's mining permits, water rights and other permits closely and considering the impact of the transfer process on the successful closing of the Proposed Restructuring Transaction, and will assist Walter Canada as requested with a view to maximizing proceeds for all of the stakeholders.
50. The Monitor views the Proposed Restructuring Transaction as very similar to a sale that could be concluded under section 36 of the CCAA, and in that regard, observes the following:
  - a) The sales process leading to the Proposed Restructuring Transaction was reasonable in the circumstances;
  - b) Walter Canada has proceeded in good faith and with due diligence throughout the process and has received advice from its legal and financial advisors, and from the Monitor and the CRO;
  - c) The Proposed Restructuring Transaction has been approved by the Board of Directors of the members of Walter Canada in exercising their business judgement, that the Proposed Restructuring Transaction is the best outcome available to Walter Canada in the circumstances;
  - d) The CRO and the Monitor conducted the SISP in accordance with the ancillary rules that were adopted by the CRO and the Monitor, and the Monitor will provide additional comments on the SISP in the Second Confidential Report, to be filed;

- e) The Proposed Restructuring Transaction would be more beneficial to Walter Canada's creditors than a sale or disposition under a bankruptcy, without the benefit of the CCAA sales process or the Proposal Restructuring Transaction developed therein;
  - f) The Successful Bidder is not related to any member of Walter Canada;
  - g) The Proposed Restructuring Transaction will monetize certain Remaining Assets and improve creditors' recoveries; and
  - h) The consideration to be received in respect of the assets subject to the Proposed Restructuring Transaction is reasonable and fair, taking into account their market value.
51. Based on the foregoing discussion in this report, the Monitor recommends to this Honourable Court that it grant the following relief which is being sought by Walter Canada:
- a) Approval of the Term Sheet and ancillary relief in respect of closing matters as set out in the 5<sup>th</sup> Aziz Affidavit; and
  - b) The sealing of the Second Confidential Report.

All of which is respectfully submitted this 5th day of December, 2016.

**KPMG INC., in its sole capacity as  
Monitor of Walter Energy Canada Holdings, Inc. et al**



Per: Philip J. Reynolds  
*Senior Vice President*



Per: Anthony Tillman  
*Senior Vice President*

## **Schedule “A”**

### **List of Petitioners, Partnerships and Affiliates**

**Petitioners**

Walter Canadian Coal ULC  
Wolverine Coal ULC  
Brule Coal ULC  
Cambrian Energybuild Holdings ULC  
Willow Creek Coal ULC  
Pine Valley Coal, Ltd.  
0541237 BC, Ltd.

**Partnerships**

Walter Canadian Coal Partnership  
Wolverine Coal Partnership  
Brule Coal Partnership  
Willow Creek Coal Partnership

**Corporate Affiliates**

Belcourt Saxon Coal Ltd.  
Belcourt Saxon Coal Limited Partnership

## **Schedule “B”**

**Term Sheet Executed on November 28, 2016**

## 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: \$17,350,000, 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 \$2,625,000 (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 inquiries 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@bluetreeadvisors.com](mailto:baziz@bluetreeadvisors.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:



\_\_\_\_\_  
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

## **Schedule “C”**

**Notice to Certain Creditors Dated November 29, 2016**



**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

A handwritten signature in black ink, appearing to read 'P. J. Reynolds'.

Per: Philip J. Reynolds  
*Senior Vice President*

A handwritten signature in black ink, appearing to read 'Anthony Tillman'.

Per: Anthony Tillman  
*Senior Vice President*