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COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF WESTPHALIA DEV. CORP.

DOCUMENT

FIRST REPORT OF FTI CONSULTING CANADA INC., IN ITS
CAPACITY AS MONITOR OF WESTPHALIA DEV. CORP.

January 21, 2025

ADDRESS FOR SERVICE AND
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FIRST REPORT OF THE MONITOR

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INTRODUCTION

1. On January 14, 2025, Westphalia Dev. Corp. (“**WDC**” or the “**Applicant**”) was granted an initial order (the “**Initial Order**”) to commence proceedings (the “**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).
2. The Initial Order established a stay of proceedings (the “**Stay of Proceedings**”) in favour of the Applicant until January 24, 2025, and appointed FTI Consulting Canada Inc. as Monitor in the CCAA Proceedings (the “**Monitor**”).
3. On January 21, 2025, the Applicant filed a notice of application returnable January 23, 2025, for the following orders:
 - a. an amended and restated Initial Order (the “**ARIO**”):
 - i. approving an interim financing commitment letter (the “**Interim Financing Agreement**”) between the Applicant as borrower (in such capacity, the “**Borrower**”) and Walton Global Investments Ltd. (“**WGIL**”) as lender (in such capacity, the “**Interim Lender**”), pursuant to which the Interim Lender will make funds available to the Borrower to finance these CCAA Proceedings;
 - ii. granting a charge for advances under the Interim Financing Agreement (the “**Interim Lender’s Charge**”) which will have a second-ranking priority against the Applicant’s property behind the Administration Charge;
 - iii. an increase in the Administration Charge; and

- iv. an extension of the Stay of Proceedings until and including March 31, 2025, or such further and other date as this Court may consider appropriate; and
- b. an order (the “**Claims Process Order**”) authorizing and approving the Applicant to undertake a claims process (the “**Claims Process**”) to determine all claims against the Applicant.

PURPOSE

- 4. The purpose of this first report of the Monitor (the “**First Report**”) is to provide this Court and the Applicant’s stakeholders with information and the Monitor’s comments with respect to the following:
 - a. the activities of the Monitor since the granting of the Initial Order and the filing of the pre-filing report of the proposed Monitor dated January 14, 2025 (the “**Pre-Filing Report**”);
 - b. the Applicant’s application for the proposed ARIO which will include:
 - i. approval of the Interim Financing Agreement;
 - ii. the granting of the Interim Lender’s Charge and re-ordering of the Charges (as defined below);
 - iii. an increase in the Administration Charge from \$100,000 to \$250,000; and
 - iv. an extension of the Stay of Proceedings.
 - c. the Applicant’s proposed Claims Process attached as Schedule “A” to the proposed Claims Process Order; and

- d. the Monitor's conclusions and recommendations.
5. The Monitor's comments with respect to the Cash Flow Statement are described in the Pre-Filing Report and are not repeated herein.

TERMS OF REFERENCE

6. In preparing this First Report, the Monitor has relied upon certain information (the "**Information**") including the Applicant's unaudited financial information, books and records and discussions with senior management of WDC ("**Management**").
7. Except as described in this First Report, the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
8. The Monitor has not examined or reviewed financial forecasts and projections referred to in this First Report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
9. Future oriented financial information reported to be relied on in preparing this First Report is based on Management's assumptions regarding future events. Actual results may vary from forecast and such variations may be material.
10. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.
11. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Pre-Filing Report and the Claims Process Order.

INITIAL ACTIVITIES OF THE MONITOR

12. The Monitor’s activities during the CCAA Proceedings to date include, but have not been limited to, the following:
- a. ongoing discussions with Management and the Applicant’s legal counsel, Norton Rose Fulbright LLP, regarding the Applicant’s business and financial affairs;
 - b. retaining Blake, Cassels & Graydon LLP to act as independent legal counsel to the Monitor;
 - c. reviewing and commenting on various documents including the Interim Financing Agreement, Claims Process, Claims Process Order and a restructuring support agreement between the Applicant and WDC and WGIL (collectively and in such capacity, the “**Plan Sponsor**”);
 - d. working with the Applicant, the Applicant’s legal counsel, the Monitor’s counsel and the Applicant’s key stakeholders to develop a plan of arrangement and compromise (the “**Plan**”), which will be presented to this Court for approval at a later date;
 - e. establishing a website (the “**Monitor’s Website**”) at the following URL: <http://cfcanada.fticonsulting.com/Westphaliadevcorp/> where the Monitor has and will continue to post all court materials related to these CCAA Proceedings. The Monitor’s website includes contact information for where secured creditors, unsecured creditors, and other stakeholders can reach the Monitor to ask any questions they may have;
 - f. preparing and issuing notices required under the CCAA and Initial Order, including the following:

- i. mailing notices to creditors as referenced in paragraph 37 of the Initial Order on January 16, 2025, to known creditors and posted on the Monitor’s website;
 - ii. publishing a notice to creditors in the Calgary Herald which will run on January 16 and 23, 2025; and
 - iii. issuing Form 1 and Form 2 notices to the Office of the Superintendent of Bankruptcy in the prescribed form as required under section 23(1)(f) of the CCAA; and
- g. preparing this Report.

PROPOSED INTERIM FINANCING AGREEMENT

13. As described in the Pre-Filing Report, the Applicant is in need of interim financing and is seeking approval of the Interim Financing Agreement, pursuant to which the Interim Lender will make funds available to the Borrower, subject to the terms and conditions set out in the Interim Financing Agreement.
14. The Monitor understands that the terms of the Interim Financing Agreement include, among others, the following:
- a. **Maximum Principal Amount:** advances under the Interim Financing Agreement shall not exceed \$750,000 (the “**Maximum Amount**”);
 - b. **Interim’s Lenders Charge:** the Borrower shall obtain from the Court a charge on all of its property in a maximum amount satisfactory to the Interim Lender to secure amounts advanced under the Interim Financing Agreement in priority to all other

security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory other otherwise, subject only to the Administration Charge;

- c. **Term:** the Interim Financing Agreement will be available until the earliest of: (i) the occurrence of any event of default which is continuing and has not been cured; (ii) the implementation of a Plan which has been approved by the requisite majorities of the Borrower's creditors and by an order entered by the Court; (iii) conversion of the CCAA Proceedings into a proceeding under the BIA; and (iv) April 30, 2025;
- d. **Interest:** Interest will accrue on the principal amounts outstanding under the Interim Financing Agreement at a rate *per annum* equal to the Royal Bank of Canada prime rate plus 4% (the "**Interest Rate**"). Overdue amounts of principal, interest and any fee or other amounts payable under the Interim Financing Agreement shall bear interest at a *per annum* rate of the Interest Rate plus an additional 3%; and
- e. **Key Provisions:** the Borrower must meet and abide by the following:
 - i. certain conditions precedent, which include obtaining the ARIO, obtaining approval of an interim lender charge on terms and in an amount satisfactory to the Interim Lender;
 - ii. advances under the Interim Financing Agreement shall only be used to: (i) pay the reasonable and documented professional fees and disbursements associated with these CCAA Proceedings; (ii) pay the interest, fees and other amounts owing under the Interim Financing Agreement; and (iii) provide funding for operating expenses of the Applicant for the preservation of the Applicant's business and assets during these CCAA Proceedings in accordance with the cash flow statement prepared by the Monitor and (iv)

pay such other costs and expenses as agreed in advance by the Interim Lender, in writing (collectively, the “**Permitted Expenses**”); and

iii. certain reporting requirements, including provision of monthly cash flow projections and variance reporting; and

- f. **Additional Fees:** the Borrower shall pay all of the Interim Lender’s legal fees, out of pocket disbursements and any costs of realization or enforcement, in each case in connection with or otherwise related to the Interim Financing Agreement, the Interim Lender’s Charge or the CCAA Proceedings.
15. The Applicant requires the financing available under the Interim Financing Agreement to, among other things, provide stability to its operations, allow the Applicant to continue to support its subsidiary, Walton Westphalia Development (USA), LLC (the “**US Subsidiary**”) in continuing to complete its mandate (the “**Remaining Project Work**”) with respect to the land development project located in Prince George’s County, Maryland, USA (the “**Project**”) and to provide funding to pay for the Permitted Expenses.
16. In the Monitor’s view:
- a. the financing contemplated by the Interim Financing Agreement is necessary to fund the Applicant’s operations and restructuring and will enhance the Applicant’s prospects of achieving a viable restructuring. Absent the funding available under the Interim Financing Agreement, the Applicant would not be able to continue its operations and the development of the Project, eroding any potential increased recoverable value that would flow up to the Applicants from the proceeds associated with the Project;
 - b. the Monitor has reviewed a database of over 85 interim financings approved in insolvency proceedings since January 2023 and can advise that proposed terms

(interest rate, etc.) in the Interim Financing Agreement are customary and in line with those approved in prior CCAA restructurings;

- c. the reporting obligations set out by the Interim Financing Agreement are reasonable and the maturity date provides the Applicant a reasonable amount of time to complete its restructuring before the Interim Financing Agreement expires.

17. Accordingly, the Monitor supports the Applicant's request for approval for the Interim Financing Agreement.

CCAA CHARGES

INTERIM LENDER'S CHARGE

18. In the proposed form of ARIO, the Applicant is seeking an Interim Lender's Charge to be granted over all of the present and future assets, property and undertakings of the Applicant, in priority to all other security interest, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise, subject only to the Administration Charge. The Interim Lender's Charge will secure all obligations owing to the Interim Lender under the Interim Financing Agreement.

19. In the Monitor's view:

- a. the Interim Financing Agreement provides the necessary funding to allow the Applicant to maintain operations and enhance its ability to present a restructuring plan to its creditors. The Interim Lender's Charge is a condition precedent to the Interim Financing Agreement and the financing would not be advanced without the Court-ordered charge; and
- b. the Interim Lender's Charge does not materially prejudice any creditors;

20. Accordingly, the Monitor recommends that the Court approve the Interim Lender's Charge.

ADMINISTRATION CHARGE

21. The ARIO provides for an increase in the Administration Charge of \$100,000 granted under the Initial Order to a maximum of \$250,000. The Monitor has reviewed the underlying assumptions upon which the Applicant has based the quantum of the proposed increase to the Administration Charge, the anticipated complexity of the CCAA Proceedings and the services to be provided by the beneficiaries of the Administration Charge and is of the view that the proposed quantum of the Administration Charge is reasonable and appropriate in the circumstances.

Summary of the Proposed Rankings of the Court-Ordered Charges

22. If the proposed ARIO is granted, the Court-ordered charges would have the following ranking:
- a. First – the Administration Charge in the amount of \$250,000;
 - b. Second – the Interim Lender’s Charge in the amount of \$550,000; and
 - c. Third – the Director’s Charge in the amount of \$25,000

(collectively, the “Charges”).

23. The Monitor believes that the Charges, including their proposed quantum and ranking are required and reasonable in the circumstances of these CCAA Proceedings to preserve the operations of the Applicant and, through the US Subsidiary, the value of the Project and, as a result, supports the granting of the Charges as proposed by the Applicant.

EXTENSION OF THE STAY OF PROCEEDINGS

24. The Monitor has considered the Applicant’s application for the extension of the Stay of Proceedings to March 31, 2025, and has the following comments:

- a. with the approval of the Interim Financing Agreement and the granting of the Interim Lender's Charge the Applicant is projected to have sufficient available liquidity to fund its obligations and the costs of the CCAA Proceedings during the term of the proposed extension of the Stay of Proceedings;
- b. there will be no material prejudice to the Applicant's creditors and other stakeholders as a result of the extension of the Stay of Proceedings;
- c. the Applicant is acting in good faith and with due diligence;
- d. the overall prospects of the Applicant effecting a viable restructuring will be enhanced by the extension of the Stay of Proceedings by allowing the Applicant to continue to support the US Subsidiary in the completion of the Remaining Project Work; and
- e. the length of the proposed Stay of Proceedings of approximately 2 months is reasonable given the timelines described in the Claims Process. Such extension is necessary to allow the Applicant to run the Claims Process and to develop and seek this Court's approval of a Plan.

CLAIMS PROCESS

25. The Applicant is seeking this Court's approval of the Claims Process to determine the nature, status, quantum, validity and enforceability of all claims against the Applicant, or its current or former directors or officers.
26. The approval and completion of the Claims Process is a necessary step in the Applicant's plans to formulate and present the Plan to its creditors and, ultimately, complete its restructuring.

27. The Claims Process has been designed to identify all claims, including:
 - a. claims of creditors known to the Applicant (“**Known Creditors**”); and
 - b. claims of unknown creditors.
28. The Monitor will send a package to each of the Known Creditors informing them of the Claims Process (the “**Claims Package**”) by prepaid ordinary mail, fax, courier or email on or before January 30, 2025.
29. The Monitor will publish a notice of the Claims Process on or before February 7, 2025, in the Calgary Herald. The Monitor will also post electronic copies of the Claims Package on the Monitor’s website as soon as practically possible after the date on which the Claims Process Order is granted.
30. Creditors must submit their Proofs of Claim to the Applicant and the Monitor prior to 5:00 pm (prevailing Mountain Time) on February 28, 2025 (the “**Claims Bar Date**”). The Applicant and the Monitor will review each Proof of Claim submitted by the Claims Bar Date. The Applicant will accept, revise or disallow the amounts of each Claim set out therein, with the consent of the Monitor, for voting and distribution purposes.
31. Any claimant that does not file a Proof of Claim prior to the Claims Bar Date, shall: (i) not be entitled to participate as a Creditor in the Claims Process; (ii) not be entitled to receive any distribution in respect of such Claim pursuant to a Plan or otherwise; and (iii) be forever extinguished and barred from make or enforcing any Claim.
32. Prior to accepting, revising or disallowing a Claim, the Applicant may, in consultation with the Monitor, attempt to consensually resolve any dispute regarding the classification and/or amount of any Claim with the applicable Creditor.

33. If the Applicant, in consultation with the Monitor, determines to revise or disallow a Claim, the Monitor shall send a notice of revision or disallowance (“NORD”) to the Creditor.
34. Any Creditor who disputes the classification or amount of its Claim as set forth in a NORD shall deliver a Notice of Dispute to the Monitor (with a copy to the Applicant) by no later than 5:00 pm on the date that is fifteen (15) Business Days after the date on which the NORD is deemed to be received under the Claims Process Order. In addition, the disputing Creditor must file an application with the Court supported by an affidavit setting out the basis for the dispute and must send the application and affidavit to the Applicant and the Monitor immediately upon filing. The application and affidavit must be filed by the disputing Creditor within fifteen (15) days after sending the Notice of Dispute to the Applicant and the Monitor.
35. Upon receipt of a Notice of Dispute, the Applicant may, with consent from the Monitor, attempt to consensually resolve the classification and the amount of the Claim with the Creditor.
36. If a Creditor does not deliver a Notice of Dispute by the deadlines set out in the Claims Process, it shall be deemed to accept the classification and amount of its Claim as set forth in the applicable NORD.
37. The Monitor believes that the proposed Claims Process and proposed Claims Process Order are reasonable and appropriate in the circumstances and provides for a timely review of all potential claims against the Applicant. In the Monitor’s view:
 - a. the notice requirements are broad and will provide adequate opportunity to both Known Creditors and unknown creditors to be aware of the Claims Process and file a Claim; and

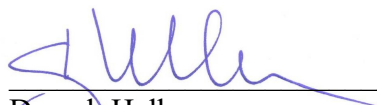
- b. the various timelines set out in the Claims Process Order are reasonable as they provide sufficient notice and time for any disputed Claims to be reconciled or adjudicated.

CONCLUSIONS

- 38. The Monitor is of the view that the relief requested by the Applicant pursuant to the proposed ARIO and the proposed Claims Process Order are necessary, reasonable and justified in the circumstances.
- 39. Accordingly, the Monitor respectfully recommends that this Court grant the following orders:
 - a. the ARIO; and
 - b. the Claims Process Order.

All of which is respectfully submitted this 21st day of January 2025.

FTI Consulting Canada Inc.,
in its capacity as Monitor of
the Westphalia Dev. Corp.
and not in its personal or corporate capacity



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