

SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PROPOSAL OF
KIRKLAND LAKE FOREST PRODUCTS INC.
OF THE MUNICIPALITY OF TIMISKAMING DISTRICT
IN THE PROVINCE OF ONTARIO

PROPOSAL

Kirkland Lake Forest Products Inc. hereby submits the following Proposal under the provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.

1. Definitions

In this Proposal:

- (a) "**Act**" means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and in force as at the Filing Date;
- (b) "**Administrative Fees and Expenses**" means the proper fees and expenses of the Trustee incidental to the preparation and facilitation of the Proposal and any amendments thereto, including legal fees incurred by the Trustee;
- (c) "**Approval Order**" means an Order of the Court approving the Proposal;
- (d) "**Affected Secured Creditor**" means a Secured Creditor that is participating in this Proposal
- (e) "**Canada Pension Plan**" means the *Canada Pension Plan*, R.S.C. 1985, c. C-8, as amended;
- (f) "**Certificate of Full Performance**" means the certificate that the Trustee shall provide to the Debtor and the Official Receiver upon Performance of the Proposal pursuant to the provisions of the *Act*;
- (g) "**Claim**" means any right of any Person against the Debtor in connection with any indebtedness, liability or obligation of any kind of the Debtor which indebtedness, liability or obligation is in existence at the Filing Date, whether or not reduced to judgement, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known, unknown, by guarantee, by surety or otherwise and whether or not such a right is executory in nature, including, without limitation, the right or ability of any Person to advance a claim for

contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future based in whole or in part on facts which exist prior to or as of the Filing Date; and any indebtedness, liability or obligation of any kind arising out of the repudiation, restructuring or termination of any contract, lease, license, equipment lease, employment relationship or other agreement after the Filing Date, or any claims that may arise under any contract, lease, license, equipment lease, employment relationship or other agreement which may arise as a result of the insolvency of the Debtor. For greater certainty, the Claim of Her Majesty the Queen in Right of Canada or a province with respect to the *Income Tax Act*, the *Excise Tax Act* and the *Retail Sales Tax Act* will include:

- i. Liabilities under the *Income Tax Act*, the *Excise Tax Act* and the *Retail Sales Tax Act* that arise as a result of this Proposal and the implementation of its provisions; and,
 - ii. Any liability that has or could accrue to the Debtor, or present or former directors of the Debtor, pursuant to the *Income Tax Act*, *Excise Tax Act*, or *Retail Sales Tax Act*, including, but not limited to s. 227.1 of the *Income Tax Act*, s. 323 of the *Excise Tax Act*, and s. 43 of the *Retail Sales Tax Act* (the "Director Liabilities"), irrespective of whether or not the CRA has raised an assessment against the Debtor, or any Person acting in his individual capacity as director of the Debtor for these Director Liabilities;
- (h) **"Collection Date"** means the date that the ETR is paid to and collected by the Debtor.
- (i) **"Court"** means the Ontario Superior Court of Justice (in Bankruptcy and Insolvency);
- (j) **"CRA"** means the Canada Revenue Agency, as representative of Her Majesty the Queen in Right of Canada;
- (k) **"Creditor"** means any Person having a Claim and may, if the context requires, mean a trustee, receiver, receiver-manager or other Person acting on behalf or in the name of such Person and shall include, but is not limited to, Secured Creditors, Preferred Creditors, Unsecured Creditors, a Person having an Employee Claim, and a Person having a Crown Claim;
- (l) **"Crown Claim"** means a Claim that could be subject to a demand under:
- i. subsection 224(1.2) of the *Income Tax Act*;

- ii. any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalty or other amounts; or
 - iii. any substantially similar provision of provincial legislation.
- (m) **"Debtor"** means Kirkland Lake Forest Products Inc.;
- (n) **"Effective Date"** means the date upon which the Approval Order becomes final and no longer subject to appeal;
- (o) **"Employee Claim"** means a Claim by an employee or former employee of the Debtor, not to include independent commissioned sales agents or contractors, for an amount equal to the amount that they would be qualified to receive under paragraph 136(1)(d) of the *Act* if the Debtor became bankrupt on the Filing Date, as well as wages, salaries, commissions or compensation for services rendered after that date and before the Court approval of the Proposal, together with, in the case of a travelling salesperson, disbursements properly incurred by that salesperson in and about the Debtor's business during the same period;
- (p) **"Employment Insurance Act"** means the *Employment Insurance Act*, S.C. 1996 c. 23, as amended;
- (q) **"ETR"** means the Export Tax Return from the settlement of the Canada-US lumber trade dispute.
- (r) **"Excise Tax Act"** means the *Excise Tax Act*, R.S.C., 1985, c. E-15, as amended;
- (s) **"Filing Date"** means December 6, 2019, the date upon which the Notice Of Intent To Make A Proposal was filed with the office of the Official Receiver;
- (t) **"Income Tax Act"** means the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended;
- (u) **"Inspectors"** means the inspectors described in paragraph 9 hereof;
- (v) **"Notes"** as set out below where Class A Notes are paid in priority to Class B Notes which are paid in priority to Class C Notes. These Notes are for principal only and are non-interest bearing

- (w) **"Performance of the Proposal"** means the payment of the money pursuant to the provisions of paragraphs 4, 5 and 6 of this Proposal;
- (x) **"Person"** means any individual, partnership, joint venture, trust, corporation, unincorporated organization, government or any agency or instrumentality thereof, or any other entity howsoever designated or constituted;
- (y) **"Preferred Creditor"** means an unsecured creditor whose Claim the *Act* directs be paid in priority to all other Claims on a proposal made by a debtor, after payment of the Administrative Fees and Expenses, from the funds available for distribution to Unsecured Creditors;
- (z) **"Proposal"** means this proposal, dated December 18, 2019, and includes any amended proposal filed with the Trustee thereafter;
- (aa) ***Retail Sales Tax Act*** means the *Retail Sales Tax Act*, R.S.O. 1990, c. R.31, as amended;
- (bb) **"Secured Creditor"** means a person holding a mortgage, hypothec, pledge, charge, lien or privilege on or against the property of the Debtor or any part thereof as security for a Claim;
- (cc) **"Small Claim Creditors"** means Unsecured Creditors filing a Claim for the lesser of the amount of their claim or \$3,000.00. Small Claim Creditors will not be eligible for Class B Notes or Class C Notes
- (dd) **"Trustee"** means **A. Farber & Partners Inc.**, or its duly appointed successor or successors;
- (ee) **"Unaffected Secured Creditor"** means Secured Creditor whose claim is not being affected by this Proposal; and
- (ff) **"Unsecured Creditor"** means a Person with a Claim, except for a Claim:
- i. that has been finally and conclusively disallowed;
 - ii. that may be contingent or unliquidated and found by the Court not to be provable;
 - iii. that is a Claim by a Secured Creditor;
 - iv. that is a Crown Claim;
 - v. that is an Employee Claim; and,

- vi. that is a Claim by a Preferred Creditor.
- vii. Any Unsecured Creditor holding a 2017 promissory note (a “Promissory Note”) is a promissory note holder (“Promissory Note Holder”) will be issued a Class C Note as set out below. All other Unsecured Creditors will be 2019 Unsecured Creditors (“2019 Unsecured Creditors”) and will be issued a Class B Note as set out below.

2. Proposal Affecting Secured Creditors

- 2.1. Unaffected Secured Creditors will be permitted to realize on their security and to proceed fully in accordance with their rights as Secured Creditors, provided that this right will be subject to any arrangements made between the Debtor and any Secured Creditor. Unaffected Secured Creditors who have either a liquidated or anticipated deficiency after realization of their security will be entitled to file as Unsecured Creditors for such deficiency. Unaffected Secured Creditors include the Ministry of the Environment to the extent of the letter of credit in their favour and Royal Bank of Canada.
- 2.2. For greater certainty, any post-filing transactions with Secured Creditors to fund the Company after the Filing Date are Post-Filing Transactions and not impacted by these Proposal proceedings.
- 2.3. Affected Secured Creditors include Northern Ontario Heritage Fund Corporation, South Temiskaming Community Futures Development Corporation, Kirkland & District Community Development Corporation, Temiskaming Development Fund Corporation. Affected Secured Creditors will defer capital repayments until such time as the ETR are paid to the Debtor (the “**Collection Date**”). The Affected Security will retain, but defer, their security until the Collection Date. The Debtor will service the monthly ongoing interest payments from the Effective Date to the Collection Date. The Debtor will pay the Affected Secured Creditors’ claim to the extent of funds available from the ETR. Upon acceptance and Court approval of the Proposal, the Debtor will issue Class A Notes to the Affected Secured Creditors for the balance of their claim and issuance of said Class A Notes will constitute full performance of the Proposal relative to the Affected Secured Creditors.

3. Proposal for Preferred Claims

- 3.1. Preferred Claims, if any, without interest, will be paid in priority to all Claims of Unsecured Creditors.

4. Crown Claims

- 4.1. The Debtor covenants and agrees to, within six months after the Effective Date, pay in full all Crown Claims that were outstanding as at the Filing Date. This payment of Crown Claims, if any, will be payable by the Debtor in addition to the funds and notes to be paid pursuant to paragraphs 2.2 and 6 of this Proposal.

5. Payment of Employee Creditors

- 5.1. The Debtor covenants and agrees to pay in full all Employee Claims that were outstanding as at the Filing Date. This payment of Employee Claims, if any, will be payable by the Debtor in addition to the funds payable pursuant to paragraphs 2.3 and 6 of this Proposal and shall be paid immediately following, or prior to, the Effective Date.

6. Proposal for Unsecured Creditors

- 6.1. Small Claim Creditors may elect to receive a cash payment on June 1, 2020 for the lesser of their Claim and \$3,000 in full and final satisfaction of their Claim.
- 6.2. 2019 Unsecured Creditors, who have proven a Claim to the Trustee for debts existing as of the Filing Date, will receive Class B Note to be paid after the Class A Notes noted above to the extent of funds available after collecting the ETR and after payment of the Class A Notes.
- 6.3. Promissory Note Holders, who have proven a Claim to the Trustee for debts existing as of the Filing Date, will receive Class C Notes for 25% of the face value of the Promissory Note in full and final satisfaction of the Promissory Note Holders' claim, to be paid after the Class A Notes and the Class B Notes have been paid in full as noted above, to the extent of funds available after collecting the ETR and after payment of the Class A Notes and Class B Notes.
- 6.4. Any funds remaining from the ETR after payment in full of the Class A Notes, Class B Notes and Class C Notes will remain for the benefit of the Debtor.

7. Deadline to File Claims

- 7.1. To Trustee will issue a 30-day Notice to File Claims pursuant to s. 149(1) of the Act after the Effective Date. To participate in this Proposal distributions, creditors are required to file their claims no later than 90 days after the Trustee issues the 30-day Notice to file Claims. Any creditor not filing a claim within this deadline shall have their debt extinguished and not be eligible to participate on the Proposal.

8. Dividend Distributions

- 8.1. The Trustee shall make dividend distributions to the Small Claim Creditors with proven Claims no later than June 1, 2020 from funds to be provided from the Debtor.
- 8.2. The Debtor will issue the Class A Notes, Class B Notes and Class C Notes, as appropriate and as set out above, for the proven Claims of the creditors.

9. Administrative Fees and Expenses

- 9.1. Payment of all proper Administrative Fees and Expenses of the Trustee, on and incidental to the proceedings arising out of the Proposal, or in the bankruptcy, if any, will be made by the Debtor in addition to the funds and notes to be paid as set out above. Failure of the Debtor to pay the Administrative Fees and Expenses of the Trustee within 30-days of an invoice being rendered to the Debtor will be a default in the performance of the Proposal. The Trustee's Administrative Fees and Expenses will be subject to final approval by the Registrar in Bankruptcy upon completion of the Proposal. The Trustee's fees shall be billed based on the actual time incurred on the file and charged at its standard hourly rates, plus any applicable taxes. The Trustee's disbursements will be charged in addition to its fees based on the actual costs incurred and/or as allowed by tariff.

10. Inspectors

- (a) At the meeting of the Affected Secured Creditors and Unsecured Creditors to be held to consider the Proposal, or any subsequent meeting of creditors, the said Affected Secured Creditors and Unsecured Creditors may appoint one or more, but not exceeding five (5), persons to act as Inspectors, whose powers will be limited to:
 - i. advising the Trustee from time to time with respect to any matter that the Trustee may refer to them;
 - ii. advising the Trustee concerning any dispute which may arise as to the validity of Claims of Unsecured Creditors; and
 - iii. authorizing an extension of the time and/or the amount of payments due from the Debtor to the Trustee pursuant to paragraph 6 of the Proposal, or for payments due from the Trustee to the Unsecured Creditors pursuant to paragraph 6.1 of the Proposal;
- (b) Any decision, direction or act of the Inspectors may be referred to the Court by

the Trustee and the Court may confirm, reverse or modify the decision, direction or act and make such order as it thinks just.

- (c) The authority and term of office of the Inspectors will terminate upon the Performance of the Proposal by the Debtor.

11. Amendment

- 11.1. This Proposal may be amended by the Debtor with the consent of the Trustee at any time prior to the conclusion of the meeting of Affected Secured Creditors and Unsecured Creditors called to consider the Proposal, provided that any amendment made pursuant to this paragraph shall not reduce the rights and benefits given to the Affected Secured Creditors and Unsecured Creditors under the Proposal before any such amendment, and provided further that any and all amendments shall be deemed to be effective as of the Filing Date of the Proposal.

12. Goods or Services Given After Filing Date

- 12.1. All Post-Filing Claims shall be paid in full in the ordinary course by the Debtor. The Debtor agrees that the Trustee shall not in any case be responsible for ensuring that payment is duly made to all those persons supplying goods or services to the Debtor on or after the Filing Date. All creditors hereby release and forever discharge the Trustee from any and all liability relating to the Debtor's non-payment of any liabilities under this paragraph.

13. Interest on Funds Paid Under Proposal

- 13.1. Interest, if any, on funds held by the Trustee on account of the Proposal shall first be applied to any outstanding Administrative Fees and Expenses, then to the Debtor only after full payment of the Small Creditor Claims under this Proposal funds payable under paragraph 6.1 of the Proposal.

14. Performance of the Proposal

- 14.1. Upon Performance of the Proposal including:
- payment of the Crown Claim
 - payment of the Preferred Claims
 - payment of the Small Creditor Claims
 - payment of the Administrative Fees and Expenses of the Trustee; and
 - issuance of the Class A Notes, Class B Notes and Class C Notes as set out above

the Trustee shall issue a Certificate of Full Performance.

15. Superintendent's Levy

- 15.1. All monies payable under the Proposal in respect of Preferred Claims, Employee Claims, Affected Secured Creditor Claims and Unsecured Claims shall be paid by the Debtor to the Trustee and, notwithstanding any other provision hereof, all payments made by the Trustee in respect of such Claims pursuant to the terms hereof shall be made net of the Superintendent's Levy required to be paid pursuant to Sections 147 and 60(4) of the Act.
- 15.2. All Notes payable under the Proposal in respect of Preferred Claims, Employee Claims, Affected Secured Creditor Claims and Unsecured Claims shall be provided by the Debtor to the Trustee and, notwithstanding any other provision hereof, all Notes issued by the Debtor in respect of such Claims pursuant to the terms hereof shall be made net of the Superintendent's Levy required to be paid pursuant to Sections 147 and 60(4) of the Act.

16. Preferential Payments

- 16.1. Sections 95 to 101 of the Act shall not apply to any dealings by the Company at any time prior to the Date of Filing. The performance contemplated in Paragraph 14 of this Proposal shall release the Company, and its former directors and officers, from all claims, actions, or remedies available to Creditors or others pursuant to Sections 95 to 101 of the Act, provided that nothing herein shall release any director of the Company from any claims coming within the exceptions set out in Section 50(14) of the Act.

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17. Claims against the Director(s) of the Debtor

- 17.1. The Affected Secured Creditors and the Unsecured Creditors hereby agree that, immediately upon Performance of the Proposal by the Debtor, the Director Liabilities resulting from potential Claims against the Debtor as at the Filing Date, if any, shall be considered fully compromised and extinguished. For greater certainty, the Director Liabilities shall include any Claims of the Debtor that may devolve upon, or be assessed against, a director of the Debtor or a Person deemed to have been in control of the business, where that Person may be liable for payment of such obligations by operation of law and/or statutory authority.

DATED at the Town of Kirkland Lake, in the Province of Ontario this 18th day of December, 2019.



Witness

KIRKLAND LAKE FOREST PRODUCTS INC.



Per: Claude Perron,