

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**THE HONOURABLE MR.)
JUSTICE CUMMING)
TUESDAY, THE 26TH
DAY OF JANUARY, 2010**

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

*AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE AND
ARRANGEMENT OF W.C. WOOD CORPORATION, LTD., W.C. WOOD HOLDINGS INC.
and W.C. WOOD CORPORATION INC.*

*AND IN THE MATTER OF SECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY
ACT, R.S.C. 1985 c. B-3, AS AMENDED, AND SECTION 101 OF THE COURTS OF
JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED*



APPROVAL AND VESTING ORDER

THIS MOTION, made by BDO Canada Limited (formerly BDO Dunwoody Limited) in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of W.C. Wood Corporation, Ltd., W.C. Wood Holdings Inc. and W.C. Wood Corporation, Inc. (collectively, "W.C. Wood") for, *inter alia*, an order approving the sale (the "Transaction") of the real property legally described on Schedule A to this Order (the "Lands"), together with the existing buildings and fixtures owned by W.C. Wood and located on the Lands (collectively, the "Purchased Assets"), as contemplated by an agreement of purchase and sale between the Receiver and Kilmer Brownfield Management Limited (the "Purchaser") made as of December 17, 2009 and appended in a redacted form to the Thirteenth Report to the Court of BDO Canada Limited (the "Thirteenth Report") and included in an unredacted form to the Confidential Appendix to the Thirteenth Report (the "Confidential Appendix", and, together with the Thirteenth Report, the "Report"), as amended by an amending agreement between the Receiver and the Purchaser dated January 22, 2010 and appended in a redacted form to the Supplemental Report to the Thirteenth Report (the "Supplemental Report") and included in an unredacted form to the Confidential Appendix (collectively, the "KBM Sale Agreement"), and vesting in the

Purchaser all right, title and interest in and to the Purchased Assets, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and the Supplemental Report and on hearing the submissions of counsel for the Receiver, counsel for the Purchaser, ^{Dai} counsel for CIT ^{Dac} and no one appearing for any other person on the service list, although properly served as appears from the affidavit of Sam Babe sworn January 22, 2010, filed:

1. THIS COURT ORDERS that the Receiver's Notice of Motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and that the KBM Sale Agreement is commercially reasonable and in the best interests of W.C. Wood and its stakeholders. The execution of the KBM Sale Agreement by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.
3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule B hereto (the "Receiver's Certificate"), all right, title and interest in and to the Purchased Assets described in the KBM Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing:
 - (i) any encumbrances or charges created by the Order of the Honourable Madam Justice Pepall dated May 19, 2009, as amended;
 - (ii) any encumbrances or charges created by the Order of the Honourable Madam Justice Pepall dated November 16, 2009, as amended;

- (iii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system;
- (iv) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets;
- (v) all manner of actions, causes of action, actions, claims, money claims (including claims to royalties or shares of profits, debts, demands, costs and damages against the Debtor, the Vendor or with respect to the Purchased Assets),
- (vii) trusts or deemed trusts (whether contractual, statutory or otherwise), assignments, executions, options, adverse claims, monetary claims, levies, agreements, taxes, claims provable if the Debtor should be adjudged bankrupt, charges, encumbrances or any other rights (including encumbrances or charges created by or pursuant to any and all orders made in the Proceedings or any other proceedings),
- (viii) title retentions, rights of reversion, revindication or repossession,
- (ix) liens (including statutory, construction and possessory liens),
- (x) disputes and debts, whether or not they have attached or been perfected, registered or filed, whether secured or unsecured or otherwise, and
- (xi) other claims of any nature, howsoever created or arising whether contractual, statutory, by operation of law or otherwise, including any claims by:
 - (a) the Corporation of the City of Guelph, Guelph Hydro, Workplace Safety and Insurance Board, Canada Customs and Revenue Agency and any other governmental agencies with respect to unpaid taxes of any nature or any other unpaid amounts, and
 - (b) all parties served with the motion record with respect to the motion for this Approval and Vesting Order

by or of any and all persons or entities of any kind whatsoever, including without limitation all individuals, firms, corporations, partnerships, joint ventures, trusts, unincorporated organizations, governmental and administrative bodies, agencies, authorities or tribunals, whether acting in their capacity as principal or as agent, and all other agents, trustees, executors, administrators or other legal representatives, including the beneficiaries of all charges approved or created in orders made in these proceedings.

4. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Registry Division and the Land Titles Division of Wellington (No. 61) of this Approval and Vesting Order and the Receiver's Certificate duly executed by the Receiver, the Land Registrar is hereby directed:

- (a) to enter the Purchaser as the owner of the Lands identified in Schedule A hereto in fee simple, and is hereby directed to delete and expunge from title to the Lands all of the Claims listed in Schedule C hereto, and
- (b) to amend the legal description of the Lands by deleting therefrom any references to the Claims and instruments set out in Schedule "C" hereto.

5. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

7. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;

- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of W.C. Wood and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of W.C. Wood;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of W.C. Wood and shall not be void or voidable by creditors of W.C. Wood, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

9. THIS COURT ORDERS that the unredacted versions of the KBM Sale Agreement and the KBM Amending Agreement (as defined in the Supplemental Report) included in the Confidential Appendix be protected as confidential and shall be segregated from other documents or information filed in connection with these until the Transaction has been completed or until further order of this Honourable Court, and any such motion for such an order must be made on notice to the Receiver.

10. THIS COURT HEREBY REQUESTS the aid and recognition of the Land Registrar for the Registry Division of Wellington, any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

Jan. 26, 2010 *Peter A. Cumming J.*

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JAN 26 2010

PER / PAR: *JS* Joanne Nicoara
Registrar, Superior Court of Justice

Schedule A – Legal Description of Real Property

Firstly: PIN 71338-0049 (LT)

Lots 45 and 46, South West Side of Duke Street, Plan 161, Part of Lots 42 and 43, North East Side of Queen Street, Plan 161, Part of Lot E, North East Side of Queen Street, Plan 161, designated as Parts 1, 2, 3, 4 and 5 on Plan 61R-10766, City of Guelph, County of Wellington;

Secondly: PIN 71338-0104 (LT)

Part of Grist Mill Lands, East side of River Speed, Plan 113 and Lots 77, 78, 79, 80, 81 and 82, Plan 113 (as amended), Part of Lot 76, Plan 113, designated as Parts 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 on Plan 61R-10767, City of Guelph, County of Wellington;

Thirdly: PIN 71338-0106 (LT)

Part of Grist Mill Lands, East Side of River Speed, Plan 113, designated as Parts 1, 2, 3, 4 and 5 on Plan 61R-10767, City of Guelph, County of Wellington;

Fourthly: PIN 71338-0118 (LT)

Part of Lot 35, North East Side of Queen Street and South West Side of Duke Street, Plan 161, designated as Parts 1 and 2 on Plan 61R-10765, City of Guelph, County of Wellington;

Fifthly: PIN 71338-0111 (R)

Part Lot 42, North East Side of Queen Street and Part Lot 43, North East Side of Queen Street, Plan 161, designated as Parts 6, 7 and 8 on Reference Plan 61R-10766, City of Guelph, County of Wellington.

Schedule B – Form of Receiver’s Certificate

Court File No. CV-09-8194-00CL

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

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE AND
ARRANGEMENT OF W.C. WOOD CORPORATION, LTD., W.C. WOOD HOLDINGS INC.
and W.C. WOOD CORPORATION INC.

AND IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY
ACT*, R.S.C. 1985 c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF
JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Pepall of the Ontario Superior Court of Justice (the "Court") dated November 16, 2009, as amended, BDO Canada Limited (or BDO Dunwoody Limited, as it was then known) was appointed as the receiver (the "Receiver") of the undertaking, property and assets of W.C. Wood Corporation, Ltd., W.C. Wood Holdings Inc. and W.C. Wood Corporation, Inc. (collectively, the "W.C. Wood").

B. Pursuant to an Order of the Court dated January 26, 2010, the Court approved the agreement of purchase and sale made as of December 17, 2009 as amended (the "KBM Sale Agreement") between the Receiver and Kilmer Brownfield Management Limited (the "Purchaser") and provided for the vesting in the Purchaser of the right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in sections 14 and 15 of the KBM Sale Agreement have been satisfied or waived by the

Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the KBM Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the KBM Sale Agreement;
2. The conditions to Closing as set out in sections 14 and 15 of the KBM Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at ___ on _____, 2009.

BDO CANADA LIMITED, in its capacity as Receiver of the undertaking, property and assets of W.C. Wood Corporation, Ltd., W.C. Wood Holdings Inc. and W.C. Wood Corporation, Inc., and not in its personal capacity

Per: _____

Name:

Title:

Schedule C – Encumbrances

1. Instrument No. RO820419 registered January 14, 2008 being a \$25,000,000 Charge/Mortgage of Land granted by W.C. Wood Corporation, Ltd. in favour of CIT Business Credit Canada Inc. (re: PIN 71338-0111 (R))
2. Instrument No. WC199518 registered January 14, 2008 being a \$25,000,000 Charge/Mortgage granted by W.C. Wood Corporation, Ltd. in favour of CIT Business Credit Canada Inc. (re: PINs 71338-0049 (LT), 71338-0104 (LT), 71338-0106 (LT) and 71338-0118 (LT))
3. Instrument No. MS71540 registered February 12, 1968 being an easement (registered against PIN 71338-0106)
4. Instrument No. ROS232734 registered August 26, 1980 is a Development Agreement between W.C. Wood Company Limited and The Corporation of the City of Guelph (the “City of Guelph”) (registered against PINs 71338-0049, 71338-0111);
5. Instrument No. RO820453 registered February 26, 2008 is a release of development agreement ROS232734 in respect of Part of Lots 42 and 43, North East side of Queen Street, Plan 161, Guelph (registered against PIN 71338-0111);
6. Instrument No. WC202874 registered February 26, 2008 is an application registered by the City of Guelph is a release of the development agreement ROS232734 (registered against PIN 71338-0049)
7. Execution Number 09-000332 filed against W. C. Wood Corporation, Ltd., W. C. Wood Corporation Ltd. and WC Wood Corporation Ltd. for \$1,400,000.00 by ITN Transborder Services Inc.
8. Execution Number 09-000995 filed against W. C. Wood Corporation Ltd for \$54,704.33 by Workplace Safety and Insurance Board.
9. The following claims and registrations pursuant under the *Personal Property Security Act* (Ontario):

| File No. | Registration No. | Secured Party |
|-----------|-------------------------|---|
| 654383835 | 20090623 0902 1590 7430 | Whirlpool Corporation |
| 654383862 | 20090623 0902 1590 7431 | Whirlpool Corporation |
| 653288661 | 20090507 1944 1531 0115 | Panasonic Canada Inc. |
| 649555947 | 20081028 1950 1531 8409 | De Lage Landen Financial Services Canada Inc. |
| 641346885 | 20071212 1345 1862 0666 | CIT Business Credit Canada Inc., as Agent |

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Lands**

1. any existing reservations, restrictions, rights of way, easements or covenants that run with the land;
2. any existing registered agreements with a municipality of a supplier of utility service including, without limitation, electricity, water, sewage, gas, telephone or cable television or other telecommunication service;
3. all existing laws, by-laws and regulations and all outstanding work orders, deficiency notices and notices of violation affecting the Lands;
4. any existing minor easements for the supply of utility service to the Lands or adjacent properties;
5. existing encroachments disclosed by any errors or omissions in existing surveys of the Lands or neighbouring properties and any title defect, encroachment or breach of a zoning or property by-law or any other Applicable Laws which might be disclosed by a more up-to-date survey of the Lands and survey matters generally;
6. the exceptions and qualifications set forth in the *Land Titles Act* (Ontario);
7. the reservations contained in the original grant from the Crown;
8. Instrument No. MS106742 registered July 30, 1971 is a transfer in favour of W.C. Wood Company Limited (registered against PIN 71338-0118);
9. Instrument No. ROS250929 registered February 19, 1982 is an easement in favour of the City of Guelph (registered against PINs 71338-0049, 71338-0111);
10. Instrument No. RO682767 registered November 24, 1992 is an easement (registered against PIN 71338-0106);
11. Instrument No. RO682768 registered November 24, 1992 is a By-law of the City of Guelph (registered against PIN 71338-0106);
12. Instrument No. WC197312 registered December 14, 2007 is a Land Registrar's order to amend Plan 8 to Plan 113 (registered against PIN 71338-0106);
13. Instrument No. WC197939 registered December 20, 2007 is a Land Registrar's order to amend the property description (registered against PIN 71338-0118);
14. Instrument No. RO820409 registered December 27, 2007 is a deposit (registered against PIN 71338-0111); and
15. Instrument No. WC206510 registered April 4, 2008 is an encroachment agreement between the City of Guelph and W.C. Wood Corporation, Ltd. (registered against PINs 71338-0104 and 71338-0106).

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. c-36, AS AMENDED AND
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AMENDED, AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

Court File No.: CV-09-8194-00C

ONTARIO

**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDINGS COMMENCED AT TORONTO

ORDER

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