

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)

IN THE MATTER OF THE PROPOSAL OF  
PRAIRIE PLUMBING & HEATING LIMITED  
OF THE CITY OF OSHAWA, IN THE PROVINCE OF ONTARIO

PROPOSAL

**PRAIRIE PLUMBING & HEATING LIMITED** of the City of Oshawa, in the Province of Ontario, submits the following Proposal under the provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.

**Definitions**

1. In this Proposal:

- (a) "**Act**" means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;
- (b) "**Administrative Fees and Expenses**" means:
  - (i) the proper fees and expenses of the Proposal Trustee, including legal fees and disbursements; and
  - (ii) the legal fees and disbursements of the Debtor on and incidental to the making of this Proposal both before and after the Filing Date and including the fees and expenses of and incidental to the negotiation, preparation, presentation, consideration and implementation of this Proposal, and all proceedings and matters relating to or arising out of this Proposal;
- (c) "**Assets**" means assets of the Debtor of whatever kind whatsoever, whether tangible or intangible, including but not limited to vehicles, inventory, machinery, equipment, office furniture, office equipment, accounts receivable, refunds, rights of action and proceeds therefrom, and insurance proceeds;
- (d) "**Brookhouse Project**" means a project known as 21 Brookhouse Drive, Newcastle, Ontario for which the Debtor filed a Statement of Claim on July 26, 2019, in the amount of \$146,776.10 on account of unpaid progress draws, extras and holdback;
- (e) "**Business Day**" means a day, other than a Saturday or Sunday or a day observed as a public holiday under the laws of the Province of Ontario or the federal laws of Canada applicable herein;

- (f) “**Cavan Project**” means a project known as the Cavan-Monaghan Community Centre for which the Debtor is owed \$566,989.28 on account of unpaid June 2019 progress draw and accumulated holdback;
- (g) “**CIBC Indebtedness**” means all amounts due to Canadian Imperial Bank of Commerce from time to time including all Term Loan, Credit Card, unpaid fees including legal fees, and interest;
- (h) “**Construction Act**” means the *Construction Act* R.S.O. 1990, c. C.30 as it read before July 1, 2018;
- (i) “**Claim**” means a claim provable under the *Act*. For greater certainty, the Claim of Her Majesty the Queen in Right of Canada with respect to the *Income Tax Act* (Canada) will include:
  - (i) liabilities under the *Income Tax Act* (Canada) that arise as a result of this Proposal and the implementation of its provisions; and
  - (ii) the Debtor’s liability under the *Income Tax Act* (Canada) for the period up to and including the filing date, for tax, interest and penalty;
- (j) “**Creditor**” means any Person having one or more Claim of an Ordinary Unsecured Creditor, Preferred Creditor, or Secured Creditor;
- (k) “**Court**” means the Ontario Superior Court of Justice in Bankruptcy and Insolvency;
- (l) “**Court Approval Date**” means the date upon which the Order of the Court approving this Proposal becomes final and no longer subject to appeal;
- (m) “**Debtor**” means PRAIRIE PLUMBING & HEATING LIMITED;
- (n) “**Employee Claims**” means claims of employees and former employees of the Debtor, not to include independent commissioned sales agents or contractors, for amounts equal to the amounts 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 Court approval of the Proposal;
- (o) “**ETR 407 Project**” means a project for which the Debtor is owed \$96,208.81 from holdback funds, for which the date of substantial performance was March 28, 2019 and the Certificate of Substantial Performance was published on June 25, 2019;
- (p) “**Filing Date**” means the date upon which the Debtor filed its Notice of Intention to Make a Proposal under the *Act* with the office of the Official Receiver;

- (q) **“Inspectors”** means the individuals nominated and appointed to carry out the duties described in the Proposal pursuant to the *Act* and described in paragraph 24 hereof;
- (r) **“Levy”** means the levy payable to the Superintendent of Bankruptcy pursuant to Section 147 of the *Act*;
- (s) **“Munroe Project”** means a project known as 86 Munroe Street, Cobourg, ON for which the Debtor has filed a lien in the amount of \$319,436.82 and for which funds were paid into Court by the general contractor on July 25, 2019;
- (t) **“Net Project Receivables”** means the amounts due to the Debtor on account of unpaid holdback, progress draws, liens or any other amounts owing to the Debtor on the Brookhouse Project, the Munroe Project and the ETR 407 Project, after satisfaction of all Project Claims and the CIBC Indebtedness;
- (u) **“Ordinary Unsecured Creditors”** means those Persons with unsecured Claims as at the Filing Date, including contingent or unliquidated Claims arising out of any transaction entered into prior to the Filing Date which are proven in accordance with the *Act*, except for those Claims:
  - (i) that have been finally and conclusively disallowed;
  - (ii) that may be contingent or unliquidated and found by the Court not to be a claim provable;
  - (iii) that are Claims by Secured Creditors or Preferred Creditors;
  - (iv) that are Project Claims which have been paid since the Filing Date or will be paid from holdback funds or project funds otherwise owing to the Debtor, in accordance with the *Construction Act*.
- (v) **“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;
- (w) **“Post-Filing Claims”** means any Claim that becomes a Claim after the Filing Date including, without limiting the foregoing, Claims arising in respect of services rendered, goods supplied, or other consideration given to the Debtor subsequent to the Filing Date;
- (x) **“Preferred Creditor”** means those creditors of the Debtor whose claims the *Act* directs be paid in priority to the claims of Ordinary Unsecured Creditors in a proposal made by a debtor, after payment of the Administrative Fees and Expenses;
- (y) **“Project Claims”** means the Claims of unpaid subcontractors and Persons which supplied services or materials in accordance with the *Construction Act* to any project of the Debtor, including but not limited to the Cavan Project, the

Brookhouse Project, the Munroe Project, and the ETR 407 Project, and are entitled to a trust or lien claim as defined in the *Construction Act* against the holdbacks and any amounts owing on all such projects to the Debtor;

- (z) “**Proposal**” means the Proposal dated August 7, 2019;
- (aa) “**Trustee**” means the trustee acting under the Notice of Intention to Make a Proposal Link & Associates Inc. or its duly appointed successor or successors;
- (bb) “**Secured Creditor**” means a Creditor holding a valid mortgage, hypothec, pledge, charge, lien, interest or privilege or security on or against the property of the Debtor or any part thereof as security for a Claim;
- (cc) “**Unsecured Creditor**” means any Person having one or more Claim of an Ordinary Unsecured Creditor or Preferred Creditor.

### **Headings**

- 2. The division of the Proposal into parts, paragraphs and subparagraphs, and the insertion of headings herein, are for convenience of reference only and are not to affect the construction or the interpretation of this Proposal.

### **General Intent**

- 3. The purpose of this Proposal is to effect a compromise of the Claims of the Preferred and Ordinary Unsecured Creditors of the Debtor, with the expectation that such creditors will derive a greater benefit from a Proposal than a bankruptcy.
- 4. This Proposal will, as of the Court Approval Date, be binding on the Debtor, all Ordinary Unsecured Creditors and Preferred Creditors.

### **Secured Creditor Claims**

- 5. This Proposal is not being made to the Secured Creditors and no claims of Secured Creditors will be affected by this Proposal.
- 6. The Secured Creditors will be paid in accordance with arrangements made between the Debtor and those Secured Creditors, or as may otherwise be agreed between the Debtor and those Secured Creditors from time to time.

### **Preferred Creditor Claims**

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

### **Crown Claims**

- 8. During the period between the Filing Date and the Approval Date, the Debtor shall pay and keep current Her Majesty in right of Canada and in right of Ontario all amounts of a kind that could be subject to a demand under subsection 224(1.2) of the *Income Tax Act*

(Canada) or otherwise as provided for in subsection 60(1.1) of the *Act* or any substantially similar provision of Ontario legislation.

9. All claims of Her Majesty in right of Canada or a province of a kind that are referenced in subsection 60(1.1) of the *Act*, and that were outstanding at the Filing Date, shall be paid in full within six months after Court approval of the Proposal.

#### **Landlord Claims**

10. The Landlord served notice to the Debtor that its lease has expired and requires vacant possession on or before October 1, 2019. The Debtor is not aware of any Landlord Claims.

#### **Employee Claims**

11. The Debtor shall pay to its employees and former employees any amount that would be payable under Section 136(1)(d) of the *Act* if the Debtor became bankrupt; such payment to be made immediately upon, and not later than 10 days following the Court Approval Date.

#### **Claims of Ordinary Unsecured Creditors**

12. Ordinary Unsecured Creditors who have filed valid proofs of claim admitted by the Trustee or the Court, for Claims existing as of the Filing Date will receive a distribution from the Funds paid to the Proposal Trustee as set out below under the heading of "Proposal Terms – Ordinary Unsecured Creditor Dividend Payments".

#### **Valuation of Claims**

13. To the extent a Claim is a contingent claim, but is a provable claim and is capable of valuation by the Trustee, the Trustee shall value it.
14. A Claim which is contingent, provable and able to be valued, shall rank as a Claim of an Ordinary Unsecured Creditor for the amount of its value, as determined by the Trustee or the Court.

#### **Proposal Funding**

15. From the funds to be paid to the Proposal Trustee for the purposes of funding this Proposal (the "**Proposal Funds**") the Debtor hereby offers payment of up to \$100,000 to its Preferred and Ordinary Unsecured Creditors.
16. The Debtor will pay to the Proposal Trustee sufficient funds to make the payments contemplated by this Proposal, from the following sources:
  - (i) 25% of the Net Project Receivables, upon collection by the Debtor, to a maximum of \$65,000;
  - (ii) \$35,000 to be paid at the rate of \$3,500 per month for a period of 10 months from

available cash flow, such payments commencing 60 days from the Court Approval Date.

### **Proposal Terms – Ordinary Unsecured Creditor Dividend Payments**

17. From the Proposal Funds to be paid to the Trustee pursuant to this Proposal, after payment of any priority Claims as set forth above, and less the payment of Administrative Fees and Expenses the Trustee shall distribute dividends to the Ordinary Unsecured Creditors as follows:
  - i) The first dividend shall be paid within 45 days of the Trustee receiving at least \$50,000 from the Debtor;
  - ii) The final dividend shall be paid within 45 days of the Trustee receiving the remaining funds due under the Proposal from the Debtor.
18. Any and all payments made by the Proposal Trustee to the Creditors hereunder shall be paid net of levy payable under Section 147 of the *Act*.

### **Effect of Payment**

19. Ordinary Unsecured Creditors and Preferred Creditors will accept the payments provided for in this Proposal in complete satisfaction of all their Claims, whether against the Debtor, its directors, officers or shareholders, and all liens, trust claims, certificates of pending litigation, executions or any other similar charges or actions or proceedings in respect of such Claims will have not effect in law or in equity against the property, assets and undertaking of the Debtor.
20. Upon the making of all payments provided for in this part, any and all such liens, certificates of pending litigation, executions or other similar charges or actions will be forever discharged and released, dismissed or vacated without costs to the Debtor.

### **Proof of Claim**

21. Creditors who do not file valid proofs of claim will not be entitled to receive payment under this Proposal.

### **Claims Bar Process**

22. Within 15 business days of the Court Approval Date, the Trustee shall give notice pursuant to Section 149 of the *Act* (the “**S. 149 Notice**”) by registered or verifiable mail to every Person with a Claim (other than Post Filing Claims) of which the Trustee has notice or knowledge but whose Claim has not been filed or proved, advising that if such Person does not prove its Claim within a period of thirty (30) days after the sending of the S. 149 Notice (the “**Claims Bar Date**”) the Trustee will proceed to declare interim or final dividends without regard to such Person’s Claim. Subject to any exceptions set out in Sections 149(2), (3) and (4) of the *Act*, any Person so notified that does not file its Claim by the Claims Bar Date shall be barred from making a Claim in this Proposal or

sharing in any dividend hereunder, and such Claim shall be forever barred, extinguished and released.

### **Administrative Fees and Expenses**

23. Notwithstanding any other provision of this Proposal, the Administrative Fees and Expenses shall be paid in priority to all Claims and shall be a first charge thereon. 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 in priority to all claims. The Trustee will be at liberty to withdraw and pay such Administrative Fees and Expenses at any time and from time-to-time 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.

### **Inspectors**

24. At the meeting of the Creditors to be held to consider the Proposal:
- (a) the said Creditors may appoint one or more but not exceeding 5 persons to act as Inspectors whose powers will be limited to:
    - (i) the power to waive any defaults in the performance of any provisions of this Proposal;
    - (ii) advising the Proposal Trustee from time to time with respect to any matter that the Proposal Trustee may refer to them;
    - (iii) advising the Proposal Trustee concerning any dispute which may arise as to the validity of Claims of Creditors under this Proposal including the settlement of same; and
    - (iv) authorizing an extension of the time for payments due from the Debtor to the Proposal Trustee or for distribution of dividends from the Proposal Trustee to the Ordinary Creditors.
  - (b) Any decision, direction or act of the Inspectors may be referred to the Court by the Proposal 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.

### **Goods or Services Given After Filing Date**

25. Post-Filing Claims arising in respect of goods supplied, services rendered or other consideration given after the Filing Date will be paid by the Debtor in full in the ordinary

course of business, and on regular trade terms, in priority to the claims of Ordinary Unsecured Creditors. The Proposal Trustee is not in any way responsible for ensuring that payment is made to any persons supplying post-filing goods and services. All Creditors hereby release and forever discharge the Proposal Trustee from any and all liability relating to the Debtor's non-payment of any liabilities arising from Post-Filing Claims.

### **Proposal Trustee**

26. The Proposal Trustee is acting in its capacity as Trustee under the Proposal and is not acting in its personal capacity and will not be responsible or liable for any obligations of the Debtor. All monies payable under this Proposal shall be paid over to the Proposal Trustee who shall make the payment of all dividends in accordance with the terms of this Proposal. The Proposal Trustee shall at all time have the authority and powers of a Trustee under the Act, as they may be applicable, including the power to disallow claims.
27. Link & Associates Inc. is acting in its capacity as Proposal Trustee and not in its personal capacity and no officer, director, employee or agent of Link & Associates Inc. shall incur any obligations or liabilities in connection with this Proposal or in respect of the business or liabilities of the Debtor. Any payments made by the Proposal Trustee under the terms of this Proposal hereunder shall be made by the Proposal Trustee net of any levies payable or due under the Act. The assets of the Debtor shall not vest in the Trustee, but shall remain vested in the Debtor.

### **Release of Directors**

28. Upon the Court Approval Date, each and every present and former director of the Debtor shall be released and discharged from any and all claims that arose before the Filing Date and that relate to the obligations of the Debtor where the director is by law liable in their capacity as director for payment of such obligations, including any and all claims that any Person may have against any officers and directors of the Debtor under the *Construction Act*.
29. This release shall have no force or effect if the Debtor fails to fully perform the Proposal as contemplated herein, and is subject to the exception set forth in Section 50(14) of the *Act*.

### **Non-Application of Sections 95-101 of the Act**

30. For the purposes of this Proposal, sections 95-101 (inclusive) of the *Act* shall not apply.

### **Other**

31. This Proposal will be fully performed for the purposes only of section 65.3 of the *Act* upon the payment to the Proposal Trustee of the Funds. The Proposal Trustee shall be entitled to, and may apply for, its discharge after having made the payments to the Creditors provided for herein.



32. After the Creditors' acceptance of the Proposal, the Debtor will proceed to have the Proposal approved by the Court and to have the Court make any ancillary orders that may be necessary or desirable. Creditors' acceptance of the Proposal shall constitute their consent to such ancillary Court Orders.

**Binding Effect**

33. The provisions of this Proposal will be binding on the Preferred and Ordinary Unsecured Creditors and the Debtor, and their respective heirs, executors, administrators, successors and assigns, upon the Court Approval Date.

**Amendment of Proposal**

34. 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 Ordinary 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 Ordinary 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.

**Performance Certificate**

35. The Proposal Trustee will give the Debtor and the Official Receiver the certificate provided for in section 65.3 of the Act when all payments required under the Proposal have been made.

DATED at the City of Toronto, in the Province of Ontario, this 7<sup>th</sup> day of August, 2019.

**PRAIRIE PLUMBING & HEATING LIMITED**

Per:

Witness

  


District of Ontario  
Division No. 9 - Toronto  
Court File No. 31-2531802  
Estate File No. 31-2531802

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ONTARIO  
SUPERIOR COURT OF JUSTICE  
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**PROPOSAL**

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PRAIRIE PLUMBING & HEATING LIMITED  
OF THE CITY OF OSHAWA,  
PROVINCE OF ONTARIO

**LINK & ASSOCIATES INC.**

Licensed Insolvency Trustee

77 King St. West, Suite 3000, PO Box 95  
Toronto, Ontario  
M5K 1G8

Robert G. Link, CIRP, LIT

Tel: (416) 862-7785

Fax: (416) 862-2136

[rlink@linkassociates.ca](mailto:rlink@linkassociates.ca)