

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF THE NOTICES OF INTENTION TO  
MAKE A PROPOSAL OF 33 LAIRD INC. AND 33 LAIRD  
GP INC., CORPORATIONS INCORPORATED UNDER THE  
ONTARIO *BUSINESS CORPORATIONS ACT*, AND 33 LAIRD  
LIMITED PARTNERSHIP, A LIMITED PARTNERSHIP  
FORMED UNDER THE ONTARIO *LIMITED  
PARTNERSHIPS ACT***

---

**MOTION RECORD**

**(approval and vesting order, approval of proposal trustee's fees and activities, sealing)  
(motion returnable June 11, 2021)**

---

June 4, 2021

**GOLDMAN SLOAN NASH & HABER LLP**

480 University Avenue, Suite 1600

Toronto, Ontario M5G 1V2

Fax: 416-597-6477

**R. Brendan Bissell** (LSO# 40354V)

Tel: (416) 597-6489

Fax: (416) 597-3370

Email: [bissell@gsnh.com](mailto:bissell@gsnh.com)

**Joël Turgeon** (LSO #80984R)

Tel: (416) 597-6486

Email: [turgeon@gsnh.com](mailto:turgeon@gsnh.com)

Lawyers for 33 Laird Inc., 33 Laird GP Inc. and  
33 Laird Limited Partnership

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF THE NOTICES OF INTENTION TO  
MAKE A PROPOSAL OF 33 LAIRD INC. AND 33 LAIRD  
GP INC., CORPORATIONS INCORPORATED UNDER THE  
ONTARIO *BUSINESS CORPORATIONS ACT*, AND 33 LAIRD  
LIMITED PARTNERSHIP, A LIMITED PARTNERSHIP  
FORMED UNDER THE ONTARIO *LIMITED  
PARTNERSHIPS ACT***

---

**INDEX**

---

<b>Tab</b>	<b>Description</b>	<b>Page</b>
<b>1</b>	Notice of motion returnable June 11, 2021	1
<b>2</b>	Affidavit of Jason L. Birnboim sworn June 4, 2021	8
<b>A</b>	Exhibit “A”: Affidavit of Jason L.S. Birnboim sworn December 10, 2020 (without exhibits)	17
<b>B</b>	Exhibit “B”: Order of Conway J. dated December 16, 2020	27
<b>C</b>	Exhibit “C”: Affidavit of Jason L.S. Birnboim sworn February 6, 2021 (without exhibits)	37
<b>D</b>	Exhibit “D”: Order of Cavanagh J. dated February 10, 2021	45
<b>E</b>	Exhibit “E”: Affidavit of Jason L.S. Birnboim sworn March 20, 2021 (without exhibits)	53
<b>F</b>	Exhibit “F”: Order of Cavanagh J. dated March 26, 2021	63
<b>G</b>	Exhibit “G”: Affidavit of Jason L.S. Birnboim sworn May 7, 2021 (without exhibits)	69
<b>H</b>	Exhibit “H”: Order of Dunphy J. dated May 12, 2021	82
<b>I</b>	Exhibit “I”: Sale agreement among 33 Laird Inc. and 33 Laird Development Inc. dated May 11, 2021 (redacted)	88
<b>J</b>	Exhibit “J”: Site plan agreement made on July 23, 2019	175

<b>Tab</b>	<b>Description</b>	<b>Page</b>
<b>K</b>	Exhibit “K”: Emails among <i>inter alia</i> counsel for the City of Toronto and counsel for the Purchaser	193
<b>L</b>	Exhibit “L”: Proposals of 33 Laird Inc., 33 Laird GP Inc., and 33 Laird Limited Partnership	204
	Confidential Exhibit “1”: Unredacted page 5 of sale agreement among 33 Laird Inc. and 33 Laird Development Inc. dated May 11, 2021	-
<b>3</b>	Draft approval and vesting order	244
<b>4</b>	Comparison between draft approval and vesting order and Commercial List model	257
<b>5</b>	Draft order re: approval of proposal trustee’s fees and activities	276
<b>6</b>	Notice to disclaim an agreement dated June 4, 2021 regarding the site plan agreement	280
<b>7</b>	Service list as of June 4, 2021	300

**TAB 1**

Notice of Motion returnable June 11, 2021

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF THE NOTICES OF INTENTION TO  
MAKE A PROPOSAL OF 33 LAIRD INC. AND 33 LAIRD  
GP INC., CORPORATIONS INCORPORATED UNDER THE  
ONTARIO *BUSINESS CORPORATIONS ACT*, AND 33 LAIRD  
LIMITED PARTNERSHIP, A LIMITED PARTNERSHIP  
FORMED UNDER THE ONTARIO *LIMITED  
PARTNERSHIPS ACT***

---

**NOTICE OF MOTION  
(approval and vesting order, approval of proposal trustee's fees and activities, sealing)  
(motion returnable June 11, 2021)  
(returnable May 12, 2021)**

---

33 Laird Inc., 33 Laird GP Inc., and 33 Laird Limited Partnership Inc. (together, the "**Laird Entities**") will make a motion to Mr. Justice Pattillo of the Superior Court of Justice (Commercial List) on Friday, June 11, 2021, at 10:00 am or as soon thereafter as the motion can be heard, via Zoom teleconference the details for which are in Schedule "A" hereto.

**PROPOSED METHOD OF HEARING:** orally.

**THE MOTION IS FOR ORDERS:**

- a. in suggested accordance with the draft filed at tab 3 of the motion record, being
  - (i) approval and vesting orders in the form of the Commercial List model order in respect of the sale (the "**Transaction**") of the Property (defined below) contemplated by an agreement (the "**Sale Agreement**") between 33 Laird Inc. (the "**Vendor**") and 33 Laird Development Inc. *qua* general partner of 33 Laird

Development Limited Partnership<sup>1</sup> (in such capacity, the “**Purchaser**”) dated May 11, 2021 (the “**Sale Agreement**”), and (ii) a sealing order for the unredacted Sale Agreement until the earlier of the filing of a certificate by MNP Ltd., in its capacity as trustee to the notice of intention to make a proposal (“**NOI**”) proceedings of the Laird Entities (in such capacity, the “**Proposal Trustee**”) under the *Bankruptcy and Insolvency Act* (“**BIA**”), confirming that the Transaction has closed, or further court order, and

- b. in suggested accordance with the draft filed at tab 5 of the motion record, being approval orders as to the third and fourth reports of the Proposal Trustee respectively dated March 23, 2021 and May 10, 2021, as well as the fifth report of the Proposal Trustee to be served and filed separately (the “**Fifth Report**”), together with orders approving the Proposal Trustee’s activities and its fees set out in the Fifth Report.

**THE GROUND FOR THE MOTION ARE:**

1. For the reasons set out in the Fifth Report, the Proposal Trustee supports the relief sought.
2. **Approval of the Transaction** – The Transaction was the preferred bid at the conclusion of the court-approved sale process. It is fair and reasonable. The purchase price allows full repayment of the Laird Entities’ obligations to their secured lender as well as what is believed to be a viable proposal to remaining creditors. The statutory and pretorian criteria for approval are met.

---

<sup>1</sup> Despite similar names, the Purchaser and the Laird Entities are not related parties.

3. **Vesting orders** –The Transaction is conditional on obtaining the vesting orders sought. This motion is on notice to all known creditors, including secured creditors, and the one other party likely to be affected, the City of Toronto. The latter is likely to oppose the removal from title of a site plan agreement. However, this is within this court’s jurisdiction to do and it is appropriate in the circumstances. This court may make the vesting orders.
4. **Sealing** –A copy of the Sale Agreement with minimal redactions on one page (e.g. price) is filed with the public motion record. The sought sealing order is in respect of the redacted page. The sealing is to protect the integrity of any necessary additional sale efforts should the Transaction fail to close for any reason. This is appropriate in the circumstances.
5. **Approval of Proposal Trustee’s reports, fees and activities** – The activities of the Proposal Trustee were reported to the court and stakeholders and are appropriate, commercially reasonable, and conducted in the best interest of stakeholders. On February 10, 2021, this court approved the Proposal Trustee’s two first reports made in the proceeding as well as the activities and fees described therein. The Proposal Trustee’s fees as well as those of its independent counsel, are set out in fee affidavits, to be communicated with the Fifth Report. Approval of the proposal trustee’s reports, fees and activities is appropriate and would have the salutary effects noted in the caselaw.

#### **MAIN STATUTORY PROVISIONS**

6. BIA s. 65.13 (approval of a sale outside of the ordinary course of business and vesting free and clear), *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 137(2) (sealing), and such other and further grounds as counsel may advise and the court permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the application:

- a. the affidavit of Jason L. S. Birnboim sworn June 4, 2021,
- b. the Fifth Report, and
- c. such further and other materials as counsel may advise and the court may permit.

June 4, 2021

**GOLDMAN SLOAN NASH & HABER LLP**  
480 University Avenue, Suite 1600  
Toronto, Ontario M5G 1V2  
Fax: 416-597-6477

**R. Brendan Bissell** (LSO# 40354V)  
Tel: (416) 597-6489  
Fax: (416) 597-3370  
Email: [bissell@gsnh.com](mailto:bissell@gsnh.com)

**Joël Turgeon** (LSO #80984R)  
Tel: (416) 597-6486  
Email: [turgeon@gsnh.com](mailto:turgeon@gsnh.com)

Lawyers for 33 Laird Inc., 33 Laird GP Inc. and  
33 Laird Limited Partnership

**TO: THE SERVICE LIST**



**Schedule “A” – Videoconference Details**

Join Zoom Meeting

<https://zoom.us/j/92714130109?pwd=ekl2eTI2YzFPbldwSnJoWWZ4RFBVUT09>

Meeting ID: 927 1413 0109

Passcode: 873847

One tap mobile

+17789072071,,92714130109#,,,\*873847# Canada

+12042727920,,92714130109#,,,\*873847# Canada

Dial by your location

+1 778 907 2071 Canada

+1 204 272 7920 Canada

+1 438 809 7799 Canada

+1 587 328 1099 Canada

+1 647 374 4685 Canada

+1 647 558 0588 Canada

Meeting ID: 927 1413 0109

Passcode: 873847

Find your local number: <https://zoom.us/u/adgL8B5YI>

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF 33 LAIRD INC. AND 33 LAIRD GP INC., CORPORATIONS INCORPORATED UNDER THE ONTARIO *BUSINESS CORPORATIONS ACT*, AND 33 LAIRD LIMITED PARTNERSHIP, A LIMITED PARTNERSHIP FORMED UNDER THE ONTARIO *LIMITED PARTNERSHIPS ACT***

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST  
Proceeding commenced in TORONTO**

**NOTICE OF MOTION  
(approval and vesting order, approval of proposal trustee's fees and activities, sealing)  
(motion returnable June 11, 2021)**

**GOLDMAN SLOAN NASH & HABER LLP**  
480 University Avenue, Suite 1600  
Toronto (ON) M5G 1V2

**R. Brendan Bissell** (LSO# 40354V)  
Tel: (416) 597-6489  
Fax: (416) 597-3370  
Email: [bissell@gsnh.com](mailto:bissell@gsnh.com)

**Joël Turgeon** (LSO #80984R)  
Tel: (416) 597-6486  
Email: [turgeon@gsnh.com](mailto:turgeon@gsnh.com)

Lawyers for 33 Laird Inc., 33 Laird GP Inc. and  
33 Laird Limited Partnership

**TAB 2**

Affidavit of Jason L.S. Birnboim sworn June 4, 2021

Estate Nos. 31-2693094, 31-2693092, and 31 2693095

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF THE NOTICES OF INTENTION TO  
MAKE A PROPOSAL OF 33 LAIRD INC. AND 33 LAIRD  
GP INC., CORPORATIONS INCORPORATED UNDER THE  
ONTARIO *BUSINESS CORPORATIONS ACT*, AND 33 LAIRD  
LIMITED PARTNERSHIP, A LIMITED PARTNERSHIP  
FORMED UNDER THE ONTARIO *LIMITED  
PARTNERSHIPS ACT***

---

**AFFIDAVIT OF JASON L. S. BIRNBOIM  
(sworn June 4, 2021)**

---

I, Jason L. S. Birnboim of the City of Toronto in the Province of Ontario, **MAKE OATH  
AND SAY:**

1. I am a director and the president of each of 33 Laird Inc. and 33 Laird GP Inc., as well as a director of Beaux Properties International Inc. which is a limited partner in the 33 Laird Limited Partnership (together with 33 Laird Inc. and 33 Laird GP Inc., the “**Laird Entities**”). As such I have knowledge of the matters in this affidavit. In preparing this affidavit, I consulted with legal, financial and other advisors of the Laird Entities and other members of the Laird Entities’ management. Where this affidavit is on information and belief, I have stated the source of that information and believe it true.
2. The affidavit is in support of the Laird Entities’ motion for:
  - a. approval and vesting orders in respect of the sale (the “**Transaction**”) of the Property (defined below) contemplated by an agreement (the “**Sale Agreement**”)

between 33 Laird Inc. (the “**Vendor**”) and 33 Laird Development Inc. *qua* general partner of 33 Laird Development Limited Partnership<sup>1</sup> (in such capacity, the “**Purchaser**”) dated May 11, 2021 (the “**Sale Agreement**”),

- b. a sealing order for the unredacted Sale Agreement until the earlier of the filing of a certificate by MNP Ltd., in its capacity as trustee to the notice of intention to make a proposal (“**NOI**”) proceedings of the Laird Entities (in such capacity, the “**Proposal Trustee**”) under the *Bankruptcy and Insolvency Act* (“**BIA**”), confirming that the Transaction has closed, or further court order, and
- c. approving the third and fourth reports of the Proposal Trustee respectively dated March 23, 2021 and May 10, 2021, as well as the fifth report of the Proposal Trustee to be served and filed separately (the “**Fifth Report**”, and, with the third and fourth reports, the “**Reports**”), together with the Proposal Trustee’s activities set out in the Reports and fees set out in the Fifth Report.

## **I. BACKGROUND**

### **A. Structure, business, assets, insolvency**

3. I provided additional background in my prior affidavit sworn December 10, 2020 filed in this proceeding, of which I attach a copy without exhibits as **Exhibit “A”**.
4. The Laird Entities were set up under a conventional limited partnership arrangement for the main purpose of pursuing a real estate development project at 33 Laird Drive in Toronto, Ontario (the “**Project**”). The Project is insolvent. Given the limited partnership and nominee structure of the Project, the debts of the Laird Entities are essentially the same.

---

<sup>1</sup> Despite similar names, the Purchaser and the Laird Entities are not related parties, including, as I am advised, within the meaning of the *Bankruptcy and Insolvency Act*.

5. Each of the Laird Entities filed an NOI under the BIA on November 28, 2020. The Proposal Trustee is the proposal trustee in each such NOI proceeding, which were administratively consolidated in this court file by the December 16 Order, of which a copy is **Exhibit “B”** hereto.
6. After the limited partners’ initial investment, the Project was principally financed through secured loan facilities extended by DUCA Financial Services Credit Union Ltd. and Centurion Management Inc. collectively (referred to together herein as “**DUCA**” for simplicity). DUCA is the Laird Entities’ most significant creditor. On November 19, 2020, DUCA made demand on its loan and security, which was a triggering event for the herein proceeding.
7. The main asset of the Project is the real property at 33 Laird Drive including a partially completed building (the “**Property**”). The status of construction is quite early, with the heritage portion of the building fronting on Laird Drive having been substantially gutted, some foundation and mechanical work being done, and structural steel having been erected for the new portions of the building that the Laird Entities had planned.

**B. Sale process**

8. In early February, the Laird Entities, in consultation with the Proposal Trustee, legal counsel and key stakeholders including DUCA, concluded that a listing and sale process was necessary to realize on the value of the Project and hopefully allow a viable proposal to creditors. I provide additional background on this in my affidavit sworn February 6, 2021 filed in support of the Laird Entities’ motion *inter alia* for the approval

of a listing and sale process with respect to the Property. A copy of that affidavit, without exhibits, is **Exhibit “C”** hereto.

9. On February 10, 2021, this court granted the Laird Entities’ motion for a listing and sale process to be conducted in respect of the Property by the Jones Lang Lasalle Real Estate Services Inc. (“**JLL**”) brokerage. A copy of that order is **Exhibit “D”** hereto.
10. On March 26, 2021, this court granted the Laird Entities’ motion for an extension to May 13, 2021 of the time to file a proposal, *inter alia* in consideration of the need for time to advance the sale process, as more fully set out in my prior affidavit sworn March 20, 2021, filed, of which I attach a copy without exhibits as **Exhibit “E”**. I attach a copy of the said March 26, 2021 order as **Exhibit “F”** hereto.

### **C. Sale Agreement**

11. As more fully set out in my prior affidavit sworn May 7, 2021, filed, of which I attach a copy without exhibits as **Exhibit “G”**, the solicitation of offers portion of the sale process concluded on April 21, 2021, with JLL having received a number of offers as recounted in my prior affidavits.
12. The Laird Entities’ management, upon consulting the Laird Entities’ legal counsel, the Proposal Trustee, and JLL, and upon consulting with DUCA, identified one of the offers as preferred and informed the selected bidder forthwith. Through counsel, the parties then started working towards the Sale Agreement.
13. On May 12, 2021, this court granted the Laird Entities’ motion for an extension of the time to file a proposal to May 28, 2021 (which I am advised was the last possible extension due to reaching the 6-month statutory maximum). A copy of the May 12, 2021 order is

**Exhibit “H”** hereto. The extension was necessary to finalize the Sale Agreement, which has now been achieved, subject to this court’s approval.

14. I attach hereto as **Exhibit “I”** a copy of the Sale Agreement with the purchase price and other sensitive terms redacted on page 5, and as **Confidential Exhibit “1”** a copy of page 5 of the Sale Agreement. That confidential exhibit is the subject of a sought sealing orders as further discussed below.

**D. Disclaimer of site plan agreement**

15. I am advised by Brendan Bissell, counsel for the Laird Entities, that he has been advised by Clifton Prophet as counsel for the Purchaser that the Purchaser does not wish to develop the Property in the manner that the Laird Entities had planned.
16. The Laird Entities’ planned development for the Property required approval by the City of Toronto (the “**City**”) because the Property is subject to site plan control under municipal bylaws. The approval given by the City for that planned development is in a site plan agreement (the “**SPA**”) with the City, which is registered on title. I attach a copy of the SPA as **Exhibit “J”**.
17. The Purchaser’s position in making the Sale Agreement was that it does not wish to be bound by the SPA as it does not wish to do the development that it contemplates. The Sale Agreement accordingly requires that the SPA be removed from title to the Property by the approval and vesting order sought on this motion (unless the Purchaser was able to reach an agreement or accommodation with the City by May 26, 2021, which did not occur).
18. I am advised, and it is my understanding, that notwithstanding any removal of the SPA from title to the Property, the Purchaser would still, under the applicable statutory



requirements including the *City of Toronto Act*, have to enter into another site plan agreement with the City before it can develop the Property. In other words, nothing in the vesting out of the SPA from title to the Property allows the Purchaser to develop or deal with the Property in a way that would not be specifically approved by the City in another such agreement. I am told by Mr. Bissell from his discussions with Mr. Prophet that the Purchaser understands this as well.

19. In addition to this motion, the Laird Entities' have sent a notice to disclaim the SPA on June 4, 2021, with the Proposal Trustee's approval, under what I am advised is s. 65.11 of the BIA. The Laird Entities have yet to receive notice that the City would apply to the court for an order that the SPA is not to be disclaimed under what I am advised is s. 65.11(3).
20. The Purchaser's concerns about the SPA have been the subject of emails among counsel for the Laird Entities, the Purchaser and the City, some of which I attach a copy as **Exhibit "K"**. In those, Matthew Longo, solicitor at and for the City, says to the Purchaser group among other things that "*of course the City will be happy to work with your [sic] on a new site plan application in the future*", adding that "*Property owners, including successors in title, apply for new site plan agreements on a regular basis as their development intentions change.*" This is reaffirmed in another email from Christopher J. Henderson, Senior Lawyer at the City, who adds that "*The site plan agreement does not contain an obligation to proceed with construction of the approved building, and your client would be free to apply for a new site plan approval for a different development.*"
21. Despite the above, I am advised that the City will likely oppose the vesting out of the SPA from title to the Property.

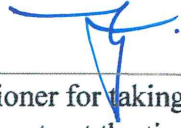
**II. ACTIVITIES SINCE LAST EXTENSION AND UPCOMING MATERIAL STEPS**

22. Aside from finalizing the Sale Agreement, the other main activities of the Laird Entities since the last extension were in respect of the proposals to creditors that each of them filed on May 28, 2021. I attach hereto as **Exhibit “L”** copies of those proposals. Despite there being technically one proposal filed per company for administrative purposes, in consideration of the fact that the Laird Entities operate an integrated business with virtually the same stakeholders, it is in fact a global proposal that is with respect to all the Laird Entities, and all of the Laird Entities’ creditors; I therefore refer to it as the proposal (singular).
23. I understand that a formal motion will be brought for this court’s approval of the proposal should it be approved by the requisite majorities of creditors, and so do not address the substance of the proposal save to say that **(i)** it is built upon and dependent on the Laird Entities’ receiving the consideration for the Transaction pursuant to the Sale Agreement, and **(ii)** it does not seek to compromise certain secured or potentially claims, including DUCA’s secured claim.
24. Should this court grant the relief sought on this motion, the next (and final) steps in this restructuring would then be:
- a. to close the Transaction and collect the consideration thereunder,
  - b. to hold a meeting of the Laird Entities’ creditors as scheduled by the Proposal Trustee on June 18, 2021 at 2pm in order for them to consider and vote on the proposal, and
  - c. should the requisite majorities of creditors approve the proposal, to move to court for approval.

[8]

*Facetime*

SWORN BEFORE ME via ~~Zeam~~ at the City of Toronto, in the Province of Ontario, this 4<sup>th</sup> day of June, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



\_\_\_\_\_  
Commissioner for taking affidavits  
(present at Toronto at the time of swearing)

*SOËL TURGEON*



**Jason L. S. Birnboim**  
(present at Toronto at the time of swearing)

This is **Exhibit "A"** to the affidavit of Jason L. S. Birnboim sworn before me via Facetime this 4<sup>th</sup> day of June, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



A Commissioner, etc.

Joël TURGEON

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF THE NOTICE OF INTENTION TO  
MAKE A PROPOSAL OF 33 LAIRD INC. A CORPORATION  
INCORPORATED UNDER THE ONTARIO *BUSINESS  
CORPORATIONS ACT***

**AFFIDAVIT OF JASON L. S. BIRNBOIM  
(sworn December 10, 2020)**

I, Jason L. S. Birnboim of the City of Toronto in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a director and the president of each of 33 Laird Inc. (the “**Nominee**”) and 33 Laird GP Inc. (“**GP**”), as well as a director of Beaux Properties International Inc. (“**Beaux**”) which is a limited partner in the 33 Laird Limited Partnership (“**LP**”, and together with the Nominee and GP, the “**Laird Entities**”). As such I have knowledge of the matters attested herein. In preparing this affidavit, I consulted with legal, financial and other advisors of the Laird Entities and other members of the Laird Entities’ management. Where this affidavit is on information and belief, I have stated the source of that information and believe it true.
2. The affidavit is in support of the Nominee’s motion for orders substantially per the draft order, filed:
  - a. administratively consolidating the estates and notice of intention court files of the Laird Entities, directing the proposal trustee to administer these proceedings on a consolidated basis, and permitting the filing of court materials in this estate and court file on behalf of all of the Laird Entities,
  - b. extending from December 28, 2020 to February 11, 2021 the time for the proposal trustee of the Laird Entities to file, on behalf of the Laird Entities (individually or collectively, as the case may be), a proposal to creditors under the *Bankruptcy and Insolvency Act* (the “**BIA**”), and

- c. creating a second-ranking debtor-in-possession financing charge on the assets of all the Laird Entities (the “**DIP Charge**”).

## **I. THE LAIRD ENTITIES AND THE PROJECT**

3. The Laird Entities were set up under a conventional limited partnership arrangement for the main purpose of pursuing a real estate development project at 33 Laird Drive in Toronto, Ontario (the “**Project**”). Corporation profile reports for the Nominee and GP are respectively attached as **Exhibits “A”** and “**B**”.
4. Title to the property known as 33 Laird Drive is held by the Nominee in trust for GP, which is the general partner of LP. A copy of the parcel register for the property is attached as **Exhibit “C”**.
5. Sealink JV Ltd. (“**Sealink**”) and 2344011 Ontario Inc. (“**Quaestus**”) are the other two limited partners in LP in addition to Beaux.
6. The Project was designed as a development, originally to lease or sell space to commercial tenants. Over time, the partners decided to only lease space to tenants. It is in the early stages of construction, with part of the structural work complete, but very little mechanical or electrical work and no finishing work. None of the Laird Entities have employees.

## **II. NOI FILINGS**

7. The Project is insolvent. Each of the Laird Entities filed a notice of intention to make a proposal to creditors (“**NOI**”) under the BIA on November 28, 2020 as follows:
  - a. in this estate/court file for the Nominee, a copy of which with the creditors listing is attached as **Exhibit “D”**,
  - b. in estate/court file number 31-2693092 for GP, a copy of which with the creditors listing is attached as **Exhibit “E”**, and
  - c. in court file number 31-2693095 for LP, a copy of which with the creditors listing is attached as **Exhibit “F”**.

(collectively, the “**NOI Proceedings**”)

8. MNP Ltd. is the proposal trustee in each of the NOI Proceedings (in such capacity, the “**Proposal Trustee**”). Given the limited partnership and nominee structure of the Project, the debts of the Laird Entities are essentially the same.

### **III. CREDITORS**

9. After the limited partners’ initial investment, the Project was principally financed through secured loan facilities with DUCA Financial Services Credit Union Ltd. (“**DUCA**”), including:
  - a. a March 17, 2017 Commitment Letter, a copy of which is **Exhibit “G”**, as amended and restated through an August 16, 2019 Amended and Restated Commitment Letter, a copy of which is **Exhibit “H”**, under both of which the Nominee is the borrower.
  - b. a May 1, 2017 charge in favour of DUCA on the real estate underlying the Project, a copy of which charge is **Exhibit “I”**, as supplemented through an April 27, 2017 Beneficiary’s Consent and Covenants among LP and DUCA, a copy of which is **Exhibit “J”**, and a September 26, 2019 Acknowledgment, Confirmation and Amending Agreement, a copy of which is **Exhibit “K”**. This charge appears, on the Exhibit “C” parcel register as registration number AT4550601, on the first page, as registered for an amount of \$22,000,000.
10. I understand that a portion of the loan from DUCA is held by Centurion Asset Management Inc.
11. The other secured creditors of the Laird Entities include Beaux and Sealink for a second ranking mortgage in the amount of \$5.2 million that was registered on title on November 16, 2020 as shown in the Exhibit “C” parcel register. I note that the parcel register also shows mortgages registered on August 13, 2020 by Beaux and Sealink, each in the amount of \$5 million. It is my understanding that the later registration in the amount of \$5.2 million is the sole mortgage claimed by Beaux and Sealink and that the earlier registration was done preliminarily only. As well, Maxwell & Co. Inc. has registered a construction lien, a copy of which is attached as **Exhibit “L”**.

12. The other known creditors of the Laird Entities are unsecured and are set out in the Exhibit “D”, “E” and “F” creditor mailing packages.
13. I attach together as **Exhibit “M”** Personal Property Security Registration Reports dated December 8, 2020 in respect of each of the Laird Entities. Those disclose chattel security registrations as follows:
  - a. with respect to the Nominee, registrations by DUCA on all but consumer goods,
  - b. with respect to GP, no registration, and
  - c. with respect to the Partnership, a registration by DUCA on “accounts” and the “other” category only.
14. I note that the amounts claimed by Beaux and Sealink as mortgagees, and also the amount claimed by Quaestus (which I understand is on account of fees claimed), are not accepted by all partners and are therefore not necessarily accepted by the Laird Entities at this time. The Laird Entities are insolvent notwithstanding the disputed claims of Beaux, Sealink and Quaestus. I am advised by the Proposal Trustee and by counsel to the Laird Entities that it would be appropriate to address these issues at a later point in the restructuring proceedings if, among other things, the claims need to be determined to permit voting at a creditors’ meeting, if there is likely to be a distribution on account of these claims, or if these claims affect distributions to other creditors. I therefore only make mention of that now for the sake of completeness and of disclosure to the court and stakeholders.

#### **IV. ASSETS**

15. The main asset of the Project is the property at 33 Laird Drive and the partially completed building. The Project does also own certain equipment that was purchased for installation at the site, but which has not been installed yet. In order to safeguard that equipment in light of its value, it is being stored offsite under conditions where security can be more assured than on site.



16. The planned development and existing approvals for the property also represent possible value to third parties, as do leases that have been entered into with proposed commercial tenants.

#### **V. CAUSES OF INSOLVENCY**

17. The immediate cause of insolvency for the Laird Entities was the demand by DUCA on its loan and security on November 19, 2020. Copies of the demand letter and notice of intention to enforce security are attached as **Exhibit “N”**.
18. DUCA had been expressing concern about whether it wished to continue to make loans to the Laird Entities since the Spring of 2020. The initial maturity date of DUCA’s loan at the end of September was extended to permit additional time for discussions with DUCA and for possible replacement financing, which did not materialize in time.
19. The underlying financial issues in the project, which DUCA also identified in its discussions with the Laird Entities about the loan, included cost overruns and the impact of the COVID-19 crisis on costs, timeline to complete, and also potential viability of the proposed tenants, which would impact takeout financing at the end of the project in order to allow DUCA as the construction lender to exit.

#### **VI. INTENDED RESTRUCTURING APPROACH**

20. Further to professional advice, the Laird Entities’ management concluded that the Project was insolvent and that a restructuring of the Project through the NOI Proceedings may allow recovery of more value for stakeholders – including each of the Laird Entities as well as their clients, suppliers, equity holders, and creditors – than a liquidation scenario.
21. Accordingly, on November 28, 2020, the Proposal Trustee filed NOIs of behalf of each of the Laird Entities in the NOI Proceedings.
22. The Laird Entities are pursuing dual track approaches to restructuring.
23. One option is to seek replacement financing for DUCA with the assistance of the Proposal Trustee and of counsel for the Laird Entities, as well as additional loan amounts to permit

the completion of most of or all the Project under the current projections. The effort to seek refinancing commenced prior to the filing of the NOIs and is ongoing.

24. The other option is the sale of the Project and all its assets in a competitive bid process. The Laird Entities have had expressions of interest from several possible purchasers, so if a refinancing option cannot be achieved then a sale of the Project in a process managed by the Laird Entities as the persons most familiar with the planned development and its features may achieve the best result for stakeholders, under the supervision of and with assistance of the Proposal Trustee.
25. The Laird Entities are currently working with various commercial real estate agents to obtain their proposed marketing strategy as well as their commission proposals in order to bring a sale process before the court for approval. The Laird Entities had hoped to be able to do so for this initial motion in the NOI Proceedings, but I am advised by counsel that the court is not sitting after December 18 except to hear emergency matters, and that December 16 was the only available date for this motion, which would not have permitted enough time to complete the work necessary for a cogent sale process and its review by the Proposal Trustee.
26. The Laird Entities anticipate returning to court in early 2021 to seek approval of a sale process. Possible refinancing will also be sought during that process, but the Laird Entities plan to require that any planned refinancing be ready by the bid deadline for the sale process in order to avoid a prolonged process.

## **VII. RELIEF SOUGHT**

### **A. Consolidation**

27. The Laird Entities operate a single Project. I understand that each entity had to commence a separate proceeding, but the restructuring is in respect of the Project as a whole, in which each Laird Entity is a stakeholder along with their own stakeholders. Consolidation would allow economies of scale with respect to court, administration and professional costs, and facilitate the handling of this restructuring as a unified case.

**B. Extension of time**

28. Following the filing of the NOI, the Laird Entities have:
- i. Arranged for DIP financing, as described below, and
  - ii. worked with the Proposal Trustee to evaluate their financial position and restructuring options, including to build a 13-week cashflow in respect of the Project dated December 8, 2020, a copy of which is attached as **Exhibit “O”**, and other financial models.
29. Ultimately, the Laird Entities remain at the earliest stage of the NOI Proceedings. An extension is sought now, merely a couple of weeks in, rather than closer to the end of the first 30-day stay period ending on December 28, 2020 to accommodate for the holiday season.
30. I believe that the Laird Entities are acting with due diligence and good faith. I also believe that, following the one-time restructuring expenses and the completion of the restructuring approach set out above, a viable proposal to creditors can be made while allowing the Project to remain a going concern, to the benefit of all its stakeholders including suppliers, shareholders and creditors.

**C. DIP Charge**

31. As appears from the Exhibit “O” projected cashflow, the Project is currently cashflow negative. This is normal for a development project where costs are incurred almost entirely at the front end before revenues are achieved on completion. The Project is expected to need \$230,837 in new funding over the period of the NOI extension requested.
32. To effect the restructuring approach noted above, additional financing is therefore necessary. Beaux, through an affiliate, has offered to extend a DIP loan, the material terms of which appear in a term sheet and are as follows:
- i. maximum loan amount: \$250,000
  - ii. interest: 10% per annum
  - iii. term: 6 months

- iv. conditions: court approval of the DIP loan and a court order satisfactory to the lender creating the DIP Charge as a charge against all the property, assets and undertaking of the Laird Entities, to a maximum of \$250,000, ranking immediately after the interest of DUCA.
- 33. A copy of the term sheet is attached as **Exhibit "P"**.
- 34. Accordingly, the Laird Entities request an approval and charging order substantially in the form of the draft order filed in the motion record, notably providing that the DIP Charge is not enforceable without prior court approval.

*FaceTime*

SWORN BEFORE ME via ~~Zoom~~ at the City of Toronto, in the Province of Ontario, this 10<sup>th</sup> day of December, 2020 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*

*R. B. Bissell*

Commissioner for taking affidavits  
(present at Toronto at the time of swearing)

*R. B. Bissell*

*Jason L. S. Birnboim*

**Jason L. S. Birnboim**  
(present at Toronto at the time of swearing)

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF 33 LAIRD INC. A CORPORATION INCORPORATED UNDER THE  
ONTARIO *PROJECT CORPORATIONS ACT***

Estate No. 31-2693094

---

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**(Commercial List)**

---

**AFFIDAVIT OF JASON L. S. BIRNBOIM**  
**(sworn December 10, 2020)**

---

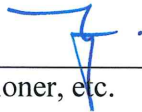
**GOLDMAN SLOAN NASH & HABER LLP**  
480 University Avenue, Suite 1600  
Toronto ON M5G 1V6

**R. Brendan Bissell** (LSO# 40354V)  
Tel: (416) 597-6489  
Fax: (416) 597-3370  
Email: [bissell@gsnh.com](mailto:bissell@gsnh.com)

**Joël Turgeon** (LSO #80984R)  
Tel: (416) 597-6486  
Email: [turgeon@gsnh.com](mailto:turgeon@gsnh.com)

Lawyers for 33 Laird Inc., 33 Laird GP Inc. and  
33 Laird Limited Partnership

This is **Exhibit "B"** to the affidavit of Jason L. S. Birnboim sworn before me via Facetime this 4<sup>th</sup> day of June, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



A Commissioner, etc.

JOEL TURGEON

Estate No. 31-2693094

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

THE HONOURABLE MADAM	)	WEDESNDAY, THE 16 <sup>TH</sup>
	)	
JUSTICE CONWAY	)	DAY OF DECEMBER, 2020

**IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF 33 LAIRD INC. A  
CORPORATION INCORPORATED UNDER THE  
ONTARIO *BUSINESS CORPORATIONS ACT***

**ORDER  
(procedural consolidation, extension of time to file a proposal,  
debtor-in-possession charge)**

**THIS MOTION** made by 33 Laird Inc. (the “**Nominee**”) for an order (i) directing procedural consolidation of certain estate and court files, (ii) extending the time to file a proposal and (iii) granting a debtor in possession financing charge, was heard this day at 330 University Ave., Toronto, by videoconference due to COVID-19.

**ON READING** the affidavit of Jason L.S. Birnboim sworn December 10, 2020 (the “**Birnboim Affidavit**”) and the First Report of MNP Ltd. in its capacity as proposal trustee for the Nominee (in such capacity, the “**Trustee**”) dated December 11, 2020 (the “**First Report**”) and upon hearing the submissions of counsel for the Nominee and the Trustee as well as those other parties present, as indicated in the counsel slip, no other parties being present although duly served as appears from the affidavit of service, filed:

**NOTICE AND SERVICE**

1. **THIS COURT ORDERS** that the time for service of the motion record in respect of this motion and the First Report is hereby abridged and validated so that the motion is properly returnable today, and that further service thereof is hereby dispensed with.

**PROCEDURAL CONSOLIDATION**

2. **THIS COURT ORDERS** that, without prejudice to the right of any party to seek or oppose substantive consolidation in respect of any or all of the following proceedings:

- (a) the present proceeding,
  - (b) the matter of the notice of intention to make a proposal of 33 Laird GP Inc. (“**GP**”), Estate and Court File No. 31-2693092, and
  - (c) the matter of the notice of intention to make a proposal of 33 Laird Limited Partnership (“**LP**”), Estate and Court File No. 31-2693095,
- (collectively, the “**NOI Proceedings**”)

the NOI Proceedings shall be procedurally consolidated and the Trustee shall be authorized and directed to administer the NOI Proceedings on a consolidated basis for all purposes in carrying out its administrative duties and other responsibilities as trustee under the *Bankruptcy and Insolvency Act* (the “**BIA**”), including, without limitation, the following:

- (d) sending notices to creditors of the Nominee, GP and LP (collectively, the “**NOI Entities**”) pursuant to one consolidated notice;
- (e) calling and conducting any meetings of creditors of the NOI Entities pursuant to one combined advertisement and one meeting;
- (f) issuing consolidated reports in respect of the estates of the NOI Entities;
- (g) preparing, filing, advertising and distributing any and all filings and/or notices relating to the administration of the estates of the NOI Entities on a consolidated basis; and
- (h) bringing motions to this Honourable Court on a consolidated basis.



3. **THIS COURT ORDERS** that the single court file number 31-2693094 (the “**Consolidated Court File**”) and the following title of proceeding of shall be assigned to the NOI Proceedings:

“

**IN THE MATTER OF THE NOTICES OF INTENTION  
TO MAKE A PROPOSAL OF 33 LAIRD INC. AND  
33 LAIRD GP INC., CORPORATIONS  
INCORPORATED UNDER THE ONTARIO  
*BUSINESS CORPORATIONS ACT*, AND 33 LAIRD  
LIMITED PARTNERSHIP, A LIMITED  
PARTNERSHIP FORMED UNDER THE ONTARIO  
*LIMITED PARTNERSHIPS ACT***

”

4. **THIS COURT ORDERS** that a copy of this Order shall be filed by the NOI Entities in the court file for each of the NOI Proceedings but that any other document required to be filed in any of the NOI Proceedings shall hereafter only be required to be filed in Court file number 31-2693094.

5. **THIS COURT ORDERS** that for avoidance of doubt, any motion, application or action, including the herein motion, in respect of the NOI Entities or any of them shall be brought and filed in the Consolidated Court File and if so brought and filed it shall be deemed brought and filed in each of the NOI Proceedings, as appropriate, without prejudice to any rules of civil procedure or otherwise that are applicable.

6. **THIS COURT ORDERS** that the procedural consolidation of the NOI Proceedings shall not:

- (a) affect the separate legal status and structures of any of the NOI Entities;
- (b) cause any of the NOI Entities to be liable for any claim for which it otherwise is not liable; or

- (c) affect the Trustee's or a creditor's right to seek to disallow any claim, including on the basis that such claim is a duplicative claim.

**EXTENSION OF TIME TO FILE A PROPOSAL**

7. **THIS COURT ORDERS** that, pursuant to Section 50.4(9) of the BIA, the period within which a proposal may be filed on behalf of any or all of the NOI Entities be and is hereby extended to February 11, 2021.

**DIP FINANCING AND CHARGE**

8. **THIS COURT ORDERS** that the NOI Entities are and each of them is hereby authorized and empowered to obtain and borrow under a credit facility from BP Capital Inc. (the "**DIP Lender**") in order to finance the NOI Entities' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$250,000 unless permitted by further Order of this Court.

9. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the term sheet attached Exhibit "P" to the Birnbiom Affidavit (the "**Term Sheet**"), filed.

10. **THIS COURT ORDERS** that the NOI Entities are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the NOI Entities are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

11. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the NOI Entities' current and future assets, undertakings and properties of every nature and kind whatsoever, and

wherever situate including all proceeds thereof (the “**Property**”). The DIP Lender’s Charge shall not secure an obligation that exists before this Order is made. The DIP Lender’s Charge shall have the priority set out in paragraph 14 hereof.

12. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the Definitive Documents; and
- (b) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the NOI Entities or any of them or the Property.

13. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the NOI Entities or any of them under the CCAA, or any proposal filed by the NOI Entities or any of them under the BIA, with respect to any advances made under the Term Sheet or the Definitive Documents.

14. **THIS COURT ORDERS** the following in respect of the DIP Lender’s Charge:

- (a) with respect to any item or part of the Property on which DUCA Financial Services Credit Union Ltd. (“**DUCA**”) holds a security interests, the DIP Lender’s Charge shall rank immediately after DUCA’s security interest, such that subject only to such DUCA’s security interest and any Encumbrance (as defined hereafter) that primes such DUCA’s security interest or has priority to such security interest, the DIP Lender’s Charge shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”), and

- (b) with respect to any item or part of the Property on which DUCA does not hold any security interest, the DIP Lender's Charge shall rank in priority to all other Encumbrances in favour of any Person.

15. **THIS COURT ORDERS** that the filing, registration or perfection of the DIP Lender's Charge shall not be required, and that the DIP Lender's Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the DIP Lender's Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

16. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the NOI Entities or any of them shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with the DIP Lender's Charge, unless the NOI Entities or any of them also obtains the prior written consent of the Trustee and the DIP Lender, or further Order of this Court.

17. **THIS COURT ORDERS** that the Term Sheet, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (each, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the DIP Lender's Charge nor the execution, delivery, perfection, registration or performance of the Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by the NOI Entities or any of them of any Agreement to which it is a party;

- (b) the DIP Lender shall have no liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the NOI Entities or any of them entering into the Term Sheet the creation of the DIP Lender's Charge, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the NOI Entities or any of them pursuant to this Order, the Term Sheet or the Definitive Documents, and the granting of the DIP Lender's Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

18. **THIS COURT ORDERS** that the DIP Lender's Charge created by this Order over leases of real property in Canada shall only be a charge in the NOI Entities' (or any of them) interest in such real property leases.

#### **MISCELLANEOUS**

19. **THIS COURT ORDERS** that the Trustee, counsel to Trustee and counsel to the NOI Entities shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the NOI Entities as part of the costs of these proceedings. The NOI Entities are hereby authorized and directed to pay the accounts of the Trustee, counsel for the Trustee and counsel for the NOI Entities. The Trustee and its counsel shall be authorized to immediately apply any such payments made by the NOI Entities to their fees and disbursements and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

20. **THIS COURT HEREBY REQUESTS** the aid and recognition of 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 NOI Entities, the Trustee and their respective 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 NOI Entities and to the Trustee, as an officer of this Court,

as may be necessary or desirable to give effect to this Order, to grant representative status to the Trustee in any foreign proceeding, or to assist the NOI Entities and the Trustee and their respective agents in carrying out the terms of this Order.

A handwritten signature in blue ink, appearing to read "Conway J.", is written over a horizontal line.

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A  
PROPOSAL OF 33 LAIRD INC. A CORPORATION  
INCORPORATED UNDER THE ONTARIO *BUSINESS  
CORPORATIONS ACT***

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
**Proceeding commenced in TORONTO**

**ORDER**  
**(procedural consolidation, extension of time to file a  
proposal, debtor-in-possession charge)**

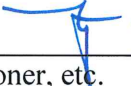
**GOLDMAN SLOAN NASH & HABER LLP**  
480 University Avenue, Suite 1600  
Toronto (ON) M5G 1V2

**R. Brendan Bissell** (LSO# 40354V)  
Tel: (416) 597-6489  
Fax: (416) 597-3370  
Email: [bissell@gsnh.com](mailto:bissell@gsnh.com)

**Joël Turgeon** (LSO #80984R)  
Tel: (416) 597-6486  
Email: [turgeon@gsnh.com](mailto:turgeon@gsnh.com)

Lawyers for 33 Laird Inc., 33 Laird GP Inc. and  
33 Laird Limited Partnership

This is **Exhibit "C"** to the affidavit of Jason L. S. Birnboim sworn before me via Facetime this 4<sup>th</sup> day of June, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



---

A Commissioner, etc.

SOELTURGEON



Estate Nos. 31-2693094, 31-2693092, and 31 2693095

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF THE NOTICES OF INTENTION TO  
MAKE A PROPOSAL OF 33 LAIRD INC. AND 33 LAIRD  
GP INC., CORPORATIONS INCORPORATED UNDER THE  
ONTARIO *BUSINESS CORPORATIONS ACT*, AND 33 LAIRD  
LIMITED PARTNERSHIP, A LIMITED PARTNERSHIP  
FORMED UNDER THE ONTARIO *LIMITED  
PARTNERSHIPS ACT***

---

**AFFIDAVIT OF JASON L. S. BIRNBOIM  
(sworn February 6, 2021)**

---

I, Jason L. S. Birnboim of the City of Toronto in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a director and the president of each of 33 Laird Inc. and 33 Laird GP Inc., as well as a director of Beaux Properties International Inc. (“**Beaux**”) which is a limited partner in the 33 Laird Limited Partnership (and together with 33 Laird Inc. and 33 Laird GP Inc., the “**Laird Entities**”). As such I have knowledge of the matters attested herein. In preparing this affidavit, I consulted with legal, financial and other advisors of the Laird Entities and other members of the Laird Entities’ management. Where this affidavit is on information and belief, I have stated the source of that information and believe it true.
2. The affidavit is in support of the Laird Entities’ motion for an Order as appended to the Laird Entities’ Motion Record, filed:
  - a. extending the time for MNP Ltd., in its capacity as trustee to the notice of intention to make a proposal (“**NOI**”) proceedings of the Laird Entities (in such capacity, the “**Proposal Trustee**”) under the *Bankruptcy and Insolvency Act* (the “**BIA**”), to file, on behalf of the Laird Entities or any of them, a proposal to creditors, and

- b. authorizing the Laird Entities (or any of them) to execute and perform a listing agreement with Jones Lang Lassalle Real Estate Services, Inc. (“**JLL**”) as noted below with such variations as the Proposal Trustee may approve, and to do all things necessary or attendant to the same.

## **I. BACKGROUND**

3. I provided additional background in my prior affidavit sworn December 10, 2020 filed in this proceeding, of which I attach a copy without exhibits as **Exhibit “A”**.
4. The Laird Entities were set up under a conventional limited partnership arrangement for the main purpose of pursuing a real estate development project at 33 Laird Drive in Toronto, Ontario (the “**Project**”). The Project is insolvent. Given the limited partnership and nominee structure of the Project, the debts of the Laird Entities are essentially the same.
5. Each of the Laird Entities filed an NOI under the BIA on November 28, 2020. The Proposal Trustee is the proposal trustee in each such NOI proceeding, which were administratively consolidated in this court file by order of this court dated December 16, 2020, of which a copy is attached as **Exhibit “B”**.
6. After the limited partners’ initial investment, the Project was principally financed through secured loan facilities with DUCA Financial Services Credit Union Ltd. (“**DUCA**”), which is the Laird Entities’ most significant creditor. On November 19, 2020, DUCA made demand on its loan and security.
7. The main asset of the Project is the real property at 33 Laird Drive and the partially completed building. The planned development and existing approvals for the property also represent possible value to third parties, as do leases that have been entered into with proposed commercial tenants.

## II. ACTIVITIES SINCE THE LAST NOI EXTENSION

8. Since the last extension of the NOI period on December 16, 2020, the Laird Entities have been engaged with the following matters:
  - a. Reviewed a compilation of construction records including permits, drawings and plans;
  - b. Met and discussed with possible lenders to determine if financing options might be available to permit the Laird Entities to repay the loans owing to DUCA and obtain sufficient further funding to complete the Project in substantially the form intended. However, such discussions did not result in any acceptable refinancing arrangements as all were determined to be unsatisfactory having regard to the terms on which any possible loans might be offered, including pricing, loan amount and term;
  - c. Corresponded with creditors involved with the Project, including the project manager, general contractor, and consultants, to review the amounts owing and discuss possible agreements on amounts payable;
  - d. Met and had discussions with a possible purchaser of the Project about a transaction that could result in the payment of all amounts owing to creditors (the “**Possible Transaction**”);
  - e. Solicited and reviewed listing proposals (as discussed further below);
  - f. Paid various normal course expenses of the Project;
  - g. Paid the accounts of the Proposal Trustee and counsel;
  - h. Worked with the Proposal Trustee to prepare extended and revised cash flow projections; and
  - i. Arranged for a settlement among the partners in the Laird Entities by which the claims of Quaestus Management Inc. and related companies against the Laird Entities have been released beyond amounts already paid, in exchange for a release by the other partners, Beaux Properties International Inc. and Sealink JV Ltd. of Quaestus Management Inc. and related companies in connection with the Project,

which reduces the amounts that the Laird Entities may owe by approximately \$770,000; and

- j. Had numerous discussions with counsel for the Laird Entities and through counsel with the Proposal Trustee and its counsel regarding restructuring options and issues, the proposed listing agreement with JLL, and various creditor inquiries and issues.

### **III. RELIEF SOUGHT**

#### **A. Approval of Listing Agreement**

##### *i. Background*

9. The Laird Entities, in consultation with the Proposal Trustee, legal counsel and key stakeholders including DUCA, concluded that notwithstanding the Possible Transaction, a listing agreement in support of a sale process is necessary to realize on the value of the Project and hopefully allow a viable proposal to creditors.
10. In furtherance of that, the Laird Entities sought competing listing proposal and obtained formal proposals from JLL and Cushman & Wakefield. Copies of the proposals are attached as **Confidential Exhibits “1”** and **“2”**, respectively. The Laird Entities ask that these exhibits be sealed pending the completion of a transaction to sell the Project, because they contain information and details that may affect a sale process to the detriment of the Laird Entities and their creditors.
11. The Laird Entities conclude that the proposal from JLL is the preferable option, including in terms of price, proposal document quality, proposed monetization options (e.g., sale and lease), and leasing experience. A copy of the listing agreement between the Laird Entities and JLL (to be dated when executed) (the **“Listing Agreement”**) is attached as **Confidential Exhibit “3”**. The Listing Agreement contains sensitive commercial information about a possible purchaser of the Project, so the Laird Entities ask that this exhibit be sealed pending the completion of a transaction to sell the Project.
12. A version of the Listing Agreement with redactions for the commission rates payable and references to that possible purchaser is attached as **Exhibit “C”**.

*ii. Salient terms*

13. The Listing Agreement uses the Ontario Real Estate Association's Form 520, entitled "Listing Agreement – Commercial". The salient terms of the Listing Agreement include:
- a. Real property: the real property underlying the Project municipally known as 33 Laird Drive in Toronto, PIN # 103690360 (the "**Property**").
  - b. Listing period: from February 1, 2021 until August 1, 2021 inclusively.
  - c. Price: JLL is authorized to list the Property with a notional minimum price of \$1 so as to allow all offers to reach the Laird Entities and the Proposal Trustee for consideration.
  - d. Commission: competitive with that offered by Cushman & Wakefield, and no commission is payable if the Possible Transaction is executed within a specified period, and a reduced commission thereafter.
  - e. Marketing: JLL is exclusively authorized and directed to use the marketing avenues that are in its discretion best to solicit interest in the Property.
  - f. No authorization to sell: the Listing Agreement includes no authority to effect any sale.
  - g. Condition: the only material condition is the court approval sought with this motion.
14. The Laird Entities, upon receiving advice including from the Proposal Trustee, conclude that the terms of the Listing Agreement are commercially fair and reasonable in the circumstances, and will allow the Laird Entities to pursue reasonable avenues to maximize value for stakeholders and allow a viable proposal.
15. The Laird Entities will apply to the court for approval of a transaction if an offer is received that is acceptable in the opinion of the Laird Entities in consultation with the Proposal Trustee, including the Possible Transaction once finalized.

**B. Extension of time to file a proposal**

- 16. As appears from the above, the Laird Entities have acted, and are acting, in good faith and with due diligence.
- 17. The 45-day extension sought would allow JLL to perform the Listing Agreement and begin to canvass the market about the value of the Property and identify potential buyers and transactions. It is likely that one or more further NOI extensions may be required to see that process to completion of a transaction.
- 18. I believe the Laird Entities are pursuing all commercially reasonable avenues available in the circumstances to maximize value for stakeholders – including creditors, suppliers, future tenants and equity holders. As such, I believe that no creditor would be materially prejudiced if the extension being applied for were granted, or, alternatively, that if any such prejudice exists, it is outweighed by the benefits of allowing the Laird Entities to attempt the proposed restructuring path in good faith.
- 19. I understand that the Proposal Trustee will serve and file separately a report recommending the relief sought.

SWORN BEFORE ME via <sup>FaceTime</sup>~~Zoom~~ at the City of Toronto, in the Province of Ontario, this 6<sup>th</sup> day of February, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*

*R. B. Bissell*

Commissioner for taking affidavits  
(present at Toronto at the time of swearing)

*R. B. Bissell*

*Jason L. S. Birnboim*

**Jason L. S. Birnboim**  
(present at Toronto at the time of swearing)

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL  
OF 33 LAIRD INC. AND 33 LAIRD GP INC., CORPORATIONS  
INCORPORATED UNDER THE ONTARIO *BUSINESS CORPORATIONS ACT*,  
AND 33 LAIRD LIMITED PARTNERSHIP, A LIMITED PARTNERSHIP  
FORMED UNDER THE ONTARIO *LIMITED PARTNERSHIPS ACT***

Estate Nos. 31-2693094, 31-2693092, and  
31 2693095

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

**AFFIDAVIT OF JASON L. S. BIRNBOIM  
(sworn February 6, 2021)**

**GOLDMAN SLOAN NASH & HABER LLP**  
480 University Avenue, Suite 1600  
Toronto ON M5G 1V6

**R. Brendan Bissell** (LSO# 40354V)  
Tel: (416) 597-6489  
Fax: (416) 597-3370  
Email: [bissell@gsnh.com](mailto:bissell@gsnh.com)

**Joël Turgeon** (LSO #80984R)  
Tel: (416) 597-6486  
Email: [turgeon@gsnh.com](mailto:turgeon@gsnh.com)

Lawyers for 33 Laird Inc., 33 Laird GP Inc. and  
33 Laird Limited Partnership

This is **Exhibit "D"** to the affidavit of Jason L. S. Birnboim sworn before me via Facetime this 4<sup>th</sup> day of June, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



A Commissioner, etc.

JOEL TURGEON



Estate No. 31-2693094

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

THE HONOURABLE MR.	)	WEDESNDAY, THE 10 <sup>th</sup>
	)	
JUSTICE CAVANAGH	)	DAY OF FEBRUARY, 2021

**IN THE MATTER OF THE NOTICES OF INTENTION  
TO MAKE A PROPOSAL OF 33 LAIRD INC. AND  
33 LAIRD GP INC., CORPORATIONS INCORPORATED  
UNDER THE ONTARIO *BUSINESS CORPORATIONS  
ACT*, AND 33 LAIRD LIMITED PARTNERSHIP, A  
LIMITED PARTNERSHIP FORMED UNDER THE  
ONTARIO *LIMITED PARTNERSHIPS ACT***

---

**ORDER**

---

**THIS MOTION** by 33 Laird Inc., 33 Laird GP Inc., and 33 Laird Limited Partnership (together, the “**Laird Entities**”) for orders:

- a. extending the time for MNP Ltd., in its capacity as trustee to the notice of intention to make a proposal (“**NOI**”) proceedings of the Laird Entities (in such capacity, the “**Proposal Trustee**”) under the *Bankruptcy and Insolvency Act* (the “**BIA**”), to file, on behalf of the Laird Entities or any of them, a proposal to creditors, and
- b. authorizing the Laird Entities (or any of them) to enter into and perform the listing agreement (the “**Listing Agreement**”) with Jones Lang Lassalle (“**JLL**”) of which a copy is attached as Confidential Exhibit “3” to the

affidavit of Jason L.S. Birnboim sworn February 6, 2021 (the “**Birnboim February Affidavit**”), with such variations as the Proposal Trustee may approve, and to do all things necessary or attendant to the same,

- c. ordering the sale process set out in schedule “A” hereto (the “**Sale Process**”),
- d. sealing Confidential Exhibits 1, 2, and 3 to the Birnboim February Affidavit pending the conclusion of a transaction with respect of the Laird Entities’ assets, as the case may be, as evidenced by the filing of a certificate by the Proposal Trustee, or further court order, and
- e. approving the Proposal Trustee’s activities and fees,

was heard this day by videoconference due to COVID-19.

**ON READING** the Birnboim February Affidavit, the Second Report of the Proposal Trustee dated February 9, 2021 (the “**Second Report**”), and the Fee Affidavits (as defined in the Second Report), and upon hearing the submissions of counsel for the Laird Entities and the Proposal Trustee as well as those other parties present, as indicated in the counsel slip, no other parties being present although duly served as appears from the affidavit of service, filed:

#### **NOTICE AND SERVICE**

2. **THIS COURT ORDERS** that the time for service of the motion record in respect of this motion and the Second Report is hereby abridged and validated so that the motion is properly returnable today, and that further service thereof is hereby dispensed with.

#### **EXTENSION OF TIME TO FILE A PROPOSAL**

3. **THIS COURT ORDERS** that, pursuant to Section 50.4(9) of the BIA, the period for the Proposal Trustee to file, on behalf of the Laird Entities or any of them, a proposal to creditors under the BIA, be and is hereby extended to and including March 29, 2021.

**LISTING AND SALE PROCESS**

4. **THIS COURT ORDERS** that the Laird Entities (or any of them) are hereby authorized to enter into and perform the Listing Agreement and to do all things necessary or attendant to the same.

5. **THIS COURT ORDERS** that the Laird Entities and the Proposal Trustee follow the sale process set out in Schedule “A” to this Order with respect to the marketing, negotiation for sale and sale of the Laird Entities’ assets.

6. **THIS COURT ORDERS** that the Proposal Trustee and its affiliates, partners, employees and agents shall have no liability with respect to the Listing Agreement or the Sale Process save gross negligence or wilful misconduct.

7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Proposal Trustee, the Laird Entities and JLL as well as each’s representatives and agents (each, an “**Authorized Discloser**”) are hereby authorized to disclose personal information of identifiable individuals (“**Information**”) to prospective purchasers and their representatives and agents (each, an “**Authorized Disclosee**”), but only to the extent the Authorized Disclosers consider necessary or desirable in respect of the Listing Agreement or the Sale Process. Each Authorized Disclosee to whom Information is disclosed shall maintain and protect the privacy of such Information and only use such Information in the context of the Listing Agreement or the Sale Process. When an Authorized Disclosee who received Information ceases involvement with respect to the Listing Agreement or the Sale Process, including without limitation upon deciding not to submit an offer, upon its offer not being retained, or upon the Listing Agreement or the Sale Process ending for any reason, then the Authorized Disclosee shall return all Information to the Authorized Disclosers or destroy it permanently. Any Authorized Disclosee with whom a transaction is effected in the context of the Listing Agreement or the Sale Process (each, a “**Purchaser**”) shall be entitled to continue to use the Information provided to it that is relevant to the object of such transaction, but only in a manner that is in all material respects identical to the prior

use of such Information by the Laird Entities, and shall return all other Information to the Proposal Trustee, or permanently destroy such Information.

8. **THIS COURT ORDERS** that the Authorized Disclosers are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Laird Entities' creditors or other interested parties and their advisors, including Authorized Disclosees. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

#### **SEALING**

9. **THIS COURT ORDERS** that Confidential Exhibits "1", "2" and "3" to the Birnboim February Affidavit be and hereby are sealed pending the conclusion of a transaction with respect of the Laird Entities' assets, as the case may be, as evidenced by the filing of a certificate by the Proposal Trustee, or further court order.

#### **APPROVAL OF TRUSTEE'S FEES AND ACTIVITIES**

10. **THIS COURT ORDERS** that the first report of the Proposal Trustee dated December 11, 2020 and the Second Report, as well as the activities described therein, be and are hereby approved, provided, however, that only the Proposal Trustee in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

11. **THIS COURT ORDERS** that the professional fees and disbursements of the Proposal Trustee and its independent legal counsel, Weisz Fell Kour LLP, as set out in the Fee Affidavits, be and are hereby approved.

12. **THIS COURT ORDERS** that the Laird Entities pay all such fees and disbursements from available funds.

**MISCELLANEOUS**

13. **THIS COURT HEREBY REQUESTS** the aid and recognition of 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 Laird Entities, the Proposal Trustee and their respective 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 Laird Entities and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Laird Entities and the Trustee and their respective agents in carrying out the terms of this Order.

14. **THIS COURT ORDERS** that this Order is effective from today's date and is not required to be entered.

---

**SCHEDULE “A” – SALE PROCESS**

Step	Deadline
Pre-marketing by JLL culminating in a listing on MLS and other marketing	To be completed within 3 weeks of court approval of the Listing Agreement
Marketing and due diligence, including JLL email blast and mailing to network, social media advertising, site tours, MLS listing, advertisement in Globe & Mail and Sing Tao newspapers, operation of data room and access to it for qualified bidders who execute confidentiality agreements	To be commenced within 3 weeks of court approval of the Listing Agreement
First bid deadline	6 weeks from the date of commencement of the marketing and due diligence
Laird Entities, Proposal Trustee and JLL to review bids received in consultation with DUCA, and to strategize next steps	within 2 business days following the first bid deadline
Provision of form of agreement of purchase and sale to selected bidders and request for re-submission of bids by second bid deadline	Second bid deadline set 5 business days following the review of bids from the first bid deadline
Laird Entities, Proposal Trustee and JLL to review further bids received in consultation with DUCA, and to negotiate further with bidders, including any final bid deadline, and select successful bidder	Within 5 business days following the second bid deadline

Note: Laird Entities may execute an agreement of purchase and sale with the Possible Purchaser referred to in the affidavit of Jason L.S. Birnboim sworn February 6, 2021 on or before February 19, 2021 on condition of Court approval, which may be sought thereafter in parallel with any of the foregoing steps.

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF 33 LAIRD INC. AND 33 LAIRD GP INC., CORPORATIONS INCORPORATED UNDER THE ONTARIO *BUSINESS CORPORATIONS ACT*, AND 33 LAIRD LIMITED PARTNERSHIP, A LIMITED PARTNERSHIP FORMED UNDER THE ONTARIO *LIMITED PARTNERSHIPS ACT***

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST  
Proceeding commenced in TORONTO**

**ORDER**

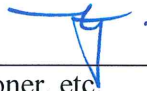
**GOLDMAN SLOAN NASH & HABER LLP**  
480 University Avenue, Suite 1600  
Toronto (ON) M5G 1V2

**R. Brendan Bissell** (LSO# 40354V)  
Tel: (416) 597-6489  
Fax: (416) 597-3370  
Email: [bissell@gsnh.com](mailto:bissell@gsnh.com)

**Joël Turgeon** (LSO #80984R)  
Tel: (416) 597-6486  
Email: [turgeon@gsnh.com](mailto:turgeon@gsnh.com)

Lawyers for 33 Laird Inc., 33 Laird GP Inc. and  
33 Laird Limited Partnership

This is **Exhibit "E"** to the affidavit of Jason L. S. Birnboim sworn before me via Facetime this 4<sup>th</sup> day of June, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



A Commissioner, etc.

JOEL TURGEON



Estate Nos. 31-2693094, 31-2693092, and 31 2693095

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF THE NOTICES OF INTENTION TO  
MAKE A PROPOSAL OF 33 LAIRD INC. AND 33 LAIRD  
GP INC., CORPORATIONS INCORPORATED UNDER THE  
ONTARIO *BUSINESS CORPORATIONS ACT*, AND 33 LAIRD  
LIMITED PARTNERSHIP, A LIMITED PARTNERSHIP  
FORMED UNDER THE ONTARIO *LIMITED  
PARTNERSHIPS ACT***

---

**AFFIDAVIT OF JASON L. S. BIRNBOIM  
(sworn March 20, 2021)**

---

I, Jason L. S. Birnboim of the City of Toronto in the Province of Ontario, **MAKE OATH  
AND SAY:**

1. I am a director and the president of each of 33 Laird Inc. and 33 Laird GP Inc., as well as a director of Beaux Properties International Inc. which is a limited partner in the 33 Laird Limited Partnership (and together with 33 Laird Inc. and 33 Laird GP Inc., the “**Laird Entities**”). As such I have knowledge of the matters in this affidavit. In preparing this affidavit, I consulted with legal, financial and other advisors of the Laird Entities and other members of the Laird Entities’ management. Where this affidavit is on information and belief, I have stated the source of that information and believe it true.
2. The affidavit is in support of the Laird Entities’ motion for an order extending the time for MNP Ltd., in its capacity as trustee to the notice of intention to make a proposal (“**NOI**”) proceedings of the Laird Entities (in such capacity, the “**Proposal Trustee**”) under the *Bankruptcy and Insolvency Act* (the “**BIA**”), to file, on behalf of the Laird Entities or any of them, a proposal to creditors.

## **I. BACKGROUND**

### **A. Structure, business, assets, insolvency**

3. I provided additional background in my prior affidavit sworn December 10, 2020 filed in this proceeding, of which I attach a copy without exhibits as **Exhibit “A”**.
4. The Laird Entities were set up under a conventional limited partnership arrangement for the main purpose of pursuing a real estate development project at 33 Laird Drive in Toronto, Ontario (the **“Project”**). The Project is insolvent. Given the limited partnership and nominee structure of the Project, the debts of the Laird Entities are essentially the same.
5. Each of the Laird Entities filed an NOI under the BIA on November 28, 2020. The Proposal Trustee is the proposal trustee in each such NOI proceeding, which were administratively consolidated in this court file by order of this court dated December 16, 2020, of which a copy is **Exhibit “B”** hereto.
6. After the limited partners’ initial investment, the Project was principally financed through secured loan facilities with DUCA Financial Services Credit Union Ltd. (**“DUCA”**), which is the Laird Entities’ most significant creditor. On November 19, 2020, DUCA made demand on its loan and security.
7. The main asset of the Project is the real property at 33 Laird Drive and the partially completed building (the **“Property”**). The planned development and existing approvals for the property also represent possible value to third parties, as do leases that have been entered into with proposed commercial tenants.

### **B. Sale process**

8. In early February, the Laird Entities, in consultation with the Proposal Trustee, legal counsel and key stakeholders including DUCA, concluded that a listing and sale process was necessary to realize on the value of the Project and hopefully allow a viable proposal to creditors. I provide additional background on this in my affidavit sworn February 6, 2021 filed in support of the Laird Entities’ motion for the approval of a listing and sale process with respect to the Property and an extension of time to file a proposal. A copy of that affidavit, without exhibits, is **Exhibit “C”** hereto.

9. On February 10, 2021, this court granted the Laird Entities' motion for a listing and sale process to be conducted in respect of the Property by the Jones Lang Lasalle Real Estate Services Inc. brokerage ("JLL"). A copy of that order is **Exhibit "D"** hereto.

## **II. ACTIVITIES SINCE LAST EXTENSION**

### **A. Generally**

10. Since the last extension of the NOI period on February 10, 2021, the Laird Entities have been engaged with the following matters:
  - a. assisting with the sale process, as more fully described below;
  - b. pursued discussions regarding the Possible Transaction (as defined and discussed in my earlier affidavit), but it appears that this transaction may not be proceeding;
  - c. corresponded with creditors involved with the Project, including the project manager, general contractor, and consultants, to review the amounts owing and discuss possible agreements on amounts payable;
  - d. corresponded through counsel with DUCA regarding questions raised by DUCA and to proactively provide information to DUCA regarding the sale and marketing process for the Project, which are set out in further detail below;
  - e. satisfied their post-filing obligations as they became due, including normal course expenses in respect of the Project;
  - f. paid the accounts of the Proposal Trustee and its counsel; and
  - g. generally, worked with counsel as well as the Proposal Trustee and its counsel to allow an orderly and transparent NOI process, respond to stakeholder inquiries, and explore restructuring options.

**B. Sale process***i. Steps to date*

11. Following the February 10, 2021 order, the Laird Entities and the Proposal Trustee have been involved in the sale process being conducted by JLL.
12. JLL advises that:
  - a. on March 4, 2021, it launched the introductory flyer/brochure, of which I attach a copy as **Exhibit “E”**, and accompanying confidentiality agreement (“CA”). The distribution list consisted of national and local groups, comprising REITs, institutions, advisors, and a significant number of private investors, developers, and potential owner-occupiers. The same flyer was also posted on JLL’s team LinkedIn pages providing additional exposure for the Property;
  - b. on March 8, 2021, the Property was posted on MLS, providing active exposure to approximately 40,000 active real estate agents and their clients. I attach a copy of the MLS posting as **Exhibit “F”**;
  - c. following the marketing launch, JLL began directly connecting with a significant number of likely prospects. As of March 15, 2021, more than 21 interested groups had submitted executed CAs.
13. JLL has provided the Laird Entities with a marketing update memorandum dated March 15, 2021. I attach a copy of the memorandum as **Confidential Exhibit “1”**. Due to the confidentiality of the information in it, including the identity of interested parties, the Laird Entities ask that Confidential Exhibit “1” be sealed from the public record until the closing of a transaction to sell the Property.
14. In order to assist stakeholders more generally, I can advise that JLL reports that the Property has garnered interest in the marketplace as a unique opportunity to acquire a large commercial development site in the affluent Leaside node. According to JLL, developers are intrigued by the flexible structure of the offering, and the ability to reposition the lands

for several alternative uses. JLL also sees the lack of product for sale in the marketplace as helping drive interest in this offering.

15. JLL's marketing strategy includes highlighting the near-term growth along Laird drive, in Toronto, given the site's proximity to a new Eglinton Crosstown LRT Station, along with its proximity to the DVP and the 400 Series North Highway.
16. The Laird Entities are pleased with the initial market response and with JLL's efforts so far.

*ii. Upcoming material steps*

17. As set out in Confidential Exhibit "1" and the Exhibit "E" brochure, and in accordance with the Exhibit "D" sale process order, the upcoming material steps in the sale process and their expected timelines are as follows:
  - a. week of March 22: re-launch of the offering to the JLL client database.
  - b. week of March 22 and March 29: Globe & Mail advertisements.
  - c. April 14, 2pm: deadline for reception of letters of intent (first bid deadline).
  - d. Approximately one week following the first bid deadline (April 21): deadline for reception of draft agreements of purchase and sale (second bid deadline).
  - e. Five days following the second bid deadline (April 26): final negotiations and selection of successful bid, as the case may be.

**III. EXTENSION OF TIME TO FILE A PROPOSAL**

18. As set out above, the Laird Entities have acted, and are acting, in good faith and with due diligence, and in accordance with this court's orders.
19. The 45-day extension sought would allow the completion of the ongoing sale process, with the selection of a successful bid around April 26, 2021, followed by a motion to approve the successful bidder's proposed transaction.
20. I believe the Laird Entities are pursuing the most commercially reasonable avenue available in the circumstances to maximize value for stakeholders – including creditors,

suppliers, future tenants, and equity holders. I believe the facts recounted above form a reasonable basis for stakeholders to be confident with the integrity and quality of the ongoing sale process, and to be at least prudently hopeful for fair recovery in the circumstances.

21. I believe it is within the reasonable expectations of the parties involved in the sale process, including the Laird Entities themselves and the Proposal Trustee, but particularly the 21 parties who have so far executed CAs as well as JLL, that save for misconduct or a material adverse change of circumstances (none of which exist), the court-approved sale process will be brought to completion in accordance with this court's orders.
22. I believe that no creditor would be materially prejudiced if the extension being applied for were granted, or, alternatively, that if any such material prejudice exists, it is outweighed by the benefits of allowing the Laird Entities, the Proposal Trustee and JLL to bring to completion the restructuring path approved by this court, in good faith.
23. I believe that the Laird Entities will be able to make a viable proposal to creditors, because there is good basis to believe that the proceeds of sale from the marketing process will be sufficient to repay DUCA's indebtedness in full, such that the proposal will only need to be directed to the remaining creditors.
24. The Laird Entities have already been in discussion with most of the remaining creditors about resolving the amounts claimed.
25. I understand that the Proposal Trustee will serve and file separately a report recommending the relief sought.

#### **IV. DUCA'S OPPOSITION TO AN EXTENSION OF TIME TO FILE A PROPOSAL**

26. I am advised by Brendan Bissell, counsel to the Laird Entities, that DUCA intends to oppose the extension of time to file a proposal.
27. I do not understand what would be accomplished by ending these NOI proceedings for DUCA or any other stakeholder.

28. DUCA has been kept up to date on the status of the sale efforts. The Laird Entities have (in most cases through counsel) answered all the questions that DUCA has asked. Further, the Laird Entities have proactively provided information to DUCA about the planned sale process, the content of the JLL marketing materials and the listing on MLS, and DUCA has been asked to provide any comments. No comments have been provided.
29. I am unaware of any substantive complaint that DUCA has about the sale process, which I note has already been approved by this Court, or how JLL has gone about its work. As noted above, DUCA has been asked for comments and has provided none.
30. Another example of how I do not understand what would be accomplished by ending the NOI proceedings is the impact that such an appointment would have on the current sale process and marketing efforts by JLL. That would terminate JLL's marketing efforts, so sale efforts would need to effectively start all over again, which would (i) likely cause confusion in the marketplace and among the interested parties who are already dealing with JLL, and (ii) definitely cause delay in the ultimate sale of the Property. Any such confusion and delay would prejudice the interests of the creditors subordinate to DUCA, as well as the equity holders of the Laird Entities.
31. I also believe that DUCA may have less economic interest in the Property and in the results of the sale and marketing process than the remaining creditors. I say this because DUCA has guarantees from the partners in the Laird Entities in the total amount of \$10,500,000 such that DUCA has substantial recourse if there is any shortfall. In contrast, I am advised by Mr. Bissell that the remaining creditors have limited, if any, recourse against anything other than the Project or its proceeds of sale.

[8]

SWORN BEFORE ME via Zoom at the City of Toronto, in the Province of Ontario, this 20<sup>th</sup> day of March, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*

*R.B.B.*

Commissioner for taking affidavits  
(present at Toronto at the time of swearing)

*R.B.B. Bissell*



**Jason L. S. Birnboim**  
(present at ~~Toronto~~ at the time of swearing)

*Keswick*



**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL  
OF 33 LAIRD INC. AND 33 LAIRD GP INC., CORPORATIONS  
INCORPORATED UNDER THE ONTARIO *BUSINESS CORPORATIONS ACT*,  
AND 33 LAIRD LIMITED PARTNERSHIP, A LIMITED PARTNERSHIP  
FORMED UNDER THE ONTARIO *LIMITED PARTNERSHIPS ACT***

Estate Nos. 31-2693094, 31-2693092, and  
31 2693095

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

**AFFIDAVIT OF JASON L. S. BIRNBOIM  
(sworn March 20, 2021)**

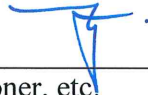
**GOLDMAN SLOAN NASH & HABER LLP**  
480 University Avenue, Suite 1600  
Toronto ON M5G 1V6

**R. Brendan Bissell** (LSO# 40354V)  
Tel: (416) 597-6489  
Fax: (416) 597-3370  
Email: [bissell@gsnh.com](mailto:bissell@gsnh.com)

**Joël Turgeon** (LSO #80984R)  
Tel: (416) 597-6486  
Email: [turgeon@gsnh.com](mailto:turgeon@gsnh.com)

Lawyers for 33 Laird Inc., 33 Laird GP Inc. and  
33 Laird Limited Partnership

This is **Exhibit "F"** to the affidavit of Jason L. S. Birnboim sworn before me via Facetime this 4<sup>th</sup> day of June, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



A Commissioner, etc.

Joel Turgeon

Estate No. 31-2693094

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

THE HONOURABLE MR.	)	FRIDAY, THE 26 <sup>th</sup>
	)	
JUSTICE CAVANAGH	)	DAY OF MARCH, 2021

**IN THE MATTER OF THE NOTICES OF INTENTION  
TO MAKE A PROPOSAL OF 33 LAIRD INC. AND  
33 LAIRD GP INC., CORPORATIONS INCORPORATED  
UNDER THE ONTARIO *BUSINESS CORPORATIONS  
ACT*, AND 33 LAIRD LIMITED PARTNERSHIP, A  
LIMITED PARTNERSHIP FORMED UNDER THE  
ONTARIO *LIMITED PARTNERSHIPS ACT***

---

**ORDER**

---

**THIS MOTION** by 33 Laird Inc., 33 Laird GP Inc., and 33 Laird Limited Partnership (together, the “**Laird Entities**”) for the herein orders was heard this day by videoconference due to COVID-19.

**ON READING** the affidavit of Jason L. S. Birnboim sworn March 20, 2021 (the “**Birnboim March Affidavit**”), the third report dated March 23, 2021 (the “**Third Report**”) of MNP Ltd. in its capacity as proposal trustee to the Laird Entities (in such capacity, the “**Proposal Trustee**”), and the Fee Affidavits (term defined in the Third Report), and upon hearing the submissions of counsel for the Laird Entities and the Proposal Trustee as well as those other parties present, as indicated in the counsel slip, no

other parties being present although duly served as appears from the affidavit of service, filed:

### **NOTICE AND SERVICE**

1. **THIS COURT ORDERS** that the time for service of the motion record in respect of this motion and the Third Report is hereby abridged and validated so that the motion is properly returnable today, and that further service thereof is hereby dispensed with.

### **EXTENSION OF TIME TO FILE A PROPOSAL**

2. **THIS COURT ORDERS** that, pursuant to Section 50.4(9) of the *Bankruptcy and Insolvency Act*, the period for the Proposal Trustee to file, on behalf of the Laird Entities or any of them, a proposal to creditors under the *Act*, be and is hereby extended to and including May 13, 2021.

### **SEALING**

3. **THIS COURT ORDERS** that Confidential Exhibit “1” to the Birnboim March Affidavit be and hereby is sealed pending the conclusion of a transaction with respect of the Laird Entities’ assets, as the case may be, as evidenced by the filing of a certificate by the Proposal Trustee, or further court order.

### **APPROVAL OF TRUSTEE’S FEES AND ACTIVITIES**

4. **THIS COURT ORDERS** that the Third Report and the activities described therein be and are hereby approved, provided, however, that only the Proposal Trustee in

its personal capacity, and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

5. **THIS COURT ORDERS** that the professional fees and disbursements of the Proposal Trustee and its independent legal counsel, Weisz Fell Kour LLP, as set out in the Fee Affidavits, be and are hereby approved.

6. **THIS COURT ORDERS** that the Laird Entities pay all such fees and disbursements from available funds.

#### **MISCELLANEOUS**

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of 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 Laird Entities, the Proposal Trustee and their respective 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 Laird Entities and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Laird Entities and the Trustee and their respective agents in carrying out the terms of this Order.

8. **THIS COURT ORDERS** that this Order is effective from today's date and is not required to be entered.

---

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF 33 LAIRD INC. AND 33 LAIRD GP INC., CORPORATIONS INCORPORATED UNDER THE ONTARIO *BUSINESS CORPORATIONS ACT*, AND 33 LAIRD LIMITED PARTNERSHIP, A LIMITED PARTNERSHIP FORMED UNDER THE ONTARIO *LIMITED PARTNERSHIPS ACT***

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
**Proceeding commenced in TORONTO**

**ORDER**  
**(extension of time to file a proposal, approval of trustee's fees and activities, sealing)**

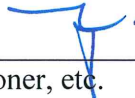
**GOLDMAN SLOAN NASH & HABER LLP**  
480 University Avenue, Suite 1600  
Toronto (ON) M5G 1V2

**R. Brendan Bissell** (LSO# 40354V)  
Tel: (416) 597-6489  
Fax: (416) 597-3370  
Email: [bissell@gsnh.com](mailto:bissell@gsnh.com)

**Joël Turgeon** (LSO #80984R)  
Tel: (416) 597-6486  
Email: [turgeon@gsnh.com](mailto:turgeon@gsnh.com)

Lawyers for 33 Laird Inc., 33 Laird GP Inc. and  
33 Laird Limited Partnership

This is **Exhibit "G"** to the affidavit of Jason L. S. Birnboim sworn before me via Facetime this 4<sup>th</sup> day of June, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



A Commissioner, etc.

Joel Turgeon



Estate Nos. 31-2693094, 31-2693092, and 31 2693095

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF THE NOTICES OF INTENTION TO  
MAKE A PROPOSAL OF 33 LAIRD INC. AND 33 LAIRD  
GP INC., CORPORATIONS INCORPORATED UNDER THE  
ONTARIO *BUSINESS CORPORATIONS ACT*, AND 33 LAIRD  
LIMITED PARTNERSHIP, A LIMITED PARTNERSHIP  
FORMED UNDER THE ONTARIO *LIMITED  
PARTNERSHIPS ACT***

---

**AFFIDAVIT OF JASON L. S. BIRNBOIM  
(sworn May 7, 2021)**

---

I, Jason L. S. Birnboim of the City of Toronto in the Province of Ontario, **MAKE OATH  
AND SAY:**

1. I am a director and the president of each of 33 Laird Inc. and 33 Laird GP Inc., as well as a director of Beaux Properties International Inc. which is a limited partner in the 33 Laird Limited Partnership (together with 33 Laird Inc. and 33 Laird GP Inc., the “**Laird Entities**”). As such I have knowledge of the matters in this affidavit. In preparing this affidavit, I consulted with legal, financial and other advisors of the Laird Entities and other members of the Laird Entities’ management. Where this affidavit is on information and belief, I have stated the source of that information and believe it true.
2. The affidavit is in support of the Laird Entities’ motion for orders:
  - a. extending to May 28, 2021 the time for MNP Ltd., in its capacity as trustee to the notice of intention to make a proposal (“**NOI**”) proceedings of the Laird Entities

(in such capacity, the “**Proposal Trustee**”) under the *Bankruptcy and Insolvency Act* (the “**BIA**”), to file, on behalf of the Laird Entities or any of them, a proposal to creditors. This is the last possible extension of the NOI proceedings due to reaching what I am advised is the statutory maximum of 6 months under the BIA NOI process.

- a. creating an administration charge (the “**Administration Charge**”) on the Laird Entities’ Property (as defined in the draft order) in favour of counsel for the Laird Entities, the Proposal Trustee, and counsel to the Proposal Trustee (together, the “**Professionals**”) in connection with any unpaid fees and disbursements up to a maximum amount of \$150,000, which Administration Charge is to rank immediately prior to the DIP Lender’s Charge (as defined in the order of Madam Justice Conway made in this proceeding on December 16, 2020 (the “**December 16 Order**”)), i.e. subject to any Encumbrances (as defined in the December 16 Order) in favour of DUCA Financial Services Credit Union Ltd. (“**DUCA**”) as well as any Encumbrance in favour of any Person (as defined in the December 16 Order) that primes DUCA’s security interest, as the case may be, the whole in accordance with the December 16 Order.
- b. sealing Confidential Exhibits “1” and “2” to this affidavit pending the conclusion of a transaction with respect of the Laird Entities’ assets, as the case may be, as evidenced by the filing of a certificate by the Proposal Trustee, or further court order.
- c. approving the third report of the Proposal Trustee dated March 23, 2021 (the “**Third Report**”) and the fourth report of the Proposal Trustee, to be served

and filed separately (the “**Fourth Report**”), as well as the Proposal Trustee’s activities and fees set out therein.

## **I. BACKGROUND**

### **A. Structure, business, assets, insolvency**

3. I provided additional background in my prior affidavit sworn December 10, 2020 filed in this proceeding, of which I attach a copy without exhibits as **Exhibit “A”**.
4. The Laird Entities were set up under a conventional limited partnership arrangement for the main purpose of pursuing a real estate development project at 33 Laird Drive in Toronto, Ontario (the “**Project**”). The Project is insolvent. Given the limited partnership and nominee structure of the Project, the debts of the Laird Entities are essentially the same.
5. Each of the Laird Entities filed an NOI under the BIA on November 28, 2020. The Proposal Trustee is the proposal trustee in each such NOI proceeding, which were administratively consolidated in this court file by the December 16 Order, of which a copy is **Exhibit “B”** hereto.
6. After the limited partners’ initial investment, the Project was principally financed through secured loan facilities with DUCA, which is the Laird Entities’ most significant creditor. On November 19, 2020, DUCA made demand on its loan and security.
7. The main asset of the Project is the real property at 33 Laird Drive including a partially completed building (the “**Property**”). The planned development and existing approvals for the Property also represent possible value to third parties, as do leases that have been entered into with proposed commercial tenants.

**B. Sale process**

8. In early February, the Laird Entities, in consultation with the Proposal Trustee, legal counsel and key stakeholders including DUCA, concluded that a listing and sale process was necessary to realize on the value of the Project and hopefully allow a viable proposal to creditors. I provide additional background on this in my affidavit sworn February 6, 2021 filed in support of the Laird Entities' motion *inter alia* for the approval of a listing and sale process with respect to the Property. A copy of that affidavit, without exhibits, is **Exhibit "C"** hereto.
9. On February 10, 2021, this court granted the Laird Entities' motion for a listing and sale process to be conducted in respect of the Property by the Jones Lang Lasalle Real Estate Services Inc. ("**JLL**") brokerage. A copy of that order is **Exhibit "D"** hereto.
10. On March 26, 2021, this court granted the Laird Entities' motion for an extension to May 13, 2021 of the time to file a proposal, *inter alia* in consideration of the need for time to advance the sale process. A copy of the March 26, 2021 order is **Exhibit "E"** hereto.

**C. DUCA's pending receivership application adjourned**

11. On April 15, 2021, DUCA served an application record with respect to an application to appoint a receiver over the Laird Entities made returnable on April 27, 2021. DUCA has since on its own volition adjourned the application to June 24, 2021 in view of the progress in the sale process. As I recount below, I believe that this application will not proceed because the finalization of a sale of the Property is likely.

## II. ACTIVITIES SINCE LAST EXTENSION

### A. Generally

12. Since the last extension of the NOI period on March 26, 2021, the Laird Entities have been engaged with the following matters:

- a. running the sale process with the assistance of JLL and the Proposal Trustee, as more fully described below.
- b. corresponded with creditors involved with the Project, including the project manager, general contractor, and consultants, to review the amounts owing and discuss possible agreements on amounts payable.
- c. corresponded through counsel with DUCA regarding questions raised by DUCA and to proactively provide information to DUCA regarding the sale and marketing process for the Project.
- d. satisfied their post-filing obligations as they became due, including normal course expenses in respect of the Project, save in respect of certain professional fees, as more fully described below.
- e. generally, worked with counsel as well as the Proposal Trustee and its counsel to allow an orderly and transparent NOI process, respond to stakeholder inquiries, and explore restructuring options.

### B. Sale process

#### *i. Steps to date*

13. Following the February 10, 2021 order (Exhibit “D”), the Laird Entities and the Proposal Trustee have been involved in the sale process being conducted by JLL.

14. In accordance with the February 10, 2021 order (Exhibit “D”), the first round of bids concluded on April 14, 2021, with JLL having received a number of offers as more fully appears from JLL’s summary of first round bids attached as **Confidential Exhibit “1”**. A sealing order is requested in respect of this highly confidential information, as set out below.
15. On April 16, 2021, upon the advice of JLL and with the consent of the Proposal Trustee and DUCA, the Laird Entities asked for in writing, and the court made through the endorsement of Cavanagh J. of which a copy is **Exhibit “F”** hereto, a minor modification to the February 10, 2021 sale process order by allowing the second bid deadline to be *within* 5 business days following the review of first round bids rather than fixed at 5 business days *after* the same.
16. In accordance with the February 10, 2021 order and the April 16 endorsement (Exhibits “D” and “F”), the solicitation of offers portion of the sale process concluded on April 21, 2021, with JLL having received a number of offers as more fully appears from JLL’s summary of second round bids attached as **Confidential Exhibit “2”**. A sealing order is requested in respect of this highly confidential information, as set out below.
17. The Laird Entities’ management, upon consulting the Laird Entities’ legal counsel, the Proposal Trustee, and JLL, and upon informing DUCA of the result of the sale process and obtaining DUCA’s support to proceed with respect to the Selected Bid (defined hereafter), identified one of the offers as preferred (the “**Selected Bid**”). The offeror for the Selected Bid (the “**Selected Bidder**”) was informed its bid was the Selected Bid on the same day.

18. Since then, the Laird Entities and the Selected Bidder, principally through counsel, have been making ongoing, diligent and good faith efforts to finalize a binding agreement of purchase and sale with respect to the Property, subject to court approval and vesting orders. It is expected that a binding agreement will be concluded within the next few days.

*ii. Upcoming material steps*

19. I am advised by counsel for the Laird Entities that there is agreement among the parties on the substance of a final sale agreement, and that while material progress has been made in this regard, a number of relatively secondary points and clauses remain to be agreed upon.
20. I am also advised by counsel for the Laird Entities that the likelihood of any disagreement on such secondary points and clauses to derail the entire transaction is low, if existent. Nevertheless, more time is required to finalize the sale agreement.

**III. RELIEF SOUGHT**

**A. Extension of time**

21. As set out above, the Laird Entities have acted, and are acting, in good faith and with due diligence, and in accordance with this court's orders and endorsements.
22. The extension sought is to allow time to finalize the sale agreement with the Selected Bidder for the Property, as set out above.
23. By pursuing the finalization of a sale agreement with respect to the Selected Bid, I believe the Laird Entities are pursuing the most commercially reasonable avenue available in the circumstances to maximize value for stakeholders – including creditors, suppliers, future tenants, and equity holders.

24. I believe the facts recounted above, as supported by Confidential Exhibits “1” and “2”, form a reasonable basis for stakeholders to be confident with the integrity and quality of the now-concluded sale process.
25. I believe the Selected Bid amount should be sufficient to allow a viable proposal to the Laird Entities’ creditors.
26. I believe it is within the reasonable expectations of the Laird Entities’ stakeholders as well as those of the parties involved in the sale process including the Selected Bidder, the Laird Entities themselves, and the Proposal Trustee, that the Laird Entities will be afforded the opportunity to complete a sale of the Property with respect to the Selected Bid, which was the aim of the sale process, and the dominant overarching strategy of these NOI proceedings generally, from the outset.
27. I believe that no creditor would be materially prejudiced if the extension being applied for were granted, or, alternatively, that if any such material prejudice exists, it is outweighed by the benefits of allowing the Laird Entities to bring to completion the restructuring path approved by this court, in good faith.

**B. Administration Charge**

28. The Laird Entities recognize that the Professionals’ invoices are, subject to court approval or taxation in the case of the Proposal Trustee and its counsel as I am advised, post-filing obligations payable in accordance with their terms (i.e., not stayed by the NOIs). It was originally anticipated that the fees of the Professionals would be paid through advances under the debtor-in-possession (DIP) facility approved in the December 16 Order (Exhibit “B”). However, for practical reasons, the Laird Entities now wish to pay part of



the outstanding invoices from their counsel from the sale proceeds of the Property. This has been discussed with counsel for the Laird Entities, who has agreed to this delay in payment conditional on the Laird Entities obtaining the sought Administration Charge.

29. The Administration Charge would be capped at \$150,000, which is reflective of the amounts outstanding plus anticipated additional professional fees to bring the Laird Entities' restructuring to completion and a reasonable contingency. It would encumber the Laird Entities' Property, as defined in the draft order to include all of their present and future assets and proceeds thereof, and would rank in immediate priority to the DIP Lender's Charge created in the December 16 Order, meaning that:

- a. with respect to any item or part of the Property on which DUCA holds a security interests, the Administration Charge would rank in immediate priority to the DIP Lender's Charge but immediately after DUCA's security interest, such that subject only to such DUCA's security interest and any Encumbrance that primes such DUCA's security interest or has priority to such security interest, the Administration Charge and DIP Lender's Charge would rank in priority to all other Encumbrances in favour of any Person, and
- b. with respect to any item or part of the Property on which DUCA does not hold any security interest, the Administration Charge would rank first, and the DIP Lender's Charge would rank second, in priority to all other Encumbrances in favour of any Person.

30. I believe the sought quantum and rank of the Administration Charge are fair and reasonable in the circumstances and I am advised by counsel to the Laird Entities that the same has been discussed with DUCA who does not oppose.


**C. Sealing orders**

31. Confidential Exhibits “1” and “2” to this affidavit contain highly confidential information including the identity of bidders and the terms and amount of their bids, both in the first round and the second round of bids.
32. From my experience in the real estate market, I believe it is within the reasonable expectations of the bidders that their identity and the terms of their bids be held confidential until a transaction is finalized in respect of the Property or further court order, be it only so those cannot be used to their detriment in any context, including, for example, any necessary further efforts to sell the Property (e.g. in bankruptcy or a receivership).
33. Moreover, should the information contained in the Confidential Exhibits be accessible to the public, this would irreparably affect the integrity of any necessary further efforts to sell the Property. This is because, without limitation, the incentives would then be such that regardless of any actual market conditions and market-correct valuation of the Property, bids could only be expected to be lower than those originally received, as there would be a perception that a sale could not be concluded at any higher price, meaning the value of the Property must be lower, which is not necessarily true.
34. The sought sealing orders appropriately alleviate these concerns and so I believe they are reasonable in the circumstances.


**D. Approval of Proposal Trustee’s reports, fees and activities**

- 35. The activities of the Proposal Trustee were reported to the court and stakeholders including in the Third and Fourth Reports. I believe such activities are appropriate, commercially reasonable, and conducted in the best interest of the Laird Entities and their stakeholders. Material in this regard is the February 10, 2021 order (Exhibit “D”), where this court approved the Proposal Trustee’s two prior reports made in the proceeding as well as the activities and fees described therein.
- 36. Overall, I understand that the Proposal Trustee will serve and file separately its Fourth Report recommending the whole relief sought on this motion.

SWORN BEFORE ME via Zoom at the City of Toronto, in the Province of Ontario, this 7<sup>th</sup> day of May, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*

  
 \_\_\_\_\_  
 Commissioner for taking affidavits  
 (present at Toronto at the time of swearing)

JOËL TURGEON

  
 \_\_\_\_\_  
**Jason L. S. Birnboim**  
 (present at Toronto at the time of swearing)

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL  
OF 33 LAIRD INC. AND 33 LAIRD GP INC., CORPORATIONS  
INCORPORATED UNDER THE ONTARIO *BUSINESS CORPORATIONS ACT*,  
AND 33 LAIRD LIMITED PARTNERSHIP, A LIMITED PARTNERSHIP  
FORMED UNDER THE ONTARIO *LIMITED PARTNERSHIPS ACT***

Estate Nos. 31-2693094, 31-2693092, and  
31 2693095

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

**AFFIDAVIT OF JASON L. S. BIRNBOIM  
(sworn May 7, 2021)**

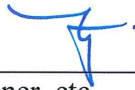
**GOLDMAN SLOAN NASH & HABER LLP**  
480 University Avenue, Suite 1600  
Toronto ON M5G 1V6

**R. Brendan Bissell** (LSO# 40354V)  
Tel: (416) 597-6489  
Fax: (416) 597-3370  
Email: [bissell@gsnh.com](mailto:bissell@gsnh.com)

**Joël Turgeon** (LSO #80984R)  
Tel: (416) 597-6486  
Email: [turgeon@gsnh.com](mailto:turgeon@gsnh.com)

Lawyers for 33 Laird Inc., 33 Laird GP Inc. and  
33 Laird Limited Partnership

This is **Exhibit "H"** to the affidavit of Jason L. S. Birnboim sworn before me via Facetime this 4<sup>th</sup> day of June, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



A Commissioner, etc.

JOEL TURGEON

Estate No. 31-2693094

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

THE HONOURABLE MR.	)	WEDESNDAY, THE 12 <sup>th</sup>
	)	
JUSTICE DUNPHY	)	DAY OF MAY, 2021

**IN THE MATTER OF THE NOTICES OF INTENTION  
TO MAKE A PROPOSAL OF 33 LAIRD INC. AND  
33 LAIRD GP INC., CORPORATIONS INCORPORATED  
UNDER THE ONTARIO *BUSINESS CORPORATIONS  
ACT*, AND 33 LAIRD LIMITED PARTNERSHIP, A  
LIMITED PARTNERSHIP FORMED UNDER THE  
ONTARIO *LIMITED PARTNERSHIPS ACT***

---

**ORDER**

**(extension of time to file a proposal, administration charge, and sealing)**

---

**THIS MOTION** by 33 Laird Inc., 33 Laird GP Inc., and 33 Laird Limited Partnership (together, the “**Laird Entities**”) for the herein orders was heard this day by videoconference due to COVID-19.

**ON READING** the affidavit of Jason L. S. Birnboim sworn May 7, 2021 (the “**Birnboim May Affidavit**”) and the fourth report (the “**Fourth Report**”) of MNP Ltd. in its capacity as proposal trustee to the Laird Entities (in such capacity, the “**Proposal Trustee**”), and upon hearing the submissions of counsel for the Laird Entities and the Proposal Trustee as well as those other parties present, as indicated in the counsel slip, no other parties being present although duly served as appears from the affidavit of service of Joël Turgeon sworn May 11, 2021, filed:

## **NOTICE AND SERVICE**

1. **THIS COURT ORDERS** that the time for service of the motion record in respect of this motion and the Fourth Report is hereby abridged and validated so that the motion is properly returnable today, and that further service thereof is hereby dispensed with.

## **EXTENSION OF TIME TO FILE A PROPOSAL**

2. **THIS COURT ORDERS** that, pursuant to Section 50.4(9) of the *Bankruptcy and Insolvency Act* (Canada), the period for the Proposal Trustee to file, on behalf of the Laird Entities or any of them, a proposal to creditors under the *Act*, be and is hereby extended to and including May 28, 2021.

## **ADMINISTRATION CHARGE**

3. **THIS COURT ORDERS** that (i) counsel for the Laird Entities, (ii) the Proposal Trustee, and (iii) counsel to the Proposal Trustee be and hereby are granted a charge (the “**Administration Charge**”) on the Laird Entities’ interest in all of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”) in connection with any unpaid fees and disbursements up to a maximum amount of \$150,000.

4. **THIS COURT ORDERS** that the Administration Charge shall rank immediately before the DIP Lender’s Charge, as defined in the order of Madam Justice Conway made in this proceeding on December 16, 2020, which for avoidance of doubt means subject to any Encumbrances in favour of DUCA Financial Services Credit Union Ltd. (“**DUCA**”) as well as any Encumbrances in favour of any Person (terms defined in said December 16

order) that primes DUCA's security interest, as the case may be, in accordance with such order.

### **SEALING**


5. **THIS COURT ORDERS** that Confidential Exhibits "1" and "2" to the Birnboim May Affidavit be and are hereby sealed until the earlier of 60 days from the date hereof and the conclusion of a transaction with respect of the Laird Entities' assets, as the case may be, as evidenced by the filing of a certificate by the Proposal Trustee, or further court order.

### **MISCELLANEOUS**

6. **THIS COURT HEREBY REQUESTS** the aid and recognition of 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 Laird Entities, the Proposal Trustee and their respective 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 Laird Entities and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Laird Entities and the Trustee and their respective agents in carrying out the terms of this order.



7. **THIS COURT ORDERS** that this order is effective from its date.



S.F. Murphy J.

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF 33 LAIRD INC. AND 33 LAIRD GP INC., CORPORATIONS INCORPORATED UNDER THE ONTARIO *BUSINESS CORPORATIONS ACT*, AND 33 LAIRD LIMITED PARTNERSHIP, A LIMITED PARTNERSHIP FORMED UNDER THE ONTARIO *LIMITED PARTNERSHIPS ACT***

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST  
Proceeding commenced in TORONTO**

**ORDER  
(extension of time to file a proposal, administration charge, and sealing)**

**GOLDMAN SLOAN NASH & HABER LLP**

480 University Avenue, Suite 1600

Toronto (ON) M5G 1V2

Fax: (416) 597-3370

**R. Brendan Bissell** (LSO# 40354V)

Tel: (416) 597-6489

Email: [bissell@gsnh.com](mailto:bissell@gsnh.com)

**Joël Turgeon** (LSO #80984R)

Tel: (416) 597-6486

Email: [turgeon@gsnh.com](mailto:turgeon@gsnh.com)

Lawyers for 33 Laird Inc., 33 Laird GP Inc. and  
33 Laird Limited Partnership

This is **Exhibit "I"** to the affidavit of Jason L. S. Birnboim sworn before me via Facetime this 4<sup>th</sup> day of June, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



A Commissioner, etc.

SOELTJURGEON

**AGREEMENT OF PURCHASE AND SALE**

This AGREEMENT dated the 10th day of May, 2021.

BETWEEN:

33 Laird Inc.,  
a company incorporated in accordance with the laws of the Province of  
Ontario

(the "Vendor")

OF THE FIRST PART

and

33 Laird Development Inc.,  
in its capacity as general partner of,  
33 Laird Development Limited Partnership  
a limited partnership created pursuant to the laws of the Province of Ontario

(the "Purchaser")

OF THE SECOND PART

**WHEREAS**

- A The Vendor filed a Notice of Intention to make a proposal pursuant to the *Bankruptcy and Insolvency Act* (Canada) on November 28, 2020 under which MNP Ltd was named as trustee of that proposal (the "Proposal Trustee");
- B. The Court has by orders extended the time to make a proposal to May 13, 2021;
- C. Subject to the Court issuing the Approval and Vesting Order, the Purchaser has agreed to purchase from the Vendor, and the Vendor has agreed to sell to the Purchaser, the right, title and interest of the Vendor in and to the Purchased Assets on the terms and conditions set out herein.

**IN CONSIDERATION** of the mutual agreements contained in this Agreement, the receipt and sufficiency of which are acknowledged by each of the Vendor and the Purchaser, the Vendor and the Purchaser agree as follows:

**1. DEFINITIONS**

In this Agreement, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

- (a) "Act" means, for purposes of Section 25 only, the *Excise Tax Act* (Canada);

- 2 -

- (b) **"Agreement"** means this agreement together with the attached schedules, as amended from time to time;
- (c) **"Approval and Vesting Order"** means an order of the Court satisfactory to the Purchaser substantially in the form attached hereto as Schedule 1(a) approving the Transaction and ordering that the Vendor's right, title and interest in the Purchased Assets be vested in the Purchaser free and clear of encumbrances, except for Permitted Encumbrances, upon satisfaction by the Purchaser of its obligations under this Agreement;
- (d) **"Assigned Contracts"** means those Contracts that, in accordance with section 14, the Purchaser has notified the Vendor it wants to assume;
- (e) **"Assigned Permits"** means those Permits that, in accordance with section 14, the Purchaser has notified the Vendor it wants to assume;
- (f) **"Assigned Warranties"** means those Warranties that, in accordance with section 14, the Purchaser has notified the Vendor it wants to assume;
- (g) **"Assignment and Assumption of Contracts"** means an assignment of the Vendor's interest in the Assigned Contracts, such document to be in the form to be agreed upon by the Vendor and the Purchaser, each acting reasonably,
- (h) **"Assignment and Assumption of Permits"** means an assignment of the Vendor's interest in the Assigned Permits, such document to be in the form to be agreed upon by the Vendor and the Purchaser, each acting reasonably;
- (i) **"Assignment and Assumption of Warranties"** means an assignment of the Vendor's interest in the Assigned Warranties, such document to be in the form to be agreed upon by the Vendor and the Purchaser, each acting reasonably;
- (j) **"Buildings"** means, collectively, the buildings, structures and fixed improvements situate on, in or under the Lands, including all improvements thereto and all fixtures and fixed equipment, forming a part thereof;
- (k) **"Business Day"** means any day other than a Saturday, Sunday or a statutory, civic or bank holiday in the Province of Ontario;
- (l) **"Chattels"** means all tangible personal property of the Vendor pertaining to the Property, no matter where located, including without limitation the items listed by the Parties in Schedule 1(b);
- (m) **"Closing"** shall have the meaning ascribed to it in Section 11;
- (n) **"Contracts"** means all contracts pertaining to the Property to which the Vendor is a party;
- (o) **"Court"** means the Ontario Superior Court of Justice (Commercial List);

- 3 -

- (p) **"Date of Closing"** shall have the meaning ascribed to it in Section 11 hereof;
- (q) **"Deposit"** shall have the meaning ascribed to it in Section 5;
- (r) **"Encumbrances"** means, in the case of any of the Purchased Assets, all mortgages, pledges, charges, liens, debentures, trust deeds, assignments by way of security, security interests, conditional sales contracts or other title retention agreements or similar interests or instruments charging, or creating a security interest in, such Purchased Assets or any part thereof or interest therein;
- (s) **"Environmental Law"** means any and all applicable international, federal, provincial, municipal or local laws, by-laws, statutes, regulations, treaties, orders, judgments, decrees, ordinances, official directives and all authorizations relating to the environment, occupational health and safety, health protection or any Hazardous Materials;
- (t) **"Government Authority"** means any person, body, department, bureau, agency, board, tribunal, commission, branch or office of any federal, provincial or municipal governments having or claiming to have jurisdiction over part or all of the Property, the Transaction contemplated in this Agreement and/or one or both of the parties hereto;
- (u) **"HST"** shall have the meaning ascribed thereto in Section 25 hereof;
- (v) **"Hazardous Materials"** means any contaminants, pollutants, dangerous substances or materials that, when released to the natural environment, could cause, at some immediate or future time, harm or degradation to the natural environment or risk to human health, whether or not such contaminants, pollutants, substances or materials are or shall become prohibited, controlled or regulated by any Government Authority and any **"Contaminants"**, **"Dangerous Substances"**, **"Hazardous Materials"**, **"Hazardous Substances"**, **"Hazardous Wastes"**, **"Industrial Wastes"**, **"Liquid Wastes"**, **"Pollutants"** and **"Toxic Substances"**, all as defined in, referred to or contemplated in federal, provincial and/or municipal legislation, regulations, orders and/or ordinances relating to environmental, health and/or safety matters and, not to limit the generality of the foregoing, includes asbestos, urea formaldehyde foam insulation and mono or poly-chlorinated biphenyl wastes;
- (w) **"Lands"** means the lands and premises municipally known as 33 Laird Drive, Toronto, Ontario, as legally described in Schedule 1(c);
- (x) **"Permits"** means all permits held by or in favour of the Vendor pertaining to the Property;
- (y) **"Permitted Encumbrances"** means those encumbrances listed in Schedule 1(d).
- (z) **"Property"** means the Lands and all of the assets and undertakings of the Vendor acquired for, or used in relation to, the Lands, including all proceeds therefrom;

- 4 -

- (aa) **“Proposal Trustee”** has the meaning ascribed thereto in preface A hereof;
- (bb) **“Purchase Price”** shall have the meaning ascribed thereto in Section 4 hereof;
- (cc) **“Purchased Assets”** means all of the Vendor’s right, title and interest in the Buildings, Lands, Assigned Contracts, Chattels, Records, Assigned Permits and Assigned Warranties;
- (dd) **“Purchaser”** shall have the meaning ascribed to it on page 1 above;
- (ee) **“Purchaser’s Solicitors”** means the firm of Gowling WLG (Canada) LLP;
- (ff) **“Records”** means all information, surveys, reports, studies, files, agreements and documentation within the Vendor’s possession or control in relation to the Property including without limitation, (i) all surveys, plans and drawings of the Property; (ii) copies of all leases, employment, service, construction, development, management and maintenance contracts; (iii) a list of all outstanding and continuing litigation, if any, concerning the Property; (iv) copies of property tax bills and assessments for the last three years; (v) true and complete copies of all environmental reports and building condition reports pertaining to the Property; and (vii) copies of any applications for site plan approval, minor variances, rezoning, development or building permit(s) with the comments/approval from municipality.
- (gg) **“Registry Office”** shall have the meaning ascribed thereto in Section 12 hereof;
- (hh) **“Site Plan Agreement”** shall have the meaning ascribed thereto in Section 8 hereof;
- (ii) **“Transaction”** means the transaction contemplated under this Agreement;
- (jj) **“Vendor”** shall have the meaning ascribed to it on page 1 above;
- (kk) **“Vendor’s Solicitors”** means the firm of Goldman Sloan Nash & Haber LLP; and
- (ll) **“Warranties”** means all warranties and guarantees existing as of the Date of Closing, if any, in favour of the Vendor as owner of the Property in connection with the construction or operation of the Building.

All other capitalized terms used in this Agreement, which are not defined in this Section 1 shall have the meaning given thereto in this Agreement.

## 2. SCHEDULES

The following Schedules are appended to this Agreement:

- Schedule 1(a)      **Approval and Vesting Order**
- Schedule 1(b)      **Chattels**

**Schedule 1(c)      Lands**

**Schedule 1(d)      Permitted Encumbrances**

### **3.      NATURE OF TRANSACTION**

The Purchaser shall purchase, and the Vendor shall sell all of the Vendor's right, title, interest in and to the Purchased Assets and all benefits derivable therefrom, upon and subject to the terms of this Agreement.

The Vendor shall deliver vacant possession of the Lands to the Purchaser on the Date of Closing, free and clear of all tenancies, licensees and occupants, subject only to the Permitted Encumbrances.

### **4.      PURCHASE PRICE**

The aggregate purchase price (the "Purchase Price") for the Purchased Assets is the sum of

### **5.      METHOD OF PAYMENT**

The Purchase Price shall be paid, accounted for and satisfied as follows:

- (a) **Deposit:** A deposit (the "Deposit") equal to \$ [REDACTED] to be deposited in an interest earning trust account of Jones Lang LaSalle Real Estate Services Inc. ("JLL") as agent for the Vendor, to be paid prior to 5:00pm on the next Business Day following execution of this Agreement by the Vendor and the Purchaser.
- (b) **Balance Due at Closing:** The balance of the Purchase Price after crediting the Deposit and all accrued interest earned thereon shall be paid at Closing to the Vendor's Solicitors in trust, subject to the adjustments contemplated in this Agreement.

The Deposit and the balance due on Closing shall be paid by wire drawn on or issued by a Canadian chartered bank.

### **6.      ALLOCATION**

The Vendor and the Purchaser shall cooperate with each other, acting reasonably, to attempt to agree on an allocation of the Purchase Price as between the Building, the Lands and the Chattels for the purposes of the *Income Tax Act (Canada)* (the "Allocation"). If the Vendor and the Purchaser agree on the Allocation, they shall enter into an allocation agreement on Closing in such form as shall be approved by the Vendor's Solicitor and the Purchaser's Solicitor, acting reasonably. In the event that the Vendor and the Purchaser fail to reach an agreement on the Allocation by Closing, then they shall each make their own respective allocations of the Purchase Price as between the Buildings, Lands and Chattels for the purposes of the *Income Tax Act (Canada)* and any filings in accordance with the provisions thereof.



## 7. DEPOSIT

The Deposit shall be held in trust by JLL on behalf of the Vendor and shall be:

- (a) credited to the Purchaser along with all accrued interest earned as an adjustment against the Purchase Price on the Date of Closing if the Transaction is completed;
- (b) refunded to the Purchaser with all accrued interest but without deduction if the Transaction is not completed for any reason, provided that the Purchaser is not in default under this Agreement; or,
- (c) retained along with all accrued interest by the Vendor as a genuine pre-estimate of liquidated damages and not as a penalty.

## 8. PURCHASER'S OPTION REGARDING THE SITE PLAN AGREEMENT

A Site Plan Agreement is registered on title to the Lands as Instrument No. AT5243555 (the "Site Plan Agreement"). The Purchaser shall:

- (a) have until 5:00pm on May 26, 2021 to enter into discussions with the City of Toronto regarding whether an acceptable amendment to the Site Plan Agreement can be agreed upon; and
- (b) unless the Purchaser has notified the Vendor by 5:00pm on May 26, 2021 that the Purchaser wishes to take title to the Property subject to the Site Plan Agreement, including as it may be amended by agreement between the Purchaser and the City of Toronto, the Purchaser agrees to purchase the Property on the basis of the Site Plan Agreement being removed from title through the Approval and Vesting Order or otherwise.

## 9. APPROVAL AND VESTING ORDER CONDITION

The Purchaser and the Vendor acknowledge that this Agreement is conditional upon the grant of the Approval and Vesting Order, which shall be final and binding, in full force and effect, and shall not be the subject of any appeal, motion to vary, set aside or stay or like proceeding which has not been finally and fully dismissed (the "Approval and Vesting Order Condition"). The Approval and Vesting Order Condition is a "true condition precedent" which may not, and shall not, be waived by the Purchaser and/or the Vendor. In the event that the Vesting Order Condition is not satisfied strictly in accordance with the terms of this paragraph 8, then this Agreement shall automatically terminate, and the Deposit shall be returned to the Purchaser without interest and without deduction and the parties shall be released from all liability hereunder except as otherwise expressly agreed to in this Agreement.

Within three (3) days after the execution by the Vendor and the Purchaser of this Agreement, the Vendor will at its own expense seek an appointment with the Court for a motion to be heard within thirty (40) days, or otherwise as soon as reasonably possible, to seek the Approval and Vesting Order at its cost.

## 10. CLOSING ADJUSTMENTS

Adjustments shall be made, as of 12:01 a.m. on the Date of Closing, for realty taxes, local improvement rates and charges, water and assessment rates, and other adjustments established by usual practice in the City of Toronto for the purchase and sale of similar properties. The day of Closing shall be for the account of the Purchaser. For the avoidance of doubt, the Vendor shall be responsible for all expenses and liabilities, and be entitled to receive all revenues accruing in respect of the Purchased Assets, if any, up to but not including the Date of Closing, and the Purchaser shall be responsible for all expenses and liabilities, and be entitled to receive all revenues accruing in respect of the Purchased Assets, from and after the Date of Closing.

As more particularly set out in section 21(b) hereof, the Vendor shall provide the Purchaser with its proposed Statement of Adjustments, together with such supporting documentation as the Purchaser may reasonably require, at least five (5) Business Days before Closing.

If the final cost or amount of an item that is to be adjusted cannot be determined at Closing, then an initial adjustment for such item shall be made at Closing, such amount to be estimated by the Vendor, acting reasonably, as of the Date of Closing on the basis of the best evidence available at the Closing as to what the final cost or amount of such item will be. All amounts which have been estimated as at the Date of Closing because they have not been finally determined at that date (the "Post Closing Adjustments") shall be finally adjusted on a one time basis once the Post Closing Adjustments have been determined and finalized. Once all of the Post Closing Adjustments are determined or on the Final Adjustment Date (as hereafter defined), whichever is earlier, the Purchaser shall provide a complete statement thereof, together with particulars relating thereto in reasonable detail, to the Vendor and within thirty (30) days thereafter the parties hereto shall make a final adjustment as of the Date of Closing for the Post Closing Adjustments. In the absence of agreement by the parties, the final cost or amount of an item shall be determined by an accountant or such other financial professional appointed jointly by the Vendor and the Purchaser, with the cost of such accountant's or other financial professional's determination being shared equally between the parties. All re-adjustments shall be requested in a detailed manner on or before the sixtieth (60<sup>th</sup>) day after the Date of Closing (the "Final Adjustment Date"), after which time neither party shall have any right to request re-adjustment.

All right, title and benefit to any realty tax appeals, reassessments or vacancy rebate applications and any rebates or reassessments of realty taxes for the Property for and in respect of the period after Closing shall be transferred and assigned by the Vendor to the Purchaser on Closing provided this shall not include supplementary assessments issued after Closing that relate to tax periods prior to Closing which shall remain the responsibility of the Vendor.

## 11. DATE OF CLOSING

The Transaction will close on the eleventh (11<sup>th</sup>) Business Day following the date on which the Approval and Vesting Order Condition is satisfied, or such other date as agreed between the Vendor and Purchaser in writing (the "Date of Closing" or "Closing").

## 12. ELECTRONIC REGISTRATION

- (a) The parties acknowledge that the electronic registration system ("TERS") is operative in the relevant land registry office (the "Registry Office") on a mandatory basis and the following provisions shall apply:
- (i) The Purchaser's Solicitor and the Vendor's Solicitors shall each be authorized TERS users and in good standing with the Law Society of Upper Canada, and are hereby authorized to enter into a document registration agreement in the form adopted by the Joint LSUC-CBAO Committee on Electronic Registration of Title Documents on September 19, 2000 or any successor version thereto (the "DRA"), establishing the procedures and timing for completing this Transaction, and which DRA shall be executed by both the Vendor's Solicitors and the Purchaser's Solicitors and exchanged by courier, e-mail or fax between said solicitors (such that each solicitor has a photocopy, PDF or faxed copy of the DRA duly executed by both solicitors) by no later than one (1) Business Day before the Date of Closing.
  - (ii) The delivery and exchange of the closing documents and the balance due at Closing:
    - (A) shall not occur contemporaneously with the registration of the Application for Vesting Order and other registerable documentation; and
    - (B) shall be governed by the DRA, pursuant to which the Vendor's Solicitors and Purchaser's Solicitors shall hold all closing documents in escrow, and will not be entitled to release them except in strict accordance with the provisions of the DRA.
- (b) The Purchaser expressly acknowledges and agrees that the Vendor will not be able to obtain release the Proposal Trustee's Certificate confirming the effectiveness of the Approval and Vesting Order until the balance of funds due on Closing, in accordance with the Statement of Adjustments, are remitted by wire transfer to the Vendor's Solicitors (or in such other manner as the Vendor or Vendor's Solicitors may in writing direct) to be held in escrow pending the release of the Proposal Trustee's Certificate.
- (c) Notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been made by the Vendor upon the Purchaser, when the Vendor's Solicitors have:
- (i) delivered all documents required to be delivered by the Vendor to the Purchaser pursuant to Section 21 hereof;

- 9 -

- (ii) advised the Purchaser's Solicitors in writing that the Vendor is ready, willing and able to complete the Transaction in accordance with the terms and provisions of this Agreement; and
- (iii) completed all steps required by TERS to complete the Transaction that can be performed or undertaken by the Vendor's Solicitors without the cooperation or participation of the Purchaser's Solicitors, and specifically when the "completeness signatory" for the Application for Vesting Order has been electronically "signed" by the Vendor's Solicitors,

without the necessity of personally attending upon the Purchaser or the Purchaser's Solicitors with the closing documents, and without any requirement to have an independent witness evidencing the foregoing.

- (d) Notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been made by the Purchaser upon the Vendor, when the Purchaser's Solicitors have:

- (i) delivered the balance due at Closing and all the documents required to be delivered by the Purchaser to the Vendor pursuant to Section 22 hereof;
- (ii) advised the Vendor's Solicitors in writing that the Purchaser is ready, willing and able to complete the transaction in accordance with the terms and provisions of this Agreement; and
- (iii) completed all steps required by TERS to complete this transaction that can be performed or undertaken by the Purchaser's Solicitors without the cooperation or participation of the Vendor's Solicitors, and specifically when the "completeness signatory" for the Application for Vesting Order has been electronically "signed" by the Purchaser's Solicitors,

without the necessity of personally attending upon the Vendor or the Vendor's Solicitors with the closing documents, and without any requirement to have an independent witness evidencing the foregoing.

- (e) If through no fault of the Purchaser's Solicitors or the Vendor's Solicitors TERS is unavailable on the Date of Closing, such that the Purchaser's Solicitors are unable to register the Application for Vesting Order, then the Transaction shall be completed in escrow in accordance with the terms of the DRA which shall apply until such time as TERS becomes available. Upon TERS becoming available, the Vendor's Solicitors shall advise the Purchaser's Solicitors forthwith and the parties shall arrange to complete the registration of the Approval and Vesting Order as expeditiously as possible, whereupon the escrow shall be released.

In the event of any conflict or inconsistency between the terms of this Section 12 and the terms of the DRA, the terms of this Section 12 shall prevail.

### **13. PRE-CLOSING RISK**

The Purchased Assets are and shall remain at the Vendor's risk until Closing and the Vendor shall hold all insurance policies and the proceeds thereunder, in trust, for the parties as their respective interests may appear pending Closing. In the event that the Purchased Assets shall be materially damaged prior to Closing, then the Vendor shall promptly notify the Purchaser in writing of such damage and the parties agree that Closing shall be postponed to the date that is twenty (20) Business Days after the Purchaser's receipt of the reparation cost determination from the Third Party Expert (as hereinafter defined and referred to below) (the "Extended Closing Date"), subject to any right of the Vendor to terminate in accordance with this section. If the cost of rectifying such damage exceeds Five Hundred Thousand five hundred thousand dollars (\$500,000) Dollars, as determined by an independent third party expert appointed by the Vendor (the "Third party Expert") at its own expense, and approved by the Purchaser (the "Third Party Damage Assessment"), then the Purchaser shall be entitled, in its sole and absolute discretion, to elect to terminate this Agreement, by delivery of written notice to the Vendor within ten (10) Business Days following receipt of a copy of the Third Party Damage Assessment, and in such event the parties hereto shall be released from all obligations and liabilities hereunder and the Deposit together with all interest accrued thereon shall be returned to the Purchaser forthwith, without deduction. If the Purchaser does not elect to terminate this Agreement as set out above, or if the cost of rectifying such damage does not exceed Five Hundred Thousand (\$500,000) Dollars, then the Transaction shall be completed on the Extended Closing Date and the Vendor shall on the Extended Closing Date, release and assign its interest in the insurance payable in respect thereof, if any, to the Purchaser and irrevocably and unconditionally direct the Vendor's insurer to pay the insurance proceeds to the Purchaser.

### **14. ASSUMED CONTRACTS, PERMITS AND WARRANTIES**

The Vendor shall provide the Purchaser with copies of all Contracts, Permits and Warranties in its possession or control as soon as practicable after the signing of this Agreement, to the extent that these have not yet been made available to the Purchaser. On or before the date that is five (5) Business Days after receipt of copies of any Contract, Permit and/or Warranty, as applicable, the Purchaser shall advise the Vendor in writing regarding those Contracts, Permits and Warranties that the Purchaser in its sole discretion wishes to assume on Closing. The Vendor, at its sole cost and expense, shall terminate on or before the Date of Closing, all Contracts, Permits and Warranties other than the Contracts, Permits and Warranties that the Purchaser has notified the Vendor of that it wants to assume.

If the Purchaser wishes to seek assignment of any Contracts, Permits or Warranties through an order made under s. 84.1 of the *Bankruptcy and Insolvency Act*, the Purchaser shall so advise the Vendor 15 days before the hearing of the motion to seek the Approval and Vesting Order, and the Purchaser shall be solely responsible for any amounts payable under subs. 84.1(5) of that Act.

### **15. PURCHASER'S REPRESENTATIONS AND WARRANTIES**

The Purchaser represents and warrants to the Vendor that, as at the date hereof:

- 11 -

- (a) the Purchaser is a corporation duly incorporated, organized and validly subsisting under the laws of the Province of Ontario and has all requisite corporate power, authority and capacity to execute and deliver and to perform each of its obligations pursuant to this Agreement; neither the execution of this Agreement nor the performance (such performance shall include, without limitation, the exercise of any of the Purchaser's rights and compliance with each of the Purchaser's obligations hereunder) by the Purchaser of the Transaction will violate:
- (i) the Purchaser's articles of incorporation and by-laws;
  - (ii) any agreement to which the Purchaser is bound;
  - (iii) any judgement or order of a court of competent authority or any Government Authority; or
  - (iv) any applicable law;
- and the Purchaser has duly taken, or has caused to be taken, all requisite corporate action required to be taken by it to authorize the execution and delivery of this Agreement and the performance of each of its obligations hereunder;
- (b) this Agreement has been duly executed and delivered by the Purchaser and constitutes a legal, valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms;
- (c) there are no orders or proceedings pending before any Government Authority, or threatened to be brought by or before any Government Authority by or against the Purchaser, affecting the legality, validity or enforceability of this Agreement or the consummation of the Transaction contemplated hereby by the Purchaser;
- (d) the Purchaser has made adequate arrangements to have sufficient funds available to satisfy its obligations to pay the Purchase Price to the Vendor on Closing;
- (e) the Purchaser will be responsible for and will remit to or reimburse, as applicable, all taxes, including (without limitation) land transfer tax, levies or the like that arise from the sale of the Purchased Assets unless otherwise specified in this Agreement; and
- (f) either (i) the Purchaser is not a "non-Canadian", as defined in the *Investment Canada Act* (Canada) ("ICA"); or (ii) if the Purchaser is a "non-Canadian", this transaction is not a reviewable transaction under the ICA, or, if applicable, the Purchaser is a non-Canadian for the purpose of the ICA and will within three (3) Business Days of the execution of this Agreement submit to Investment Canada a fully completed Application for Review with respect to the transaction contemplated in this Agreement and will use its best efforts to obtain approval from Investment Canada prior to Closing.

The Purchaser shall promptly deliver to the Vendor written notice specifying the occurrence or likely occurrence of any event which may result in any of the Purchaser's representations and warranties contained in this Agreement not continuing to be true as at Closing.

## 16. VENDOR'S REPRESENTATIONS AND WARRANTIES

The Vendor represents and warrants to the Purchaser that, as at the date hereof:

- (a) it is a valid and subsisting corporation under and governed by the laws of the Province of Ontario and has the necessary authority, power and capacity to enter into this Agreement and carry out the Transaction contemplated herein;
- (b) this Agreement and its obligations hereunder and the documents and Transaction contemplated herein shall have been authorized by all requisite proceedings and shall constitute legal, valid and binding obligations of the Vendor, and the completion of the Transaction contemplated by this Agreement will not result in the violation of any of the terms and provisions of the constating documents or by-laws of the Vendor;
- (c) at Closing, the Vendor shall not be a non-resident of Canada within the meaning of Section 116 of the *Income Tax Act* (Canada);
- (d) no other entity has any right or option or right of first refusal to purchase the Purchased Assets, or any of them, that is inconsistent with the provisions of this Agreement;
- (e) the Vendor is not aware of any specific inaccuracy in relation to the documentation provided by the Vendor to the Purchaser and contained in the data room made available to prospective purchasers; and
- (f) the Vendor has not received any notice that any expropriation or condemnation proceedings are pending or have been threatened with respect to the Property.

## 17. PURCHASER'S ACKNOWLEDGEMENT

The Purchaser acknowledges that:

- (a) it is relying entirely upon its own searches, investigations and inspections in entering into this Agreement;
- (b) the Vendor makes no representation or warranty of any kind that the present use or future intended use by the Purchaser of the Property is or will be lawful or permitted;
- (c) it is satisfied with the Property and all matters and things connected therewith or in any way related thereto;

- 13 -

- (d) it is purchasing the Property on an "as is, where is" and "without recourse" basis including, without limitation, outstanding work orders, deficiency notices, compliance requests, development fee, imposts, lot levies, sewer charges, zoning and building code violations and any outstanding requirements which have been or may be issued by any governmental authority having jurisdiction over the Property;
- (e) the Vendor shall have no liability for, or obligation with respect to, the value, state or condition of the Property;
- (f) except as other expressly stated in this Agreement, the Vendor has made no representations or warranties with respect to or in any way related to the Property, including without limitation, the following:
  - i. the title, quality, quantity, marketability, zoning, fitness for any purpose, state, condition, encumbrances, description, present or future use, value, location or any other matter or thing whatsoever related to the Property, either stated or implied; and
  - ii. the environmental state of the Property, the existence, nature, kind, state or identity of any Hazardous Materials on, under, or about the Property, the existence, state, nature, kind, identity, extent and effect of any administrative order, control order, stop order, compliance order or any other orders, proceedings or actions under the *Environmental Protection Act* (Ontario), or any other statute, regulation, rule or provision of law and the existence, state, nature, kind, identity, extent and effect of any liability to fulfill any obligation to compensate any third party for any costs incurred in connection with or damages suffered as a result of any discharge of any Hazardous Materials whether on, under or about the Property or elsewhere.

## 18. ENCROACHMENTS

The Purchaser agrees that the Vendor shall not be responsible for any matters relating to encroachments on or to the Buildings or Lands, or encroachments onto adjoining lands, or to remove same, or for any matters relating to any applicable zoning regulations or by-laws in existence now or in the future affecting any of the Purchased Assets.

## 19. INDEMNIFICATION

The Purchaser shall indemnify and save harmless the Vendor and its directors, officers, employees, agents and representatives (collectively, the "Indemnitees") from and against any and all liabilities, obligations, losses, damages, penalties, notices, judgments, suits, claims, demands, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against the Indemnitees or any of them arising out of or in connection with the operations of the Purchaser on the Buildings or Lands after the Date of Closing, or any order, notice, directive, or requirement under, or breaches, violations or non-compliance with any Environmental Laws after the Date of Closing as such breaches relate to the Purchaser's use and occupation of the Lands and Buildings, or as a result of the disposal, storage, release or spill, or



threat of release or spill , on or about the Lands and/or the Building, of any Hazardous Substance after the Date of Closing (“**Claims**”) in connection with the Purchaser’s use and occupation thereof . The obligation of the Purchaser hereunder shall survive the Date of Closing. Provided however that the foregoing indemnity of the Purchaser shall not extend to or include any Claims, including without limitation Claims for breaches of Environmental Laws, incurred or asserted against Indemnitees for breaches, actions or inactions prior to the Date of Closing incurred by or asserted against the Indemnitees for breaches of Environmental Laws by the Vendor prior to the Date of Closing.

## **20. NON-REGISTRATION**

The Purchaser hereby covenants and agrees not to register notice of this Agreement against title to the Property. Should the Purchaser register notice of this Agreement on title to the Property, the Vendor may (as agent and attorney of the Purchaser) cause the removal of such notice of this Agreement from the title to the Property and the Purchaser irrevocably nominates, constitutes and appoints the Vendor as its agent and attorney in fact and in law to cause the removal of such notice of this Agreement from title to the Property. Provided however and notwithstanding the foregoing, the Purchaser shall be entitled, at its option, to register a certificate of pending litigation on title to the Property in the event that the Vendor breaches this Agreement and, through no fault of the Purchaser, fails to complete the Transaction herein described.

## **21. VENDOR’S CLOSING DELIVERIES**

The Vendor covenants to execute, where applicable, and deliver the following to the Purchaser at Closing or on such other date expressly provided herein:

- (a) **Approval and Vesting Order:** the Approval and Vesting Order;
- (b) **Statement of Adjustments:** a statement of adjustments prepared in accordance with Section 10 hereof to be delivered at least five (5) Business Days before Closing;
- (c) **Vendor’s Certificate:** the Vendor’s certificate and indemnity setting out that each of the Vendor’s representations and warranties contained in this Agreement are true as at Closing;
- (d) **Keys:** all master keys and duplicate keys relating to the Property in the Vendor’s possession;
- (e) **Proposal Trustee’s Certificate:** the Proposal Trustee’s Certificate, subject to section 12(b) hereof;
- (f) **Allocation Agreement:** if and only if the Vendor and Purchaser have agreed on the Allocation in accordance with Section 6, an allocation agreement in such form as shall be approved by the Vendor’s Solicitor and the Purchaser’s Solicitor, acting reasonably, containing the Allocation of the Purchase Price as so agreed.

- 15 -

- (g) **Undertaking to Re-Adjust:** an undertaking by the Vendor to re-adjust the adjustments in accordance with Section 10;
- (h) **Bill of Sale and Assignment of Warranties:** a bill of sale for the Chattels, together with the benefit of all transferrable warranties in respect of the Chattels;
- (i) **Assignment and Assumption of Contracts;**
- (j) **Assignment and Assumption of Permits;**
- (k) **Assignment and Assumption of Warranties;** and
- (l) **Further Documentation:** all other documents which may be reasonably required by the Purchaser's Solicitors to give effect to the Transaction herein contemplated.

(the "Vendor's Closing Deliveries").

All documentation shall be in form and substance acceptable to the Purchaser and the Vendor each acting reasonably and in good faith, provided that none of such documents shall contain covenants, representations or warranties which are in addition to or more onerous upon either the Vendor or the Purchaser than those expressly set forth in this Agreement

## 22. PURCHASER'S CLOSING DELIVERIES

The Purchaser covenants to execute, where applicable, and deliver the following to the Vendor at or prior to Closing:

- (a) **Purchaser's Certificates:** the Purchaser's certificate and indemnity setting out that each of the Purchaser's representations and warranties contained in this Agreement are true as at Closing and, if applicable, the Purchaser's certificate described in Subsection 25(b) hereof;
- (b) **HST Indemnity:** the indemnity provided for under Subsection 25(c) hereof;
- (c) **Direction re Title:** a direction re title to confirm the name in which title to the Purchased Assets will be taken, provided that such direction must be provided to the Vendor no less than 3 Business Days before the schedule hearing date for the motion to obtain the Approval and Vesting Order;
- (d) **Balance Due at Closing:** the balance of the Purchase Price described in Subsection 5(b) hereof;
- (e) **Application for Vesting Order:** the Purchaser's Solicitor will prepare the application for vesting order in Teraview in accordance with the Purchaser's direction re title;
- (f) **Undertaking to Re-Adjust:** an undertaking by the Purchaser to re-adjust the adjustments in accordance with Section 10;

- 16 -

- (g) **Allocation Agreement:** if and only if the Vendor and Purchaser have agreed on the Allocation in accordance with Section 6, an allocation agreement in such form as shall be approved by the Vendor's Solicitor and the Purchaser's Solicitor, acting reasonably, containing the Allocation of the Purchase Price as so agreed;
- (h) **Assignment and Assumption of Contracts;**
- (i) **Assignment and Assumption of Permits;**
- (j) **Assignment and Assumption of Warranties**
- (k) **Further Documentation:** all other documents which may be reasonably required by the Vendor's Solicitors to give effect to the Transaction herein contemplated.

(the "Purchaser's Closing Deliveries").

All documentation shall be in form and substance acceptable to the Purchaser and the Vendor each acting reasonably and in good faith, provided that none of such documents shall contain covenants, representations or warranties which are in addition to or more onerous upon either the Vendor or the Purchaser than those expressly set forth in this Agreement.

### **23. DOCUMENTATION PREPARATION AND REGISTRATION**

The Vendor shall prepare or cause to be prepared all documentation described in Section 21 hereof and shall deliver draft documentation to the Purchaser not less than three (3) Business Days prior to Closing. The Purchaser shall prepare or cause to be prepared all documentation described in Section 22 hereof and shall deliver draft documentation to the Vendor not less than three (3) Business Days prior to Closing. Except as otherwise expressly provided in this Agreement, all such documentation shall be in form and substance satisfactory to the Vendor and the Purchaser, acting reasonably. The Purchaser shall be responsible for and pay all registration costs incurred in connection with the Transaction. The Vendor shall be responsible for the costs of preparing and registering any discharges of Encumbrances with respect to the Purchased Assets which are not Permitted Encumbrances. Except as otherwise expressly provided in this Agreement, each of the Vendor and the Purchaser shall be responsible for and pay all legal and other professional/consultant fees and disbursements incurred by it, directly or indirectly, in connection with this Agreement.

### **24. LAND TRANSFER TAXES AND RETAIL SALES TAXES**

The Purchaser shall pay all land transfer taxes (as required pursuant to the *Land Transfer Tax Act* (Ontario) and, if applicable, all retail sales taxes (as required pursuant to the *Retail Sales Tax Act* (Ontario) payable in connection with the transfer of the Purchased Assets pursuant to this Agreement.

### **25. HARMONIZED SALES TAX**

- (a) **Application of HST to this Agreement:** The Purchaser acknowledges and agrees that the Transaction contemplated hereunder shall be subject to the goods and

- 17 -

services tax and harmonized sales tax ("HST") levied pursuant to the Act and that HST shall be in addition to and not included in the Purchase Price and shall be collected and remitted in accordance with the Act.

- (b) **Self-Assessment:** If:
- (i) the Vendor is a non-resident of Canada or the Vendor would be a non-resident of Canada but for Subsection 132(2) of the Act; and/or
  - (ii) the Purchaser is a "prescribed recipient" under the Act and/or is registered under the Act,

then the Purchaser shall deliver, prior to Closing, its certificate in form prescribed by the Act or, if no such form is prescribed, then in form satisfactory to the Vendor and the Vendor's Solicitors, acting reasonably, certifying that the Purchaser shall be liable for, shall self-assess and shall remit to the appropriate Government Authority all HST payable in respect of the Transaction contemplated hereunder. If Subsection (b)(i) hereof shall be applicable, then the Purchaser's certificate shall also include certification of the Purchaser's prescription and/or registration, as the case may be, and the Purchaser's HST registration number. If the Purchaser shall fail to deliver its certificate, then the Purchaser shall tender to the Vendor, at Closing, in addition to the balance otherwise due at Closing, an amount equal to the HST that the Vendor shall be obligated to collect and remit in connection with the said Transaction.

- (c) **HST Indemnity:** The Purchaser shall indemnify and save harmless the Vendor from all claims, liabilities, penalties, interest, costs and legal and other expenses incurred by the Vendor as a result of the failure by the Purchaser to comply with the provisions of this section 25.

## 26. PLANNING ACT (ONTARIO)

This Agreement shall be effective to create an interest in the Buildings or Lands for the Purchaser only if Part VI of the *Planning Act* (Ontario) is complied with prior to Closing or if a Court orders the completion of the Transaction notwithstanding what would otherwise be non-compliance with Part VI of the *Planning Act* (Ontario).

## 27. DOCUMENTATION IN CONNECTION WITH THE LANDS

- (a) The Vendor agrees to deliver to the Purchaser prior to Closing any and all information, surveys, reports, studies, files, agreements and documentation within the Vendor's possession or control in relation to the Property including as requested by the Purchaser, without limitation, the following: (i) all surveys, plans and drawings of the Property; (ii) copies of all leases, employment, service, construction, development, management and maintenance contracts, if any, in respect of the Property, it being understood that there will be no obligation by the Purchaser to assume any lease, employee or contract on closing unless otherwise provided in the Purchase Agreement; (iii) authorizations to governmental

- 18 -

authorities to release any requested information about the Property to the Purchaser; (iv) a list of all outstanding and continuing litigation, if any, concerning the Property; (v) copies of property tax bills and assessments for the last three years; (vi) true and complete copies of all environmental reports and building condition reports pertaining to the Property; and (vii) copies of any applications for site plan approval, minor variances, rezoning, development or building permit(s) with the comments/approval from municipality. The Vendor will authorize its consultants to provide the Purchaser with letters of reliance in relation to the environmental reports and building condition reports prepared for the Vendor, provided that any fees or amounts required by such consultants for a reliance letter shall be to the account of the Purchaser.

- (b) The Purchaser acknowledges and agrees that any and all information and documentation provided pursuant to section (a) shall be considered "Information" within the meaning of the Confidentiality and Non-Disclosure Agreement that the Purchaser signed in order to take part in the JLL sale process.
- (c) The Purchaser acknowledges and agrees that its obligation to perform its obligations under this Agreement is in no manner conditional on the form or content of any of the information or documentation that may be provided, or the absence of any information or documentation to be provided, as contemplated in section (a), and without limiting the generality of the foregoing that there is no due diligence condition in favour of the Purchaser in connection with this Agreement.

## 28. ACCESS

The Purchaser may attend at the Lands in order to conduct one or more inspections at its own cost prior to Closing. Any testing or inspection of any of the Purchased Assets shall solely be on a non-destructive basis.

## 29. NOTICE

Any notice given hereunder shall be in writing and delivered or communicated by telecopier machine or e-mail to:

in the case of the Purchaser at:

c/o Canadian Storage Investment Trust  
 266 King St. W., Suite 405  
 Toronto, ON M5V 1H8  
 Attention: Christopher Donald  
 Email: [chris.donald@xyzstorage.com](mailto:chris.donald@xyzstorage.com)

- 19 -

with a copy to the Purchaser's Solicitors:

Gowling WLG (Canada) LLP  
 1 First Canadian Place, Suite 1600  
 100 King St. W.  
 Toronto, ON M5X 1G5  
 Attention: Clifton P. Prophet  
 Email: [clifton.prophet@gowlingwlg.com](mailto:clifton.prophet@gowlingwlg.com)

and in the case of the Vendor at:

33 Laird Inc..  
 5140 Yonge Street, Suite 2360  
 Toronto ON M2N 6L7  
 Attention: Jason L.S. Birnboim  
 Email: [jason@beauxproperties.com](mailto:jason@beauxproperties.com)

with a copy to the Vendor's Solicitors:

Goldman Sloan Nash & Haber LLP  
 480 University Ave., Suite 1600  
 Toronto ON M5G 1V2  
 Attention: Brendan Bissell  
 Email: [bissell@gsnh.com](mailto:bissell@gsnh.com)

Such notice shall be deemed to have been delivered upon delivery or communicated upon transmission unless such notice is delivered or transmitted outside of usual business hours, in which event the notice shall be deemed to have been delivered or transmitted on the next Business Day. A party may change its address and/or telecopier machine number by providing notice in accordance with this Section 29.

### **30. WAIVER OF CONDITIONS**

Except as otherwise provided in this Agreement, all conditions contained herein have been inserted for the benefit of either the Vendor or the Purchaser, as indicated, and are conditions of the obligations of such party to complete the Transaction contemplated hereunder at Closing and, save and except for the Approval and Vesting Order Condition, are not conditions precedent of this Agreement. Save and except for the Approval and Vesting Order Condition which is a true condition precedent, any one or more of the said conditions may be waived, in writing, in whole or in part, by the benefiting party without prejudice to the benefiting party's right of termination in the event of the non-fulfilment of any other condition, and, if so waived, this Agreement shall be read exclusive of the said condition or conditions so waived. For greater certainty, the closing of the Transaction by a party hereof shall be deemed to be a waiver by such party of compliance with any condition inserted for its benefit and not satisfied at Closing.

**31. SEVERABILITY**

If any provision contained in this Agreement or the application thereof to any person/entity or circumstance is, to any extent, invalid or unenforceable, the remainder of this Agreement and the application of such provision to persons/entities or circumstances other than those to whom/which it is held invalid or unenforceable, shall not be affected thereby and each provision contained in this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

**32. DIVISION/HEADINGS**

The division of this Agreement into Sections, Subsections, Paragraphs and Subparagraphs and the insertion of headings or captions are for convenience of reference only and shall not affect the construction or interpretation of this Agreement or any part hereof.

**33. ENTIRE AGREEMENT**

This Agreement, the schedules attached hereto and any agreements, instruments and other documents herein contemplated to be entered into between the Vendor and the Purchaser constitute the entire agreement between the Vendor and the Purchaser in respect of the Purchased Assets. Each of the parties acknowledges that, except as contained in this Agreement, there is no representation, warranty, collateral agreement or condition (whether a direct or collateral condition or an express or implied condition) which induced it to enter into this Agreement. Each of the parties agrees that all provisions of this Agreement, and all provisions of any and all documents and security delivered in connection herewith, shall not merge and except where otherwise expressly stipulated herein, shall survive the closing of the Transaction contemplated by this Agreement.

**34. CUMULATIVE REMEDIES**

No remedy conferred upon or reserved to one or both of the parties hereto is intended to be exclusive of any other remedy, but each remedy shall be cumulative and in addition to every other remedy conferred upon or reserved hereunder, whether such remedy shall be existing or hereafter existing, and whether such remedy shall become available under common law, equity or statute.

**35. INTERPRETATION**

This Agreement shall be read with all changes of gender and number as required by the context.

**36. REFERENCES TO STATUTES**

Except as otherwise provided in this Agreement, references to any statute herein shall be deemed to be a reference to such statute and any and all regulations from time to time promulgated thereunder and to such statute and regulations as amended or re-enacted from time to time. Any reference herein to a specific section or sections, paragraph or paragraphs and/or clause or clauses of any statute or regulations promulgated thereunder shall be deemed to include a reference to any corresponding provision of future law.

**37. TIME OF ESSENCE**

Time shall in all respects be of the essence hereof provided that the time for the doing or completing of any matter referred to herein may be extended or abridged by an agreement, in writing, executed by the Vendor and the Purchaser or their respective solicitors who are hereby expressly appointed for that purpose.

**38. CANADIAN FUNDS**

All references to dollar amounts contained in this Agreement shall be deemed to refer to Canadian funds.

**39. TENDER**

Any tender of notices, documents and/or monies hereunder may be made upon the Vendor or the Purchaser or their respective solicitors. Monies may be tendered by a negotiable cheque certified or bank draft drawn on or issued by a Canadian chartered bank.

**40. FURTHER ASSURANCES**

Except as otherwise expressed herein to the contrary, each party shall, without receiving additional consideration therefor, co-operate with and take such additional actions as may be requested by the other party, acting reasonably, in order to carry out the purpose and intent of this Agreement.

**41. CONFIDENTIALITY**

The Purchaser agrees that all information and documents supplied by the Vendor or anyone on its behalf to the Purchaser or anyone on the Purchaser's behalf (including but not limited to information in the schedules hereto) shall, unless and until Closing occurs, be received and kept by the Purchaser and anyone acting on the Purchaser's behalf on a confidential basis and, without the Vendor's prior written consent shall not be disclosed to any third party. If for any reason Closing does not occur, all such documents shall forthwith be returned intact to the Vendor and no copies or details thereof shall be retained by the Purchaser or anyone acting on its behalf. The Purchaser and Vendor further agree that unless and until the terms of this Agreement become public knowledge in connection with an application to the Court, the Purchaser shall keep such terms confidential and shall not disclose them to anyone except the Purchaser's solicitors, agents or lenders acting in connection herewith and then only on the basis that such persons also keep such terms confidential as aforesaid.

**42. NON-BUSINESS DAYS**

In the event that any date specified or any date contemplated in this Agreement shall fall upon a day other than a Business Day, then such date shall be deemed to be the next following Business Day.



**43. GOVERNING LAWS**

This Agreement has been executed in the Province of Ontario and, for all purposes, shall be construed in accordance with and governed by the laws in effect within the Province of Ontario.

**44. ASSIGNMENT**

No party may assign its rights or obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, the Purchaser shall have the right, until two (2) Business Days prior to the date set for the motion to be heard by the Court for the granting of the Approval and Vesting Order, upon written notice to the Vendor's Solicitors, to assign, in whole or part, this Agreement and its rights to acquire the Purchased Assets hereunder to any company or companies affiliated (as that term is defined in the Ontario *Business Corporations Act*) with the Purchaser, provided that such assignment shall not release the Purchaser from its obligations under this Agreement.

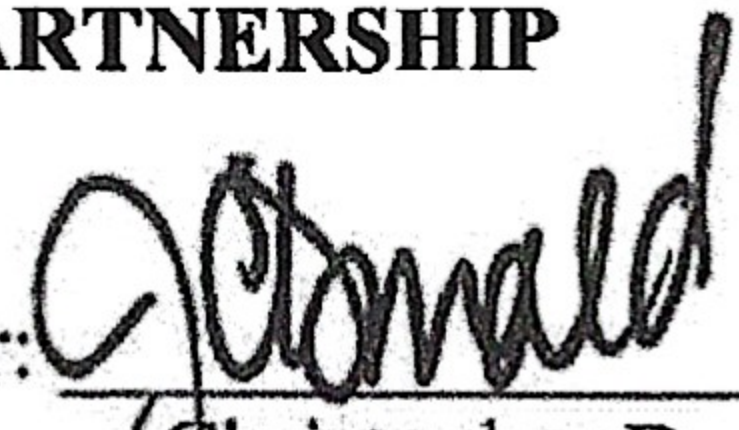
**45. SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

[The remainder of this page has intentionally been left blank.]

DATED as of the date first mentioned above.

**33 LAIRD DEVELOPMENT INC.,  
in its capacity as general partner of,  
33 LAIRD DEVELOPMENT LIMITED  
PARTNERSHIP**

Per:   
Name: Christopher Donald  
Title: ASD

I have authority to sign on behalf of the trust.

The Vendor hereby accepts this Agreement to purchase and its terms and agrees with the Purchaser to duly complete the Transaction contemplated thereunder.

**33 LAIRD INC.**

Per: \_\_\_\_\_  
Name: Jason L.S. Birnboim  
Title: President

I have authority to bind the corporation.

DATED as of the date first mentioned above.

**33 LAIRD DEVELOPMENT INC.,  
in its capacity as general partner of,  
33 LAIRD DEVELOPMENT LIMITED  
PARTNERSHIP**

Per: \_\_\_\_\_  
Name: Christopher Donald  
Title:

I have authority to sign on behalf of the trust.

The Vendor hereby accepts this Agreement to purchase and its terms and agrees with the Purchaser to duly complete the Transaction contemplated thereunder.

**33 LAIRD INC.**

Per: \_\_\_\_\_  
Name: Jason L.S. Birboim  
Title: President

I have authority to bind the corporation.

**SCHEDULE 1(a)**

**APPROVAL AND VESTING ORDER**

Estate No. 31-2693094

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

THE HONOURABLE ► ) ► DAY, THE ► DAY  
JUSTICE ► ) OF ►, 2021

**IN THE MATTER OF THE NOTICE OF INTENTION TO  
MAKE A PROPOSAL OF 33 LAIRD INC. A CORPORATION  
INCORPORATED UNDER THE ONTARIO *BUSINESS  
CORPORATIONS ACT***

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by 33 Laird Inc. (the “**Debtor**”), for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Debtor and [NAME OF PURCHASER] (the “**Purchaser**”) made as of [DATE] and appended to the Report of MNP Ltd.(the “**Proposal Trustee**”) in its capacity as the trustee of the proposal of the Debtor [DATE] (the “**Report**”), and vesting in the Purchaser the Debtor’s right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”), was heard this day at ●.

**ON READING** the Report and on hearing the submissions of counsel for the Debtor and the Proposal Trustee, [NAMES OF OTHER PARTIES APPEARING], no one appearing for any other person on the service list, although properly served as appears from the affidavit of [NAME] sworn [DATE] filed:

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Debtor is hereby authorized and approved, with such minor amendments as the Proposal Trustee may deem necessary. The Debtor 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.

2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Proposal Trustee's certificate to the Purchaser substantially in the form attached as **Schedule A** hereto (the "**Proposal Trustee's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the 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, leases, 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 Justice Conway dated December 16, 2020; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; (iii) any leases of all or part of the Real Property (as hereafter defined) and (vi) those Claims listed on **Schedule B** 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 C**) 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.

3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Toronto of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in **Schedule D** hereto (the "**Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule B hereto.

4. 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 Proposal Trustee'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.

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

6. 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 the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

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 the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, 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.

7. THIS COURT HEREBY REQUESTS the aid and recognition of 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 Debtor, the Proposal Trustee and their 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 Debtor and the Proposal Trustee as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Debtor, the Proposal Trustee and their agents in carrying out the terms of this Order.

**Schedule A – Form of Proposal Trustee’s Certificate**

Estate No. 31-2693094

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF THE NOTICE OF INTENTION TO  
MAKE A PROPOSAL OF 33 LAIRD INC. A CORPORATION  
INCORPORATED UNDER THE ONTARIO *BUSINESS  
CORPORATIONS ACT***

**PROPOSAL TRUSTEE’S CERTIFICATE**

**RECITALS**

- A. 33 Laird Inc. (the “**Debtor**”) filed a Notice of Intention to make a proposal pursuant to the *Bankruptcy and Insolvency Act* (Canada) on November 28, 2020 under which MNP Ltd was named as trustee of that proposal (the “**Proposal Trustee**”);
- B. Pursuant to an Order of the Honourable Justice Conway dated February 16, 2020 a DIP Borrowing Charge was granted over the assets of the Debtor;
- C. Pursuant to an Order of the Court dated [DATE], the Court approved the agreement of purchase and sale made as of [DATE OF AGREEMENT] (the “**Sale Agreement**”) between the Debtor and [NAME OF PURCHASER] (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Debtor’s 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 Proposal Trustee 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 the Sale Agreement have been satisfied or waived by the Debtor and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Proposal Trustee.
- D. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

**THE PROPOSAL TRUSTEE CERTIFIES** the following:

1. The Purchaser has paid and the Debtor has received the Purchase Price for the Purchased Assets payable on the Date of Closing pursuant to the Sale Agreement;
1. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Debtor and the Purchaser;
2. The Transaction has been completed to the satisfaction of the Proposal Trustee; and
3. This Certificate was delivered by the Proposal Trustee at [TIME] on ► [DATE].

**MNP Ltd., solely in its capacity as trustee of the proposal of 33 Laird Inc., and not in its personal or corporate capacity and without personal or corporate liability**

Per: \_\_\_\_\_

Name:

Title:

I have authority to bind the corporation.



**Schedule B – Specific Claims to be deleted and expunged from title to Real Property**

1. the following Financing Statements/Claims for Lien registered under the *Personal Property Security Act (Ontario)* (“**PPSA Registrations**”):

File Number	Registration Number	Secured Party
726410295	20170407 1137 1590 1354 20190911 1452 1590 4964	DUCA FINANCIAL SERVICES CREDIT UNION LTD.
726410313	20170407 1138 1590 1355 20190911 1452 1590 4963	DUCA FINANCIAL SERVICES CREDIT UNION LTD.

2. a Charge registered on title to the Real Property as Instrument No. **AT4550601** by DUCA Financial Services Credit Union Ltd. (the “**DUCA Charge**”);
3. a Notice of Assignment of Rents General registered on title to the Real Property as Instrument No. **AT4550614** by DUCA Financial Services Credit Union Ltd. (the “**DUCA Assignment of Rents**”);
4. Instruments Nos. **AT4815354**, **AT5243559**, **AT5247712** which are registered on title to the Real Property and which relate to the DUCA Charge and the DUCA Assignment of Rents;
5. the Charge registered on title to the Real Property as Instrument No. **AT5494803** by Sealink J.V. Ltd.;
6. the Charge registered on title to the Real Property as Instrument No. **AT5494804** by Beau Properties International Inc.;
7. a Charge registered on title to the Real Property as Instrument No. **AT5572805** by Beau Properties International Inc. and Sealink JV Ltd.;
8. Instrument No. **AT5243555** (Site plan Agreement) registered on title to the Real Property;
9. a Construction Lien registered on title to the Real Property as Instrument No. **AT5569465** Maxxwel & Co. Inc. (the “**Maxwell Lien**”);
10. a Construction Lien registered on title to the Real Property as Instrument No. **AT5593811** by Aztec Structural Restoration Inc. (the “**Aztec Lien**”);
11. a Certificate of Action registered on title to the Real Property as Instrument No. **AT5594868** by Maxxwel & Co. Inc. in connection with the Maxwell Lien;
12. a Certificate of Action registered on title to the Real Property as Instrument No. **AT5635827** by Aztec Structural Restoration Inc. in connection with the Aztec Lien;

13. all leases entered into by the Debtor with tenants of the Real Property including without limiting the generality of the foregoing:
- (a) Retail Lease dated January 1<sup>st</sup>, 2017 made between the Debtor, as landlord, 2557479 Ontario Inc., as tenant, and Organic Garage (Canada) Ltd., as indemnifier, as amended by Lease Amending Agreement made between the said parties dated May 16<sup>th</sup>, 2019;
  - (b) Offer to Lease dated March 5<sup>th</sup>, 2019, between the Debtor, as landlord, and Aim RX Inc., as tenant, as amended by the said parties by a letter agreement dated March 13<sup>th</sup>, 2019, as amended by the said parties by a letter agreement dated May 16<sup>th</sup>, 2019, as amended by the said parties by a letter agreement dated August 9<sup>th</sup>, 2019, and as subsequently revived and amended between the said parties by a letter agreement dated August 9<sup>th</sup>, 2019;
  - (c) Offer to Lease dated June 22, 2017 between the Debtor, as landlord, and Vivo Pizza Pasta Franchising Inc., as tenant, as amended by notice of waiver dated February 13<sup>th</sup>, 2019 signed by the Debtor;
  - (d) Offer to Lease dated March 20<sup>th</sup>, 2017 made between the Debtor, as landlord, and Acuity Group Inc., as tenant, as revived and amended by a letter agreement dated September 27<sup>th</sup>, 2019 made between the parties;
  - (e) Offer to Lease dated April 1<sup>st</sup>, 2019 made between the Debtor, as landlord, and Global Pet Food Stores Inc., as tenant, as amended by notice of waiver dated May 23<sup>rd</sup>, 2019 signed by Global Pet Food Stores Inc., as amended by notice of waiver dated July 2<sup>nd</sup>, 2019 signed by the Debtor;
  - (f) Offer to Lease dated October 22<sup>nd</sup>, 2019 made between the Debtor, as landlord, and Nails For You Limited, as tenant;
  - (g) Offer to Lease dated December 24<sup>th</sup>, 2019 made between the Debtor, as landlord, and 2730419 Ontario Inc., o/a Davina's Swim House, as tenant;
  - (h) Retail Lease dated December 1<sup>st</sup>, 2017 made between the Debtor, as landlord, and Happy Bathrooms Inc., as tenant;
  - (i) Offer to Lease dated June 14<sup>th</sup>, 2016 made between the Debtor, as landlord, and 0866825 Canada Corp., d/b/a "Glow Zone", as tenant, as amended by notice of waiver dated February 12<sup>th</sup>, 2018 signed by the Debtor, as amended by a letter agreement signed by the said parties dated December 6<sup>th</sup>, 2018, as revived and amended by a letter agreement dated September 27<sup>th</sup>, 2019;
  - (j) Retail Lease dated April 1<sup>st</sup>, 2017 made between the Debtor, as landlord, and 2569773 Ontario Inc., as tenant, and Ernest Pozzobon, as indemnifier; and

Indemnification Agreement dated April 1<sup>st</sup>, 2019 made between the Debtor and Ernest Pozzobon, as indemnifier; and

- (k) Offer to Lease between the Debtor, as landlord, and Anesh Srikrishnakumar, as tenant, made on June 4<sup>th</sup>, 2020.

**Schedule C – Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Real Property**

**(unaffected by the Vesting Order)**

Any minor easements for the supply of domestic utility or telephone services to the Property or adjacent properties; and easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the use of the Property; and the following encumbrances registered on title to the Property

1. Instrument No. TL42961 (Bylaw) registered on title to the Real Property;
2. Instrument No. AT4643103 (Bylaw) registered on title to the Real Property;
3. Instrument No. AT4815350 (Notice) registered on title to the Real Property;
4. Instrument No. AT5243558 (Easement) registered on title to the Real Property; and
5. Instrument No. AT5274151 (Encroachment Agreement) registered on title to the Real Property;

**Schedule D – Legal Description**

PIN: 10369-0360 LT

Description PART LOTS 685, 686, 687, 688, 689, 690 AND 691 PLAN 2120, PART LOTS 12 & 13 CONCESSION 3 FROM THE BAY (YORK), PART LEASIDE ROAD PLAN 1535 AND PART CANVARCO ROAD PLAN 2921 (CLOSED BY BYLAW 627 AS IN EY173327), PARTS 2, 3, 4 & 5 PLAN 66R30829; TOGETHER WITH AN EASEMENT OVER PARTS 1 & 6, PLAN 66R30829 AS IN AT5243556; SUBJECT TO AN EASEMENT IN GROSS OVER PART 3, PLAN 66R30829 AS IN AT5243558; CITY OF TORONTO

**SCHEDULE 1(b)**

**CHATTELS**

Any furniture, furnishings, equipment, inventory, parts, materials, supplies and machinery including, but not limited to, all windows, elevators or elevator parts, those items depicted in the photographs forming part of this Schedule 1(b), and together with any other such furniture, furnishings, equipment, inventory, parts, materials, supplies and machinery used in the maintenance, repair or operation of the Property.



































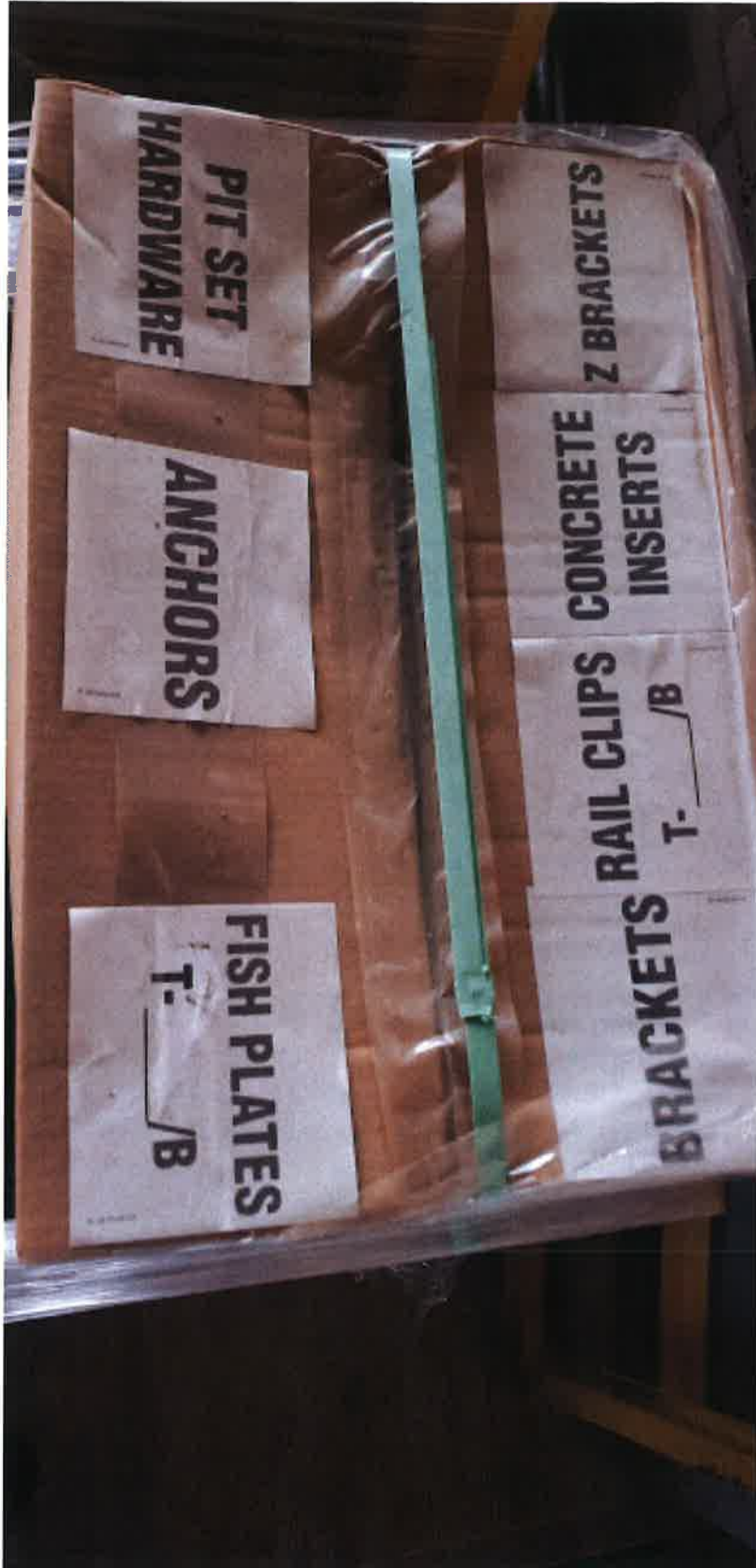
















































































**SCHEDULE 1(d)**

**PERMITTED ENCUMBRANCES**

Any minor easements for the supply of domestic utility or telephone services to the Property or adjacent properties; and easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the use of the Property; and the following encumbrances registered on title to the Lands

1. Instrument No. TL42961 (Bylaw) registered on title to the Lands;
2. Instrument No. AT4643103 (Bylaw) registered on title to the Lands;
3. Instrument No. AT4815350 (Notice) registered on title to the Lands;
4. Instrument No. AT5243558 (Easement) registered on title to the Property; and
5. Instrument No. AT5274151 (Encroachment Agreement) registered on title to the Lands.

This is **Exhibit "J"** to the affidavit of Jason L. S. Birnboim sworn before me via Facetime this 4<sup>th</sup> day of June, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



A Commissioner, etc.

SOEL TURGEON

The applicant(s) hereby applies to the Land Registrar.

**Properties**

*PIN* 10369 - 0198 LT

*Description* LT 685 PL 2120 TWP OF YORK; PT LT 686 PL 2120 TWP OF YORK; PT LT 687 PL 2120 TWP OF YORK; PT LT 688 PL 2120 TWP OF YORK; PT LT 689 PL 2120 TWP OF YORK; PT LT 690 PL 2120 TWP OF YORK; PT LT 691 PL 2120 TWP OF YORK; PT LT 692 PL 2120 TWP OF YORK; PT LT 12 CON 3 FTB TWP OF YORK; PT LT 13 CON 3 FTB TWP OF YORK; PT LEASIDE RD PL 1535 TWP OF YORK AS IN TL46644; PT CANVARCO RD PL 2921 TWP OF YORK CLOSED BY EY173327, AS IN EY184825; TORONTO , CITY OF TORONTO

*Address* 33 LAIRD DRIVE  
TORONTO

**Consideration**

*Consideration* \$0.00

**Applicant(s)**

The notice is based on or affects a valid and existing estate, right, interest or equity in land

*Name* CITY OF TORONTO

*Address for Service* Legal Services  
55 John Street  
Stn. 1260, 26th Flr., Metro Hall  
Toronto ON M5V 3C6

This document is not authorized under Power of Attorney by this party.

This document is being authorized by a municipal corporation Brian Haley, Solicitor for the City of Toronto.

**Statements**

This notice is pursuant to Section 71 of the Land Titles Act.

This notice is for an indeterminate period

Schedule: See Schedules

**Signed By**

David Kwok-Wai Lee	55 John St., 26th Floor Toronto M5V 3C6	acting for Applicant(s)	Signed	2019 09 23
--------------------	---	----------------------------	--------	------------

Tel 416-392-8047

Fax 416-397-5624

I have the authority to sign and register the document on behalf of the Applicant(s).

**Submitted By**

CITY OF TORONTO	55 John St., 26th Floor Toronto M5V 3C6	2019 09 23
-----------------	---	------------

Tel 416-392-8047

Fax 416-397-5624

**Fees/Taxes/Payment**

*Statutory Registration Fee* \$64.40

*Total Paid* \$64.40

**File Number**

*Applicant Client File Number :* PSP2-700-2018-5058 (ID 205002565)

**SITE PLAN AGREEMENT** made this 23<sup>rd</sup> day of July, 2019.

08/13

29/03/2018

**B E T W E E N:**

**33 LAIRD INC.**

(the "Owner")

- and -

**CITY OF TORONTO**

(the "City")

**WHEREAS:**

- (A) The Owner is the owner of the land known as 33 Laird Drive, in the City of Toronto, more particularly described in Schedule "A" to this Agreement (the "Land");
- (B) Pursuant to Subsection 114(2) of the *City of Toronto Act, 2006*, S.O. Chapter 11, Schedule A, the Council for the City of Toronto by enactment of By-law No. 774-2012 designated the City of Toronto as a site plan control area;
- (C) The Owner has applied to the City under Section 41 of the *Planning Act* and Section 114 of the *City of Toronto Act, 2006*, for site plan approval in respect of its development for a new two-storey building containing commercial space and retain the existing heritage building (the "Project");
- (D) Section 114(17)(b) of the *City of Toronto Act, 2006*, states that the City may by by-law delegate any of the City of Toronto's powers or authority in Section 114 to an appointed official;
- (E) Article 415-19 of the Toronto Municipal Code delegates the powers and authority granted to Council with respect to site plan approval, to the Chief Planner or his/her designates, the Directors of Community Planning;
- (F) The Director of Community Planning, North York District, (the "Director") on February 27, 2018 issued Notice of Approval Conditions and further revised on July 27, 2018 with respect to application No. 15 222368 NNY 26 SA, wherein the Director indicated that he/she would be in a position to issue the Statement of Approval with respect to the Plans and Drawings listed in Schedule "B" to this Agreement (the "Plans and Drawings") once the Owner has satisfied all of the pre-approval conditions set out in the Notice of Approval Conditions, including the entering into of this Agreement;
- (G) Subsection 114(14) of the *City of Toronto Act, 2006*, provides that an agreement entered into to secure the provision of facilities, works or matters may be registered on the title of the land to which it applies.

**IN CONSIDERATION** of the premises and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

**DEVELOPMENT OF PROJECT**

1. The Owner agrees to develop the Land and construct the Project in substantial conformity with the Plans and Drawings and in accordance with the conditions set out in Schedule "C" to this Agreement, including, without limiting the

generality of the foregoing, those Plans and Drawings setting out the approved exterior design and sustainable design features of the Project.

2. The Owner acknowledges and agrees that minor variations from the requirements of this Agreement including the Plans and Drawings may be consented to by the Chief Building Official for the City on amendments necessary to satisfy the requirements of the Ontario Building Code, or in other cases by the Chief Planner or designate, provided that in the opinion of the said Official, the general intent and purpose of this Agreement is maintained.

#### **MAINTENANCE OF THE PROJECT**

3. The Owner agrees to maintain the Project in substantial conformity with the Plans and Drawings and in accordance with the conditions set out in Schedule "C" to this Agreement, in default of which the Owner acknowledges that the City may exercise its rights set out in this Agreement.

#### **COMPLETION OF THE PROJECT**

4. The Owner agrees to complete the Project as set out in this Agreement within two years from the date of issuance of the Statement of Approval failing which this approval shall require an extension by the Director prior to the issuance of any building permit and the City may exercise the other remedies set out in this Agreement.

#### **SECURITY FOR PERFORMANCE OF OBLIGATIONS**

5. Upon execution of this Agreement, the Owner shall, if required in Schedule "C" of this Agreement, submit to the City a letter of credit or cash deposit in an amount satisfactory to the Director to secure the Owner's obligations (the "Security"). Any letter of credit shall be provided in a format acceptable to the City Treasurer and Chief Financial Officer. The Owner acknowledges and agrees security submitted in the form of a cash deposit when returned will not include interest.
6. Where required by Schedule "C" to this Agreement, the Owner agrees to guarantee the performance of the Owner's obligations to the satisfaction of the Director. The City may in its sole discretion reduce the Security and retain the balance until the conclusion of the guarantee period, if required by Schedule "C", and the Owner has completed its obligations to the satisfaction of the City.
7. The Security, or such remaining balance, shall be returned upon the satisfactory completion of the Owner's obligations under this Agreement. If the security is submitted to the City in the form of a cash deposit, it shall be returned to the person or Company having submitted the security, unless a signed Direction is provided to the City indicating otherwise. If the security is submitted in the form of a letter of credit, it will be returned to the Financial Institution.

#### **RIGHT TO ENTER**

8. The Owner acknowledges and agrees that the City may enter onto the Land at any time to inspect the Project to ensure substantial conformity with the Plans and Drawings and compliance with the obligations of this Agreement.

#### **NON-COMPLETION**

9. If in the opinion of the City, the Project is not being completed within the specified time or not in accordance with the approved Plans and Drawings, or should the Owner neglect or abandon the Project before completion or unreasonably delay the same so that the conditions of this Agreement are being violated, or should the Owner, in any manner, in the opinion of the City, default in the performance of any of the terms of this Agreement, then in such case, the City shall notify the Owner by prepaid registered mail in writing, specifying with reasonable

particularity the nature of such default or neglect and require the Owner to remedy the same.

10. If such default or neglect is not remedied within ten (10) working days after such notice or within such greater time period as may be specified by the City, the City thereupon shall have full authority and power immediately to draw on the Financial Security to purchase such materials, tools and machinery and to employ such people as in the City's opinion shall be required for the proper completion of the outstanding obligations in this Agreement.
11. The cost of completion of any outstanding obligations of the Project shall be calculated by the City whose decision shall be final and such costs may be deducted from the Letter of Credit or other Financial Securities provided herein. In the event that the said Letter of Credit or other securities are insufficient to reimburse the City for all expenses incurred by the City to carry out the terms and obligations of this Agreement, then the Owner agrees to pay to the City such additional costs forthwith upon demand and the provisions of Section 386 of the *City of Toronto Act 2006*, c.11 as amended, shall apply.

#### **REMEDIES OF CITY**

12. The Owner agrees that the City may recover the total cost of all labour and materials in carrying out and completing the obligations of the Owner as set out in this Agreement, plus a management fee equal to 15% of the costs and to do so, may from time to time draw without notice on the Security, in whole or in part, and retain the money secured by the Security.

#### **ADJACENT MUNICIPAL PROPERTY**

13. The Owner shall rectify, restore and repair any adjacent municipal property damaged in implementing this Agreement.

#### **INDEMNITY**

14. The Owner agrees to defend, indemnify and save the City harmless from and against all claims, demands, losses, costs, charges, expenses, actions and other proceedings made, brought against, suffered by or imposed on the City in respect of any failure by the Owner to fulfill any of its obligations (including the failure to maintain) under this Agreement.
15. The Owner agrees to pay to the City on demand, any loss, costs, or damages which may be sustained, incurred or paid by the City in consequence of the Owner's failure to fulfill any of its obligations (including the failure to maintain) under this Agreement.

#### **NO OBLIGATION TO INSPECT**

16. Nothing in this Agreement imposes upon the City any duty or obligation to inspect or examine the Land for compliance, or non-compliance or to provide an opinion or view respecting any condition of development or to request or require compliance with the conditions of this Agreement.

#### **WAIVER**

17. The waiver by the City of any provision of this Agreement in one instance shall not constitute a waiver of any other instance and any waiver shall be in writing.
18. No delay or omission by the City in exercising any right or remedy shall operate as a waiver of the right or remedy or of any other right or remedy.

**REGISTRATION OF AGREEMENT**

19. The Owner consents to the registration of this Agreement against the title of the Land and agrees to pay all of the City's costs with respect to the registration of this Agreement and any other required documents, including but not limited to any applicable subsearch, execution search and registration fees.

**NOTICE**

20. Any notice given by the City to the Owner pursuant to this Agreement is sufficiently given if sent by prepaid first class mail (addressed to the Owner at the address shown for the Owner on the assessment rolls of the City or on any application for building permit) or by means of facsimile transmission. The notice shall be conclusively deemed to have been received on the third business day following mailing or respectively, the date of transmission contained on the facsimile confirmation printout.

**VALIDITY**

21. The invalidity of any particular provision of this Agreement shall not affect any other provision, but this Agreement shall be construed as if the invalid provision had been omitted.

**SUCCESSORS, ASSIGNS**

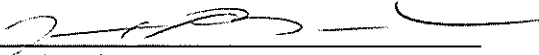
22. This Agreement enures to the benefit of the City and is binding upon the Owner and its successors and assigns. Notwithstanding anything in this Agreement to the contrary, in the event that the City acquires any part of the Land for any municipal purpose, including a road widening, the City shall not be bound by this Agreement as an Owner.

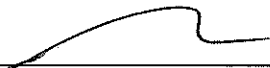
**INTERPRETATION**

23. This Agreement is to be read with all changes in gender or number as required by the context.
24. Schedules "A", "B" and "C" shall form part of this Agreement.
25. Notwithstanding anything in this Agreement to the contrary, in the event the City acquires any part of the Land for any municipal purpose, including streets, pedestrian walkways or connections and parks, or for the purposes of any of its boards, commissions, authorities, or agencies, the City shall not be bound by this Agreement as an Owner.
26. The Owner acknowledges that the entering into of this Agreement does not in itself constitute the approval of the Plans and Drawings under Section 114 of the *City of Toronto Act*.

**IN WITNESS WHEREOF** the Owner and the City have executed this document under the hands of their officers duly authorized in that behalf.

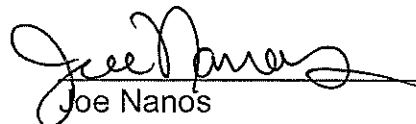
**33 LAIRD INC.**

  
\_\_\_\_\_  
Jason Birnboim  
President

  
\_\_\_\_\_  
Barry Godfrey  
Secretary

We have the authority to bind the Corporation.

**CITY OF TORONTO**

  
\_\_\_\_\_  
Joe Nanos  
Director, Community Planning  
North York District

I have authority to bind the Corporation.



**SCHEDULE "A"**

**DESCRIPTION OF LAND**

**Municipal Address**

33 Laird Drive, Toronto

**Legal Description**

Lot 685, Plan 2120, Township of York; Part of Lot 686, Plan 2120, Township of York; Part of Lot 687, Plan 2120, Township of York; Part of Lot 688, Plan 2120, Township of York; Part of Lot 689, Plan 2120, Township of York; Part of Lot 690, Plan 2120, Township of York; Part of Lot 691, Plan 2120, Township of York; Part of Lot 692, Plan 2120, Township of York; Part of Lot 12, Concession 3 FTB, Township of York; Part of Lot 13, Concession 3 FTB, Township of York; Part of Leaside Road, Plan 1535, Township of York as in TL46644; Part of Canvarco Road, Plan 2921, Township of York closed by EY173327, as in EY184825; City of Toronto.

**PIN 10369-0198 (LT)**

- 7 -

**SCHEDULE "B"****APPROVED PLANS AND DRAWINGS**

<b>Drawing No.</b>	<b>Title</b>	<b>Produced By</b>	<b>Date</b>	<b>Date Stamped</b>
A101	Site Plan	SMV Architects	June 19, 2018	July 4, 2018
A202	Main Level Floor Plan	SMV Architects	October 30, 2017	November 1, 2017
A205	Roof Plan	SMV Architects	October 30, 2017	November 1, 2017
A301	Building Elevations	SMV Architects	October 27, 2017	November 1, 2017
L-1	Landscape Plan	MHBC	October 31, 2017	November 1, 2017
L-2	Landscape Plan	MHBC	October 31, 2017	November 1, 2017
LE-1	Site Lighting Plan and Details	Tristar Engineering	October 27, 2017	November 1, 2017

**SCHEDULE "C"**

**SITE SPECIFIC CONDITIONS**

**PRE-APPROVAL CONDITIONS**

**City Planning**

1. **Prior to final site plan approval**, the Owner shall submit a financial guarantee in the form of an irrevocable letter of credit or certified cheque, payable to the Treasurer, City of Toronto, in the amount of **\$206,965.00**, to guarantee the provision of landscape development including (but not limited to) any planting, fencing, decorative paving, retaining walls, terraces, and/or other landscape features as detailed on the approved Landscape Plan to the satisfaction to the Director.

**Heritage Preservation Services**

2. **Prior to final site plan approval**, the Owner shall:
  - a. provide final site plan drawings including drawings related to the approved Conservation Plan, to the satisfaction of the Senior Manager, Heritage Preservation Services;
  - b. provide a Lighting Plan that describes how the heritage property will be sensitively illuminated to enhance its heritage character to the satisfaction of the Senior Manager, Heritage Preservation Services and shall implement such Plan to the satisfaction of the Senior Manager, Heritage Preservation Services; and
  - c. provide a detailed landscape plan for the subject property, satisfactory to the Senior Manager, Heritage Preservation Services.
3. **Prior to final site plan approval**, the Owner shall, prior to the issuance of any permit for all or any part of the property at 33 Laird Drive, including a heritage permit or a building permit, but excluding permits for repairs and maintenance and usual and minor works for the existing heritage building as are acceptable to the Senior Manager, Heritage Preservation Services:
  - a. provide full building permit drawings, including notes and specifications for the conservation and protective measures keyed to the approved Conservation Plan, including a description of materials and finishes, to be prepared by the project architect and a qualified heritage consultant to the satisfaction of the Senior Manager, Heritage Preservation Services;
  - b. provide an Interpretation Plan for the subject property, to the satisfaction of the Senior Manager, Heritage Preservation Services and shall implement such Plan to the satisfaction of the Senior Manager, Heritage Preservation Services; and
  - c. provide a Letter of Credit, including provision for upwards indexing, in a form and amount satisfactory to the Senior Manager, Heritage Preservation Services to secure all work included in the approved Conservation Plan, Lighting Plan and Interpretation Plan.

**Urban Forestry**

4. **Prior to final site plan approval**, the Owner shall submit, to the Supervisor, Urban Forestry, Tree Protection and Plan Review (TPPR), a complete "Application to Remove Healthy City-owned Trees" and an application fee in the amount of **\$1,002.18** in the form of a certified cheque payable to the Treasurer,

City of Toronto, for three (3) trees inventoried as Tree Numbers 1, 2 and 5, to the satisfaction of the General Manager or Parks, Forestry & Recreation (PF&R). If the application is approved, the Owner shall submit a payment in the amount of **\$4,074.00** in the form of a certified cheque payable to the Treasurer, City of Toronto, for the Tree Appraisal Value of Tree Numbers 1, 2 and 5. The Owner further acknowledges and agrees to submit a complete "Agreement for Private Contractor to Perform Work on City-owned Trees" prior to removing any City-owned tree.

5. **Prior to final site plan approval**, the Owner shall submit, to the Supervisor, Urban Forestry, TPPR, a tree planting security deposit in the form of an irrevocable letter of credit or certified cheque payable to the Treasurer, City of Toronto, in the amount of **\$6,413.00** for eleven (11) new City trees to be planted within the City road allowance, to the satisfaction of the General Manager, PF&R.
6. **Prior to final site plan approval**, the Owner shall submit, to the Supervisor, Urban Forestry, TPPR, a complete "Application to Injure or Destroy Trees on Private Property" and an application fee in the amount of **\$2,066.74** in the form of a certified cheque payable to the Treasurer, City of Toronto, for four (4) trees inventoried as Tree Numbers 3, 4, 15 and 16 to the satisfaction of the General Manager, PF&R.

### Engineering & Construction Services

#### *Widening of Highways that abut on the Land*

7. **Prior to final site plan approval**, the Owner shall prepare all documents and convey to the City, at nominal consideration and at no cost to the City, in fee simple, the following road widening:
  - a. a 4.96m road allowance widening along the Laird Drive frontage south of the existing building; and
  - b. and a 5.0 m corner rounding at the south-east corner of the Canvarco and Laird Drive intersection,

namely **Parts 1 and 6 on Plan 66R-30829** (Road Widening Lands).

Said lands to be free and clear of all physical and title encumbrances, and subject to a right-of-way for access in favour of the Owner until such time as said lands have been dedicated as a public highway, all to the satisfaction to the Chief Engineer & Executive Director, Engineering & Construction Services (E&CS) and the City Solicitor

8. **Prior to final site plan approval**, the Owner shall retain a Qualified Person to conduct environmental site assessments for the Road Widening Lands to be conveyed to the City.
9. **Prior to final site plan approval**, the Owner shall submit all environmental site assessment reports prepared in accordance with the Record of Site Condition Regulation (O. Reg. 153/04) describing the current conditions of the Road Widening Lands to be conveyed to the City and the proposed remedial action plan based on the site condition standards approach, to the Chief Engineer & Executive Director, E&CS, for peer review.
10. **Prior to final site plan approval**, the Owner shall pay all costs associated with the City retaining a third-party peer reviewer including all administrative costs to the City (7%), and submit an initial deposit of **\$8,000.00** towards the cost of the Peer Review in the form of a certified cheque, to the Chief Engineer & Executive Director, E&CS. The Owner further agrees to submit further deposits when requested to cover all costs of retaining a third-party peer reviewer (unused funds will be refunded to the applicant by the City).

11. **Prior to final site plan approval**, the Owner shall submit, to the satisfaction of the City's peer reviewer, all Environmental Site Assessment reports prepared in accordance with the Record of Site Condition Regulation (Ontario Regulation 153/04, as amended) describing the current conditions of the Road Widening Lands to be conveyed to the City and the proposed Remedial Action Plan based on the site condition standards approach, to the Chief Engineer & Executive Director, E&CS.
12. **Prior to final site plan approval**, the Owner shall, at the completion of the site assessment/remediation process, submit a Statement from the Qualified Person based on the submitted environmental documents, to the Chief Engineer & Executive Director, E&CS for Peer Review and concurrence, which states:
- a. In the opinion of the Qualified Person:
    - i. It is either likely or unlikely that there is off-site contamination resulting from past land uses on the development site that has migrated onto adjacent City lands that would exceed the applicable Site Condition Standards; and
    - ii. To the extent that the possible or unlikely that such off-site contamination on adjacent City lands poses an adverse effect to the environment or human health.
  - b. Land to be conveyed to the City meets either:
    - i. the applicable Ministry Generic Site Condition Standards (Tables 1, 2, 3, 6, 7, 8 and 9; subject to applicable exemptions as stated in O. Reg. 153/04) for the most environmentally sensitive adjacent land use; or
    - ii. the Property Specific Standards as approved by the Ministry for a Risk Assessment/Risk Management Plan which was conducted in accordance with the conditions set out herein.
13. **Prior to final site plan approval**, the Owner shall include a Reliance Letter, with the Qualified Person's statement, referenced in Condition 12.a above, that is dated and signed by the applicant's Qualified Person, as defined in O. Reg. 153/04, as amended, confirming that both the City and the City's peer reviewer can rely on the environmental documentation submitted, consistent with O. Reg. 153/04 requirements, and the Qualified Person's opinion as to the conditions of the site; all environmental documentation consistent with O. Reg. 153/04 requirements and opinions shall be submitted with reliance extended to the City and its peer reviewer and any limitation on liability and indemnification is to be consistent with Ontario Regulation 153/04, as amended, insurance requirements or such greater amount specified by the Chief Engineer & Executive Director, E&CS.

*Facilities to Provide Access to and from the Land*

14. **Prior to final site plan approval**, the Owner shall make satisfactory arrangements with E&CS for work on the City's right-of-way to provide access to and from the land and submit a financial guarantee in the form of an irrevocable letter of credit or certified cheque payable to the Treasurer, City of Toronto, in the amount of **\$106,208.00**, to guarantee the access to and from the land, to the satisfaction of the Chief Engineer & Executive Director, E&CS.
15. **Prior to final site plan approval**, the Owner shall submit a certified cheque payable to the Treasurer, City of Toronto, in the amount of **\$5,301.00**, as engineering and inspection fees and provide insurance, as required, to the satisfaction of the Chief Engineer & Executive Director, E&CS.

16. **Prior to final site plan approval**, the Owner shall submit a certified cheque payable to the Treasurer, City of Toronto, in the amount of **\$1,731.63**, for pavement marking and signage on Canvarco Road, as required by Transportation Services, to the satisfaction of the Chief Engineer & Executive Director, E&CS.

*Easements conveyed to City*

17. **Prior to final site plan approval**, the Owner shall prepare all documents and convey to the City a 9.0m easement for 1200mm combined sewer easement (the "Combined Sewer Easement") for the purpose of maintaining the storm and sanitary sewers and appurtenances for nominal consideration and at no cost to the City, in respect of those lands comprising **Part 3 on Plan 66R-30829** (the "Easement Lands"). The Easement Lands are to be free and clear of all physical and title encumbrances, all to the satisfaction to the Chief Engineer & Executive Director, E&CS and the City Solicitor.
18. **Prior to final site plan approval**, the Owner shall retain a Qualified Person to conduct environmental site assessments for the Easement Lands to be conveyed to the City;
19. **Prior to final site plan approval**, the Owner shall pay all costs associated with the City retaining a third-party peer reviewer including all administrative costs to the City (7%), and submit an initial deposit of **\$8,000.00** towards the cost of the Peer Review in the form of a certified cheque, to the Chief Engineer & Executive Director, E&CS. The Owner further agrees to submit further deposits when requested to cover all costs of retaining a third-party peer reviewer (unused funds will be refunded to the applicant by the City).
20. **Prior to final site plan approval**, the Owner shall submit, to the satisfaction of the City's peer reviewer, all Environmental Site Assessment reports prepared in accordance with the Record of Site Condition Regulation (Ontario Regulation 153/04, as amended) describing the current conditions of the Easement Lands to be conveyed to the City and the proposed Remedial Action Plan based on the site condition standards approach, to the Chief Engineer & Executive Director, E&CS.
21. **Prior to final site plan approval**, the Owner shall, at the completion of the site assessment/remediation process, submit a Statement from the Qualified Person based on the submitted environmental documents, to the Chief Engineer & Executive Director, E&CS for Peer Review and concurrence, which states:
- a. In the opinion of the Qualified Person:
    - i. It is either likely or unlikely that there is off-site contamination resulting from past land uses on the development site that has migrated onto adjacent City lands that would exceed the applicable Site Condition Standards; and
    - ii. To the extent that the opinion in Condition 21.a.i above is that past migration is likely, it is either possible or unlikely that such off-site contamination on adjacent City lands poses an adverse effect to the environment or human health.
  - b. Lands to be conveyed to the City meets either:
    - i. the applicable Ministry Generic Site Condition Standards (Tables 1, 2, 3, 6, 7, 8 and 9; subject to applicable exemptions as stated in O. Reg. 153/04) for the most environmentally sensitive adjacent land use; or

- ii. the Property Specific Standards as approved by the Ministry for a Risk Assessment/Risk Management Plan which was conducted in accordance with the conditions set out herein.

22. **Prior to final site plan approval**, the Owner shall include a Reliance Letter, with the Qualified Person's statement, referenced in Condition 21.a above, that is dated and signed by the applicant's Qualified Person, as defined in O. Reg. 153/04, as amended, confirming that both the City and the City's peer reviewer can rely on the environmental documentation submitted, consistent with O. Reg. 153/04 requirements, and the Qualified Person's opinion as to the conditions of the site; all environmental documentation consistent with O. Reg. 153/04 requirements and opinions shall be submitted with reliance extended to the City and its peer reviewer and any limitation on liability and indemnification is to be consistent with Ontario Regulation 153/04, as amended, insurance requirements or such greater amount specified by the Chief Engineer & Executive Director, E&CS.

*Stormwater Management, Grading and Site Servicing*

23. **Prior to final site plan approval**, the Owner shall submit a financial guarantee in the form of an irrevocable letter of credit or certified cheque, payable to the Treasurer, City of Toronto, in the amount of **\$500,000.00**, for security of the existing 1200mm combined sewer infrastructure within the proposed easement area to the satisfaction to the Chief Engineer & Executive Director, E&CS. The Owner further acknowledges and agrees that that it will perform post construction CCTV of the two sewer legs and manholes and submit to Toronto Water for review and that the security will be released after the review of the CCTV satisfactory to the General Manager, Toronto Water.

*Other Conditions*

24. **Prior to final site plan approval**, the Owner shall enter into a canopy agreement for the canopy within the Canvarco Road and Laird Drive boulevard with the Right-of-Way Management section of the City.
25. **Prior to final site plan approval**, the Owner shall enter into an encroachment agreement for the raised planter curbs, benches and decorative concrete treatment in the Laird Drive and Canvarco Road boulevard.

**POST APPROVAL CONDITIONS**

**Heritage Preservation Services**

26. Prior to the release of the Letter of Credit, the Owner shall:
- a. provide a letter of substantial completion, prepared and signed by a qualified heritage consultant, confirming that the required conservation work, heritage lighting work, and the required interpretive work has been completed in accordance with the Conservation Plan, Heritage Lighting Plan, and Interpretation Plan and that an appropriate standard of conservation has been maintained, all to the satisfaction of the Senior Manager, Heritage Preservation Services; and
  - b. provide replacement Heritage Easement Agreement photographs to the satisfaction of the Senior Manager, Heritage Preservation Services.

**Engineering & Construction Services**

*Combined Sewer Easement*

27. Subject to Conditions 28 to 39 below and to the terms of this Agreement, the

Owner acknowledges and agrees that the building as illustrated in the approved Plans and Drawings and subject to this Agreement (the "Permitted Structure") shall be the only structure permitted to encroach upon the Easement Lands being the lands upon which the Combined Sewer Easement as depicted by approved Site Plan Drawing No. A101 is to be located.

28. The Owner shall not interfere with the City's rights under the Combined Sewer Easement during the development as contemplated in this Agreement.
29. The Owner shall, at its expense and in the same manner and to the same extent as a prudent owner, maintain and operate all structures and building elements within and related to the Permitted Structure and keep the same in good and substantial repair and in the event of damage to or destruction of the Permitted Structure, repair or reconstruct the Permitted Structure to provide full and proper access to that part of the Combined Sewer Easement as required by the terms of this Agreement.
30. Prior to the commencement of any repair, maintenance, restoration or reconstruction of the Permitted Structure located on the Easement Lands, the Owner shall submit the plans and drawings for the proposed work to the General Manager, Toronto Water, for approval and shall make all revisions thereto as may be required. The Owner shall repair, maintain, restore or reconstruct any such integral or structural elements, or any elements affecting such integral or structural elements, of the Permitted Structure in accordance with the plans and drawings approved by the General Manager, Toronto Water.
31. The Owner shall restore, at the Owner's cost, the affected Easement Lands after any repair, maintenance, restoration or reconstruction of the Permitted Structure to the satisfaction of the General Manager, Toronto Water.
32. The Owner acknowledges and agrees to permit the City to enter the Permitted Structure to inspect the state of repair and maintenance upon giving the Owner reasonable notice in writing. In the event that the Owner fails to repair or maintain the Permitted Structure so as to properly provide access to that part of the Combined Sewer Easement located beneath the Permitted Structure or to properly restore the affected Easement Lands as required by this Agreement, and, in the event the City has provided the Owner with not less than thirty (30) days prior notice in writing setting out the failure or defect and the Owner has not commenced and diligently continued to remedy such failure or defect, then the City may enter the Permitted Structure and any adjacent land necessary for access to the Permitted Structure and do such repair or maintenance work as is necessary to provide the required access and the City may restore the affected Easement Lands all at the cost of the Owner. The Owner acknowledges that this Section imposes no obligation upon the City to do any such work and neither does this Section in any way release the Owner from any of its obligations under this Agreement or under any easement granted to the City nor does it diminish the responsibility of the Owner in respect hereof and that notwithstanding the City's rights under this Section, the City, its officials, employees, agents and those under its direction are under no obligation whatsoever to inspect the Permitted Structure nor to make any determination as to the proper construction of or necessary repairs and maintenance to the Permitted Structure including without limitation the ability of the Permitted Structure to provide the access required for the affected Easement Lands.
33. In the event of an emergency situation where the life or safety of the public is endangered or the public right-of-way is in imminent danger of collapse or damage, the City, without having given notice to the Owner, shall be entitled to enter the Permitted Structure and perform such emergency work as is necessary to deal with the emergency situation at the cost of the Owner. The Owner acknowledges that this Section imposes no obligation or duty on the City. In addition, in the event of an emergency, the General Manager, Toronto Water, may direct the Owner to commence maintenance and repair work



notwithstanding that the plans and drawings submission requirements of this Section have not been satisfied.

34. The Owner shall insure and keep insured the Permitted Structure for its full replacement cost without deduction for depreciation and against loss or damage under an "all risks" insurance policy, acceptable as to form, limits and conditions to the City.
35. The Owner shall take out and thereafter maintain, at its expense, commercial general liability insurance acceptable as to form, limits and conditions to the City for a limit of not less than five million dollars (\$5,000,000.00) per occurrence (such limit to be increased from time to time to reflect an amount which would be maintained by a prudent owner as determined by the City) covering possible damages, losses, claims and expenses for or in connection with any personal injury, death or property damage that might be incurred on or about the affected Easement Lands in connection with the maintenance, repair, reconstruction or operation of the Permitted Structure including but not limited to any damages arising from the failure of the Permitted Structure to provide the access to the affected Easement Lands as required by this Agreement.
36. The Owner shall ensure that such liability insurance policy noted above shall include the City as an additional insured. Such "all risks" property insurance policy shall contain, as applicable, a waiver of any subrogation rights which the Owner's insurer may have against the City. Such liability insurance policy shall contain a cross-liability and severability of interest clause and include contractual liability coverage. Such liability insurance policy shall provide that any breach of a condition of the policy by any insured shall not affect the protection given by the policy to any other insured. Such liability insurance policy shall contain a clause providing that the insurer will not cancel or refuse to renew the said insurance without first giving the City thirty (30) days prior written notice thereof. The Owner shall supply the City with satisfactory evidence of such insurance upon request by the City, and a certificate of insurance shall be remitted to the General Manager, Toronto Water, within thirty (30) days of issuance and evidence of continuance shall be remitted to the City at least thirty (30) days prior to the expiration of any insurance policy.
37. If at any time the City determines that the required insurance has not been taken out or if the City receives notice from the insurer that it has cancelled or refused to renew the said insurance, or that it intends to do so, or if the City otherwise determines that the said insurance has lapsed, been cancelled or is about to lapse or be cancelled without renewal or replacement, the City may, on written notice to the Owner, at the sole cost and expense of the Owner, obtain new insurance or add the necessary insurance coverage to the City's blanket insurance. The Owner shall forthwith upon receipt of written notice thereof from the City arrange for new insurance pursuant to this subsection and shall reimburse the City for the cost of any insurance arranged by the City and payable as noted above. Such insurance shall be cancelled by the City upon receipt of both a certificate of insurance as herein above required together with payment of any cost incurred by the City.
38. The Owner shall remise, release, and forever discharge the City from all manner of actions, causes of action, suits, proceedings, claims and demands whatsoever which the Owner or its successors or assigns shall or may have against the City by reason of any damage to the Permitted Structure, or associated structure arising in any way from the normal course of operation, maintenance or existence of the Combined Sewer Easement or related infrastructure.
39. In addition to any other indemnification requirements of this Agreement, the Owner, in respect of any Permitted Structure constructed by the Owner over the Easement Lands, for itself as well as for its successors and assigns, hereby agrees that it will, from time to time and at all times, hereafter save, keep harmless, and fully indemnify the City, its elected officials, officers, employees

and agents, and its successors and assigns, from and against all causes of action, suits, proceedings, claims and demands whatsoever which may be brought against or made upon the City, its elected officials, officers, employees and agents, and against all loss, liability, judgments, costs, charges, demands, damages or expenses which the City, its elected officials, officers, employees and agents, may sustain, suffer or be put to resulting from or arising out of:

- a. The exercise of rights in the nature of the easements that may be reserved by the Owner to effect the maintenance, repair or replacement of the Permitted Structure;
- b. Any construction, maintenance, repair or replacement by the Owner of the Permitted Structure;
- c. The failure of the Owner to design, construct and maintain that part of the Permitted Structure over the affected Easement Lands in the form approved by the General Manager, Toronto Water; and
- d. The failure of the Owner to provide access to the affected Easement Lands as contemplated in this Agreement.

*Facilities to Provide Access to and from the Land*

40. The Owner shall provide and maintain traffic operations measures/facilities as recommended in the accepted Traffic Impact Study, prepared by Dionne Bacchus & Associates, dated November 22, 2016, to the satisfaction of the Chief Engineer & Executive Director, E&CS.
41. The Owner shall remove all existing accesses, curb cuts, traffic control sign(s) along the development site frontage that are no longer required and reinstate the curb, gutter and boulevard within the City's right-of-way, in accordance with City standards and to the satisfaction of the Chief Engineer & Executive Director, E&CS.

*Off-street Vehicular Loading and Parking Facilities and Access/Driveways*

42. The Owner shall provide and maintain off-street vehicular loading and parking facilities and access driveways in accordance with the approved plans and drawings, to the satisfaction of the Chief Engineer & Executive Director, E&CS.
43. The Owner shall install and maintain appropriate signage and pavement markings on-site directing such as but not limited to: vehicle stopping and circulation, designated disabled parking, loading, and pedestrian walkways, to the satisfaction of the Chief Engineer & Executive Director, E&CS.

*Facilities for the Landscaping of the Lands or the Protection of Adjoining Lands*

44. The Owner acknowledges and agrees that it will be responsible for removing and replacing the shrubs within the easement area, if Toronto Water staff need to maintain the combined sewer.

*Facilities for the Storage of Garbage and Other Waste Material*

45. The Owner shall advise all owners and tenants/future purchasers of the commercial units that refuse and recyclable materials generated by this building must be collected by a private refuse collection firm.

*Stormwater Management, Grading and Site Servicing*

46. The Owner acknowledges and agrees that Staff have reviewed this application on the understanding it will comprise one parcel of land upon completion. The Owner shall not convey or transfer any part of the Development Site in any other

manner than that agreed to above if to do so would result in either the retained parcel or the conveyed or the transferred parcel ceasing to comply with Chapters 681 or 851 of the City of Toronto Municipal Code, as amended, which prohibit a private service connection, that connects to a municipal water or sewer system, from servicing more than one property. Each parcel shall have separate service connections to the municipal water and sewer systems, including any associated stormwater management systems, to the satisfaction of the Chief Engineer & Executive Director, E&CS, at the sole cost to the Owner. Further, the Owner shall prepare all plans and studies as required by the City for the servicing at the sole cost of the Owner.

47. The Owner shall submit an application to Toronto Water (Environmental Monitoring & Protection) for any permanent dewatering system that is required for the building, and enter into an agreement and/or permit to discharge groundwater as required by the General Manager, Toronto Water.
48. The Owner shall construct and maintain stormwater management measures/facilities and site grading as recommended in the accepted Functional Servicing and Stormwater Management Report, dated December 2016 and Site Grading Plan, Drawing No. C03, revision 6, dated October 30, 2017, prepared by The Crozier & Associates Consulting Engineers.
49. The Owner shall construct and maintain site servicing indicated on the accepted Site Servicing Plan, Drawing No. C02, revision 6, dated October 30, 2017, prepared by Crozier & Associates Consulting Engineers.
50. The Owner shall provide post-construction CCTV of the two sewer legs of 1200mm combined sewer and manholes and submit to the Chief Engineer & Executive Director, E&CS for review.
51. The Owner shall provide certification to the Chief Engineer & Executive Director, E&CS by the Professional Engineer who designed and supervised the construction that the stormwater management facilities and site grading have been constructed in accordance with the accepted Stormwater Management Report and the accepted Grading Plans.
52. The Owner shall provide certification to the Chief Engineer & Executive Director, E&CS by the Professional Engineer who designed and supervised the construction, that the site servicing facilities have been constructed in accordance with the accepted drawings.

*Other Condition*

53. The Owner shall provide a signed and stamped letter from a Professional Engineer (Structural), licensed to practice in Ontario and qualified in the subject matter to the Chief Engineer & Executive Director (c/o Manager, Development Engineering), E&CS and copy to General Manager (c/o Manager, Environmental Monitoring and Protection Unit), Toronto Water:

"I \_\_\_\_\_, confirm that *all buildings on the subject lands (33 LAIRD DRIVE) have been constructed completely water-tight below grade in a manner that will resist hydrostatic pressure without any necessity for foundation drains (weeping tiles, sub-floor drains), groundwater collections systems (groundwater collection sump(s), pump(s), etc.) or any other type of permanent drainage system or any direct or indirect connection to the City's sewage works.*"

This is **Exhibit "K"** to the affidavit of Jason L. S. Birnboim sworn before me via Facetime this 4<sup>th</sup> day of June, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



A Commissioner, etc.

JOEL TURGEON

**Brendan Bissell**

---

**From:** Christopher J Henderson <Christopher.Henderson@toronto.ca>  
**Sent:** Monday, May 31, 2021 2:39 PM  
**To:** 'Prophet, Clifton'; Matthew Longo; Michelle Corcoran; 'Chris Donald'  
**Cc:** Parker, Brian; jchrisdonald@gmail.com; Lupo, Rosa; Strong, Kirsty; John Donald; Paul Hornak; Brendan Bissell  
**Subject:** RE: 33 Laird Drive Documents

Clifton:

We are aware of *Third Eye Capital*, and I had reviewed it again prior to reviewing the matter with Matthew last week. In our view, it strongly supports the City's position, in that the site plan which you have advised that your client is seeking to delete:

(a) is greater than a mere financial interest, and more like an easement (in that site plan agreements are in large part essentially statutory positive covenants that run with the land) – para. 104;

(b) the reasonable expectation at the time it was entered into is it could not be extinguished based on the simple payment of money, but rather many obligations under it continue in perpetuity – para. 105;

(c) the City will not consent to it being deleted, and instead, will oppose it, and the City never agreed to subordinate its interest under it – para. 106 - 109;

(d) the equities strongly favour the City, and a representative of the public interest and the applicable "regulatory body" as defined in the BIA, in preserving the rights secured for both the City and the public in the site plan agreement, and those rights and interests cannot be compensated by proceeds from the sale. By contrast, the City does not see how your client is prejudiced, as it can apply for a new or amended site plan agreement after the sale, and has a right of appeal under s. 114 of the *City of Toronto Act* if it is not able at first instance to obtain the amended site plan agreement that it seeks – para. 110

Can you please advise why your client does not consider its ability to apply for a new or amended site plan agreement to be a satisfactory remedy? The site plan agreement does not contain an obligation to proceed with construction of the approved building, and your client would be free to apply for a new site plan approval for a different development. As Matthew noted, purchasers of lands with site plan agreements apply for amendments to or new site plan agreements as a standard course. The applicable site plan agreement in this case is generally standard, in particular, the paragraphs which you have identified which you are of the view create unacceptable financial obligations.

From a land use planning perspective this is not a complicated process. I understand Rosa Lupo of your office has been engaged, perhaps she or another lawyer from your offices with expertise in land use development law (ie. someone from Gowling's municipal law group) should speak to Matthew to bring some clarity to those procedures.

The proposal in your letter of May 12, 2021 to amend the site plan agreement as an interim measure (in expectation of further undefined amendments) is extremely problematic as City staff do not have authority to enter into an arrangement like what you have proposed in absence of a site plan application. Putting aside the extremely tight time frames you set out in your letter, the City has still not been presented with specifics of the proposed amendments to the agreement, the rationale for those amendments, or how those amendments would preserve the financial securities the City currently holds. The City's land use legal regulatory regime is complex and inter-dependent with various City divisions and non-City entities, and creating "one off" exceptions because they would be more convenient for a prospective owner in a given case is highly problematic.

As it stands, the City will oppose any vesting Order that seeks to delete the site plan agreement from title. Can you clarify whether the issue of the vesting Order will be dealt with on the June 10 motion date? If your client continues to attempt to vest the property to delete the site plan agreement, we will require the matter to be considered on a full record, which will require time for responding affidavit evidence from the City, and facts.



**Christopher J. Henderson, M.P.A., LL.B.**  
Senior Lawyer, Litigation Section  
City of Toronto | Legal Services  
Metro Hall, 26th Floor | 55 John Street | Toronto ON M5V 3C6  
T: 416.397.7106 | E: [Christopher.Henderson@toronto.ca](mailto:Christopher.Henderson@toronto.ca)

-----Confidentiality Notice-----

This email is directed solely to the person(s) named above. Its contents may be privileged and/or protected by the *Municipal Freedom of Information and Protection of Privacy Act*. If you are not the intended recipient(s), no waiver of privilege is implied, and any disclosure, copy, distribution or reliance upon its contents may be prohibited by law.

If you have received this email in error, please notify the sender immediately. Thank you.

---

**From:** Prophet, Clifton [mailto:Clifton.Prophet@gowlingwlg.com]

**Sent:** May 28, 2021 2:01 PM

**To:** Matthew Longo <Matthew.Longo@toronto.ca>; Michelle Corcoran <Michelle.Corcoran@toronto.ca>; 'Chris Donald' <chris.donald@xyzstorage.com>

**Cc:** Parker, Brian <Brian.Parker@gowlingwlg.com>; jchrisdonald@gmail.com; Lupo, Rosa <rosa.lupo@gowlingwlg.com>; Strong, Kirsty <Kirsty.Strong@gowlingwlg.com>; John Donald <john.donald@xyzstorage.com>; Paul Hornak <paul.hornak@xyzstorage.com>; Christopher J Henderson <Christopher.Henderson@toronto.ca>; 'Brendan Bissell' <bissell@gsnh.com>

**Subject:** RE: 33 Laird Drive Documents

Matthew;

Thanks for your e-mail. I want to start by clarifying that our client is not intending to vest out or affect the heritage easement agreement registered on title. Neither does our client seek to displace the City's power to regulate development at the site going forward after it acquires the property. In our correspondence and discussions with the City, we have made it clear that our client does not contest the City's authority to exercise its statutory control over the site and its development by our client. What our client does not accept, however, is that it can or should be liable for any existing financial or contingent obligations arising from the site plan agreement entered into by the debtor 33 Laird Inc. with the City. To do so would be contrary to the entire basis for the acquisition of a distressed property of this type, which, in accordance with the agreement of purchase and sale entered into with the debtor 33 Laird Inc. (the "APS") is to be transferred free and clear of all encumbrances that create obligations for the purchaser (including the site plan agreement) but saving those specifically accepted. To assist, we have attached a copy of the APS, with the financial details redacted for confidentiality. Please see paragraphs 3, 8, 9, 21 and Schedules 1(a) of the APS.

As a general matter, it is our view that there is no general public interest exception to the authority of the Ontario Superior Court of Justice exercising powers under federal bankruptcy legislation to vest out financial and liability creating obligations under agreements with the City of Toronto or other municipal corporations. In cases which include the decision of the Court of Appeal for Ontario in *Third Eye Capital v. Dianor Resources*, the courts have made it clear that mortgages and purely private contracts are not the only obligations or instruments that can be vested off title. Rather, it is a matter of the nature of the obligations that are sought to be vested out and released as against purchasers like our client. In our view, the site plan agreement creates financial obligations on its face (see, without limitation, paragraphs 3,4,5,6,7,9,10,11,12,14,15 of the site plan agreement and paragraphs 4,5,6,10,14,15,16,19,23, of

schedule "C" thereto) that fall within the core of the court's authority to vest property free and clear in arm's length purchasers.

We are of course happy to discuss this matter and are open to alternative means of achieving our client's objective of starting with a clean slate with the City and without legacy liabilities arising from the debtor/vendor's site plan agreement. Happy to have a call about this with you and Mr. Henderson at your convenience today, (except 2:30pm to 3:45pm), Monday or Tuesday.

In order to ensure that we have all necessary participants in this dialogue, I have copied counsel to the debtor, Brendan Bissell of Goldman Sloan, on this correspondence and would ask that the City involve him on these matters going forward.

One other matter. As I think we mentioned, the debtor's current insolvency proceedings and stay extensions are expiring shortly. The debtor has therefore been required to choose a date for the hearing of its motion to approve the APS with our client (which remains conditional on, among other things, an Approval and Vesting Order satisfactory to our client). The date available to the Court and the parties is June 10, 2021.

I look forward to hearing from you with respect to the forgoing and continuing our dialogue.

Regards,

Cliff

Clifton Prophet

*Partner*

T +1 416 862 3509

[clifton.prophet@gowlingwlg.com](mailto:clifton.prophet@gowlingwlg.com)



---

**From:** Matthew Longo <[Matthew.Longo@toronto.ca](mailto:Matthew.Longo@toronto.ca)>

**Sent:** Tuesday, May 25, 2021 2:21 PM

**To:** Michelle Corcoran <[Michelle.Corcoran@toronto.ca](mailto:Michelle.Corcoran@toronto.ca)>; 'Chris Donald' <[chris.donald@xyzstorage.com](mailto:chris.donald@xyzstorage.com)>

**Cc:** Prophet, Clifton <[Clifton.Prophet@gowlingwlg.com](mailto:Clifton.Prophet@gowlingwlg.com)>; Parker, Brian <[Brian.Parker@gowlingwlg.com](mailto:Brian.Parker@gowlingwlg.com)>; [jchrisdonald@gmail.com](mailto:jchrisdonald@gmail.com); Lupo, Rosa <[rosa.lupo@gowlingwlg.com](mailto:rosa.lupo@gowlingwlg.com)>; Strong, Kirsty <[Kirsty.Strong@gowlingwlg.com](mailto:Kirsty.Strong@gowlingwlg.com)>; John Donald <[john.donald@xyzstorage.com](mailto:john.donald@xyzstorage.com)>; Paul Hornak <[paul.hornak@xyzstorage.com](mailto:paul.hornak@xyzstorage.com)>; Christopher J Henderson <[Christopher.Henderson@toronto.ca](mailto:Christopher.Henderson@toronto.ca)>

**Subject:** RE: 33 Laird Drive Documents

**This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.**

---

Chris,

Thanks for the response, and of course the City will be happy to work with your on a new site plan application in the future.

Cliff,

I have some remaining questions about your approach to the insolvency proceedings and the City documents registered on title. My understanding is that there is both a heritage easement agreement and a site plan agreement registered. These are statutory agreements arising from the City of Toronto Act, Planning Act and Ontario Heritage Act, and regulate a variety of matters in the public interest, including the environment, heritage preservation, public infrastructure, health, safety, and accessibility for the disabled. In speaking to my colleague Christopher Henderson (copied here) we are aware of Courts issuing vesting Orders deleting instruments from title in insolvency proceedings, however, in his experience these are more typically instruments of a financial nature (i.e. mortgages and liens) involving private parties. We do not find the issues to be analogous. We consider it unlikely a Court would be prepared to delete the instruments at issue over the City's objection. I would appreciate your confirmation that you will not be seeking a vesting order to remove either from title.

You have still not provided the nature of your concern with the site plan agreement remaining on title, and I remain of the view that the best course of action is to leave that agreement on title until such time as a new application is made. Property owners, including successors in title, apply for new site plan agreements on a regular basis as their development intentions change. While your original letter references amending the existing site plan agreement, site plan agreements and their related plans and drawings are detailed and can be time consuming to enter into, and we question whether it is possible to finalize new agreement in the timeframe you have outlined.

My colleague Christopher Henderson has greater experience than I in matters relating to insolvency and development agreements. Please copy him on any further correspondence or if you would like to discuss further.

Matt

**Matthew Longo** | Solicitor, City of Toronto Legal Services  
Planning & Administrative Tribunal Law Section |  
55 John Street, 26<sup>th</sup> Floor Metro Hall, M5V 3C6, Toronto  
T: (416) 392-8109 | F: (416) 397-5624 | E: [matthew.longo@toronto.ca](mailto:matthew.longo@toronto.ca)

**Confidentiality Notice:** The contents of this message may contain confidential and/or privileged subject matter. If you have received this message in error, please notify the sender immediately by telephone, do not print and delete the original communication.

---

**From:** Michelle Corcoran  
**Sent:** May 25, 2021 8:41 AM  
**To:** 'Chris Donald' <[chris.donald@xyzstorage.com](mailto:chris.donald@xyzstorage.com)>  
**Cc:** Prophet, Clifton <[Clifton.Prophet@gowlingwlg.com](mailto:Clifton.Prophet@gowlingwlg.com)>; Parker, Brian <[Brian.Parker@gowlingwlg.com](mailto:Brian.Parker@gowlingwlg.com)>; [jchrisdonald@gmail.com](mailto:jchrisdonald@gmail.com); Lupo, Rosa <[rosa.lupo@gowlingwlg.com](mailto:rosa.lupo@gowlingwlg.com)>; Strong, Kirsty <[Kirsty.Strong@gowlingwlg.com](mailto:Kirsty.Strong@gowlingwlg.com)>; Matthew Longo <[Matthew.Longo@toronto.ca](mailto:Matthew.Longo@toronto.ca)>; John Donald <[john.donald@xyzstorage.com](mailto:john.donald@xyzstorage.com)>; Paul Hornak <[paul.hornak@xyzstorage.com](mailto:paul.hornak@xyzstorage.com)>  
**Subject:** RE: 33 Laird Drive Documents

Hi Chris,

Happy to have been of assistance. Once you've had a chance to consider a new design, please reach out to me to set up a pre-application meeting. Interested staff will attend to provide early feedback, and we can discuss the process.

In terms of time frames, the length of the review process is impacted by a number of factors, including complexity of the application. The previous owner moved through multiple planning processes: Official Plan Amendment (OPA), Zoning By-law Amendment (ZBA), and Site Plan Control (SPC). The first two require a community consultation meeting, a preliminary report to Community Council, a final report to Community and City Councils, and a statutory public meeting before Community Council. There were a number of hurdles (in addition to review of the amendments themselves and the plans/reports/heritage component/easement) that resulted in a longer process. If it is your expectation you will not require changes to the OPA/ZBA, and therefore only require a new application for Site Plan Control, the process will be shorter.



Circling back to my first comment, the best way to get started is a pre-app meeting that includes a site plan, site stats, and elevations as a starting point. Let's reconvene when you have these materials prepared. Information regarding pre-app meetings can be found here: <https://www.toronto.ca/city-government/planning-development/application-forms-fees/pre-application-consultation/>.

Thanks,

Michelle Corcoran, MCIP, RPP (*she/her*)  
Senior Planner  
Community Planning, City Planning Division

City of Toronto  
North York Civic Centre  
5100 Yonge Street, Ground Floor  
Toronto, ON M2N 5V

c: (416) 670-9569  
o: (416) 395-7130  
f: (416) 395-7155  
e: [Michelle.Corcoran@toronto.ca](mailto:Michelle.Corcoran@toronto.ca)

**From:** Chris Donald [<mailto:chris.donald@xyzstorage.com>]  
**Sent:** May 24, 2021 9:44 AM  
**To:** Michelle Corcoran <[Michelle.Corcoran@toronto.ca](mailto:Michelle.Corcoran@toronto.ca)>  
**Cc:** Prophet, Clifton <[Clifton.Prophet@gowlingwlg.com](mailto:Clifton.Prophet@gowlingwlg.com)>; Parker, Brian <[Brian.Parker@gowlingwlg.com](mailto:Brian.Parker@gowlingwlg.com)>; [jchrisdonald@gmail.com](mailto:jchrisdonald@gmail.com); Lupo, Rosa <[rosa.lupo@gowlingwlg.com](mailto:rosa.lupo@gowlingwlg.com)>; Strong, Kirsty <[Kirsty.Strong@gowlingwlg.com](mailto:Kirsty.Strong@gowlingwlg.com)>; Matthew Longo <[Matthew.Longo@toronto.ca](mailto:Matthew.Longo@toronto.ca)>; John Donald <[john.donald@xyzstorage.com](mailto:john.donald@xyzstorage.com)>; Paul Hornak <[paul.hornak@xyzstorage.com](mailto:paul.hornak@xyzstorage.com)>  
**Subject:** Re: 33 Laird Drive Documents

Dear Michelle & Matthew,

Thank you for your time and the files that you have forwarded to our team members. It was quite eye opening for me (and our team) last week to discover that the approved SPA included the new mezzanine to the south of the existing building as well as the 3 structures along the 1 Laird Dr. property line.

In all of our materials and discussions with the stakeholders from the prior ownership group - there was (1) no budget for the mezzanine and 3 buildings, (2) the income stmt & tenant list did not include the mezz etc. and (3) the prior owner told us that they did not intend on building the mezzanine ..... all of which led me to the incorrect assumption that it was not part of the approved plan .....

So - what I would like to suggest is that we discontinue the effort to amend the SPA as I believe the changes that we might look to make are probably 'too significant' to fit within the scope of an amendment .... I can see why you responded the way you did when you said we were suggesting more than just a 10% change to the plans now .....

And - since it will take me time to review all of the material, pull together a brand new 'development programme & team' that we delay a conversation until i am better equipped with all of the details surrounding the current project.

I would ask for your help at some point in the future for as you mentioned - the prior group took 5+ years and countless submissions to get their approval ... I am sure that there are some lessons learned as well as elements of the approved SPA that you would like to see incorporated into any new development and I would like to understand your and the city's viewpoints so that we do not 'reinvent the wheel" and are able to proceed expeditiously.

Thank you again for your time last week - it was v helpful.

Sincerely,

Chris



**Chris Donald, CFA**

Managing Director | Directeur Général

[chris.donald@xyzstorage.com](mailto:chris.donald@xyzstorage.com)

M. 647 985 4856

T. 416 360 0122 ext. 323

266 King St. W. Suite 405  
Toronto, Ontario, M5V 1H8  
[xyzstorage.com](http://xyzstorage.com)

On Sat, May 22, 2021 at 9:22 AM Michelle Corcoran <[Michelle.Corcoran@toronto.ca](mailto:Michelle.Corcoran@toronto.ca)> wrote:

Hi all,

Before booking a meeting it would be helpful to understand what you want to discuss at this meeting.

Thanks,

Michelle

Sent from my iPhone

On May 21, 2021, at 4:51 PM, Prophet, Clifton <[Clifton.Prophet@gowlingwlg.com](mailto:Clifton.Prophet@gowlingwlg.com)> wrote:

Michelle;

Thanks for meeting with our team yesterday. We appreciated the opportunity to discuss plans for 33 Laird.

Thanks also for the information forwarded with your e-mail. This is really the first definitive data that our client has been able to get on these matters.

Our client would really appreciate a further opportunity to speak with you concerning this site. Are you available during the windows below:

May 26 – 4:00pm

May 27 – 10am to 2pm

We think that it might be helpful to have this meeting on a “client to client” basis. Accordingly, the Gowling lawyers will not be attending and from our side it would just be Chris Donald and Brian Parker.

If you don’t mind replying to all with your availability, I will leave it to you, Chris and Brian to take it from there.

Thanks again.

Regards,

Cliff

Clifton Prophet

*Partner*

T +1 416 862 3509

[clifton.prophet@gowlingwlg.com](mailto:clifton.prophet@gowlingwlg.com)



---

**From:** Michelle Corcoran <[Michelle.Corcoran@toronto.ca](mailto:Michelle.Corcoran@toronto.ca)>  
**Sent:** Thursday, May 20, 2021 3:26 PM  
**To:** Parker, Brian <[Brian.Parker@gowlingwlg.com](mailto:Brian.Parker@gowlingwlg.com)>; [jchrisdonald@gmail.com](mailto:jchrisdonald@gmail.com); Prophet, Clifton <[Clifton.Prophet@gowlingwlg.com](mailto:Clifton.Prophet@gowlingwlg.com)>; [chris.donald@xyzstorage.com](mailto:chris.donald@xyzstorage.com); Lupo, Rosa <[rosa.lupo@gowlingwlg.com](mailto:rosa.lupo@gowlingwlg.com)>; Strong, Kirsty <[Kirsty.Strong@gowlingwlg.com](mailto:Kirsty.Strong@gowlingwlg.com)>  
**Cc:** Matthew Longo <[Matthew.Longo@toronto.ca](mailto:Matthew.Longo@toronto.ca)>  
**Subject:** 33 Laird Drive Documents

**This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.**

---

Hi everyone,

Thanks for the meeting this afternoon. Attached you will find the drawings listed in Schedule B of the Site Plan Agreement, as well as the engineering/transportation reports and drawings found in Schedule C. Below are links to the Official Plan Amendment, Zoning By-law Amendment, and heritage easement and designation by-laws:

OPA: <https://www.toronto.ca/legdocs/bylaws/2017/law0738.pdf>

ZBA: <https://www.toronto.ca/legdocs/bylaws/2017/law0739.pdf>

Easement: <https://www.toronto.ca/legdocs/bylaws/2017/law0780.pdf>

Designation: <https://www.toronto.ca/legdocs/bylaws/2017/law0781.pdf>

Michelle Corcoran, MCIP, RPP (*she/her*)

Senior Planner

Community Planning, City Planning Division

City of Toronto

North York Civic Centre

5100 Yonge Street, Ground Floor

Toronto, ON M2N 5V

c: (416) 670-9569

o: (416) 395-7130

f: (416) 395-7155

e: [Michelle.Corcoran@toronto.ca](mailto:Michelle.Corcoran@toronto.ca)

The information in this email is intended only for the named recipient and may be privileged or confidential. If you are not the intended recipient please notify us immediately and do not copy, distribute or take action based on this email. If this email is marked 'personal' Gowling WLG is not liable in any way for its content. E-mails are susceptible to alteration. Gowling WLG shall not be liable for the message if altered, changed or falsified.

Gowling WLG (Canada) LLP is a member of Gowling WLG, an international law firm which consists of independent and autonomous entities providing services around the world. Our structure is explained in more detail at [www.gowlingwlg.com/legal](http://www.gowlingwlg.com/legal).

References to 'Gowling WLG' mean one or more members of Gowling WLG International Limited and/or any of their affiliated businesses as the context requires. Gowling WLG (Canada) LLP has offices in Montréal, Ottawa, Toronto, Hamilton, Waterloo Region, Calgary and Vancouver.



This is **Exhibit "L"** to the affidavit of Jason L. S. Birnboim sworn before me via Facetime this 4<sup>th</sup> day of June, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



A Commissioner, etc.

JOEL TURGEON

Estate No. 31-2693094

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
[IN BANKRUPTCY AND INSOLVENCY]  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE NOTICE OF INTENTION TO  
MAKE A PROPOSAL OF 33 LAIRD INC. A CORPORATION  
INCORPORATED UNDER THE ONTARIO *BUSINESS  
CORPORATIONS ACT***

**PROPOSAL OF 33 LAIRD INC**

**ARTICLE 1**

**DEFINITIONS**

**1.1 Definitions**

In this Proposal:

- a) "**Administrative Fees and Expenses**" means the proper fees, expenses, including legal fees and disbursements, of the Trustee and the Debtor on and incidental to the negotiation, preparation, presentation, consideration and implementation of the Proposal, and all proceedings and matters relating to or arising out of the Proposal;
- b) "**Approval Order**" means an Order of the Court approving the Proposal;
- c) "**BIA**" means the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended and in force as at the Filing Date;
- d) "**Beaux**" means Beaux Properties International Inc.;
- e) "**Business Day**" means a day, other than a Saturday or Sunday, on which banks are generally open for business in Toronto, Ontario;
- f) "**Canada Pension Plan**" means the Canada Pension Plan, R.S.C. 1985, c. C-8, as amended;
- 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;
- h) "**Court**" means the Ontario Superior Court of Justice [in Bankruptcy and Insolvency] (Commercial List);
  - i) "**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;
  - j) "**Creditors' Meeting**" means the meeting of the Unsecured Creditors called for the purpose of considering and voting upon the Proposal;
  - k) "**Creditors' Meeting Date**" means the date and time as may be called by the Trustee for the meeting of creditors to consider this Proposal, but in any event shall be no later than twenty-one (21) days following the Proposal Date;
  - l) "**Debtor**" means 33 Laird Inc;
  - m) "**Employee Creditors**" means 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 BIA 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 travelling salesmen, disbursements properly incurred by those salesmen in and about the Debtor's business during the same period;
  - n) "**Employment Insurance Act**" means the *Employment Insurance Act*, S.C. 1996 c. 23, as amended;
  - o) "**Filing Date**" means 28 November 2020 (the date the Debtor filed a Notices of Intention to Make a Proposal);
  - p) "**Implementation Date**" means the date upon which the conditions set forth in Article 6.7 have been satisfied;
  - q) "**Income Tax Act**" means the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended;
  - r) "**Official Receiver**" shall have the meaning ascribed thereto in the BIA;
  - s) "**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;
  - t) "**Preferred Creditors**" means Creditors with Proven Claims that are required by the BIA to be paid in priority to all other claims under a proposal made by a debtor save and except for Employee Creditors and Source Deduction Creditors;
  - u) "**Proof of Claim**" shall mean the proof of claim required by the BIA to be mailed to each known Creditor prior to the Creditors' Meeting;
  - v) "**Property**" means the premises known municipally as 33 Laird Drive, Toronto, ON and owned by the Debtor;
  - w) "**Proposal**" means this proposal together with any amendments or additions thereto;
  - x) "**Proposal Date**" means the date of the filing of the Proposal with the Official Receiver;

- y) "**Purchaser**" means 33 Laird Development Inc. in its capacity as the general partner of 33 Laird Development Limited Partnership, a limited partnership under the laws of the Province of Ontario;
- z) "**Proven Claim**" of a Creditor means the amount of the Claim of such Creditor finally determined in accordance with the provisions of the BIA;
- aa) "**Related Creditor**" means Beaux and/or SeaLink;
- bb) "**SeaLink**" means SeaLink JV Ltd. in trust;
- cc) "**Sale Agreement**" means the agreement of purchase and sale dated May 11, 2021 between the Debtor and the Purchaser for the purchase of the Property and all other assets of the Debtor;
- dd) "**Second Mortgage**" means the mortgage held by Beaux and SeaLink and registered on title to the Property as instrument number AT5572805;
- ee) "**Source Deduction Creditors**" means Her Majesty in Right of Canada or a Province for all amounts that were outstanding at the time of the Filing Date and are of a kind that could be subject to a demand under,
  - a. subsection 224(1.2) of the *Income Tax Act*;
  - b. 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, penalties or other amounts; or
  - c. any provision of provincial legislation that has a similar purpose to **subsection 224(1.2)** of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum;
    - i. has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*; or
    - ii. is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in **subsection 3(1)** of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection;
- ff) "**Trustee**" means MNP Ltd. or its duly appointed successor or successors;
- gg) "**Unsecured Claim**" means a claim for which a creditor holds no security over the assets of the Debtor, or a claim for which any security held is valued at \$NIL within the meaning of Article 2.1, but for the purposes of the Proposal does not include the claim of the Related Creditor.
- hh) "**Unsecured Creditor Cash Pool**" means a fund of \$50,000 to be held by the Trustee for the distribution to the Unsecured Creditors in accordance with the terms of this Proposal.

- ii) "**Unsecured Creditors**" means the Preferred Creditors and any Creditor who holding an Unsecured Claim; and
- jj) "**Voting Letter**" shall mean the voting letter required by **subsection 51(1)** of the BIA to be mailed to each known Creditor prior to the Unsecured Creditors' Meeting.

## **1.2 Articles of Reference**

The terms "hereof", "hereunder", "herein" and similar expressions refer to the Proposal and not to any particular article, section, subsection, clause or paragraph of the Proposal and include any agreements supplemental hereto. In the Proposal, a reference to an article, section, subsection, clause or paragraph will, unless otherwise stated, refer to an article, section, subsection, clause or paragraph of the Proposal.

## **1.3 Interpretation Not Affected by Headings**

The division of the Proposal into articles, sections, subsections, clauses or paragraphs and the insertion of a table of contents and headings are for convenience of reference only and will not affect the construction or interpretation of this Proposal.

## **1.4 Date for Any Action**

In the event that any date on which any action is required to be taken hereunder is not a Business Day, such action will be required to be taken on the next succeeding day which is a Business Day.

## **1.5 Time**

All times expressed herein are local time in Toronto, Ontario, Canada unless otherwise stipulated. Where the time for anything pursuant to the Proposal on a particular date is unspecified herein, the time shall be deemed to be 5:00 p.m. local time in Toronto, Ontario, Canada.

## **1.6 Numbers**

In the Proposal, where the context requires, a word importing the singular number will include the plural and vice versa and a word or words importing gender will include all genders.

## **1.7 Currency**

Unless otherwise stated herein, all references to currency in the Proposal are to lawful money of Canada.

## **1.8 Statutory References**

Except as otherwise provided herein, any reference in the Proposal to a statute includes all regulations made thereunder, all amendments to such statute or regulation(s) in force from time to time, and any statute or regulation that supplements or supersedes such statute or regulation(s).

### **1.9 Successors and Assigns**

The Proposal will be binding upon and will enure to the benefit of the heirs, administrators, executors, legal personal representatives, successors and assigns of any Person named or referred to in the Proposal.

### **1.10 Proposals of 33 Laird Inc. 33 Laird GP Inc. and 33 Laird Limited Partnership**

33 Laird Inc. is the bare trustee of the Property for 33 Laird GP Inc. as beneficial owner, which is the general partner of 33 Laird Limited Partnership. These three entities will as a result have the same assets and the same obligations to creditors. This Proposal by the Debtor is being made in conjunction with the proposals by 33 Laird GP Inc. and 33 Laird Limited Partnership. The treatment of creditors in this Proposal and the Unsecured Creditor Cash Pool shall mirror the treatment of creditors in the proposals of the other two entities. Without limiting the generality of the foregoing, there shall only be one Unsecured Creditor Cash Pool of \$50,000 among all three such proposals.

## **ARTICLE 2**

### **CLASSIFICATION AND TREATMENT OF CREDITORS**

#### **2.1 Valuation of Security**

For the purposes of this Proposal, the value of the security held by any creditor with a security interest in the assets of the Debtor that is subordinate to the Second Mortgage will be \$Nil and any amount owing to such creditors will be treated as an Unsecured Claim.

#### **2.2 Secured Creditor**

Subject to Article 2.1, the Claim of any Creditor with an interest ranking in priority to the Second Mortgage (which shall include without limiting the generality of the foregoing: (i) any municipal taxes owed, (ii) any holdback owing to claimants under the *Construction Act*, (iii) any amounts owing to DUCA Financial Services Credit Union Ltd. and Centurion Mortgage Corporation in respect of a mortgage on the Property, (iv) amounts owing to the Restructuring Professionals within the meaning of the Court Order dated May 12, 2021, (v) amounts owing to the DIP Lender within the meaning of the Court Order dated December 16, 2020, and (iv) any valid and enforceable trust claims as against the estate of the Debtor) shall be paid by the Debtor in accordance with agreements between the Debtors and the Secured Creditor or as otherwise agreed between the Secured Creditor and the Debtor from the proceeds of sale of the Property pursuant to the Sale Agreement. For greater clarity, the Claims of any Creditor with an interest ranking in priority to the Second Mortgage are unaffected by this Proposal.

#### **2.3 Classes of Creditors**

For the purposes of voting on the Proposal, there shall be one (1) class of Creditors. Class 1 will consist of the Unsecured Creditors.

#### **2.4 Administrative Fees and Expenses**

The Administrative Fees and Expenses will be paid from the Unsecured Creditors Cash Pool to a maximum of \$15,000. Any further Administrative Fees and Expenses beyond that maximum amount will be paid pursuant to the charge granted by the Court in its order dated May 12, 2021.

#### **2.5 Preferred Creditors**

The Proven Claims of the Preferred Creditors are to be paid in full in priority to the Proven Claims of the Unsecured Creditors in accordance with the BIA and the Proposal.

#### **2.6 The Second Mortgage**

The Claim of each Related Creditor under the Second Mortgage shall be paid by the Debtor in accordance with agreements between the Debtor and the Related Creditor or as otherwise agreed between the Related Creditor and the Debtor from the proceeds of sale of the Property pursuant to the Sale Agreement, subject to the Related Creditor releasing an interest in the proceeds of sale of the Property in the amount of the Unsecured Creditor Cash Pool. The Claim of the Related Creditor is otherwise not affected by this Proposal.

#### **2.7 Unsecured Creditors**

Unsecured Creditors will receive the funds from the Unsecured Creditor Cash Pool less the amounts referred to in Article 2.4 and 2.5, which shall be funded from the proceeds of sale of the Property pursuant to the Sale Agreement as noted in Article 2.6 on a pro rata basis on account of their respective Proven Claims.

### **ARTICLE 3**

#### **PROCEDURE FOR VALIDATION OF CLAIMS**

##### **3.1 Filing of Proofs of Claims**

Each Creditor must file a Proof of Claim as required by the BIA to vote on, or receive a distribution under, the Proposal.

##### **3.2 Allowance or Disallowance of Claims by the Trustee**

Upon receipt of a completed Proof of Claim, the Trustee shall examine the Proof of Claim and shall deal with each Proof of Claim in accordance with the provisions of the BIA. The procedure for valuing Claims of the Unsecured Creditors and resolving disputes with respect to such Claims will be as set forth in the BIA.

## ARTICLE 4

### MEETING OF CREDITORS

#### 4.1 Unsecured Creditors' Meeting

On the Creditors' Meeting Date, the Debtor shall hold the Creditors' Meeting in order for the Creditors to consider and vote upon the Proposal.

#### 4.2 Time and Place of Meeting

Unless otherwise ordered by the Court, the Creditors' Meeting shall be held at a time and place to be established by the Official Receiver, or the nominee thereof, and confirmed in the notice of Creditors' Meeting to be mailed to Creditors pursuant to the BIA.

#### 4.3 Conduct of Meeting

The Official Receiver, or the nominee thereof, shall preside as the chair of the Creditors' Meeting and will decide all matters relating to the conduct of the Creditors' Meeting. The only persons entitled to attend the Creditors' Meeting are those persons, including the holders of proxies, entitled to vote at the Creditors' Meeting, the Secured Creditors and their respective legal counsel, if any, and the officers, directors, auditors and legal counsel of the Debtor, together with such representatives of the Trustee as the Trustee may appoint in its discretion, and such scrutineers as may be duly appointed by the chair of such meeting. Any other person may be admitted on invitation of the chair of the Creditors' Meeting or with the consent of the Unsecured Creditors.

#### 4.4 Adjournment of Meeting

The Creditors' Meeting may be adjourned in accordance with Section 52 of the BIA.

#### 4.5 Voting by Creditors

To the extent provided for herein, each Creditor will be entitled to vote in their respective class to the extent of the amount that is equal to that Creditor's Claim. Any Proof of Claim in respect of a Claim that is not a Proven Claim as at the Creditors' Meeting Date will be marked as objected to in accordance with subsection 108(3) of the BIA.

#### 4.6 Approval by Creditors

In order that the Proposal be binding, it must be approved by Creditors in accordance with the BIA.

## ARTICLE 5

### DISTRIBUTION

**5.1 Payment of Employee Creditors**

The Claims, if any, of the Employee Creditors shall be paid on the later of (i) the Implementation Date or (ii) the receipt of proceeds of the sale of the Property pursuant to the Sale Agreement.

**5.2 Payment of Source Deduction Creditors**

Unless Her Majesty agrees otherwise, the Proven Claims, if any, of the Source Deduction Creditors shall be paid within six (6) months after the making of the Approval Order using proceeds from the sale of the Property pursuant to the Sale Agreement.

**5.3 Payment of the Second Mortgage**

The amounts owing under the Second Mortgage shall be paid to the mortgage holder less the Unsecured Creditors Cash Pool on the later of the later of (i) Implementation Date or (ii) the receipt of proceeds of the sale of the Property pursuant to the Sale Agreement.

**5.4 Payment of Unsecured Creditors**

On the later of (i) the Implementation Date or (ii) the receipt of proceeds of the sale of the Property pursuant to the Sale Agreement, the Debtor shall pay to the Trustee the Unsecured Creditor Cash Pool. The Trustee shall make the payments from the Unsecured Creditor Cash Pool to the Unsecured Creditors with a Proven Claim as soon as reasonably practicable.

**5.5 Levy**

All payments to Unsecured Creditors shall be net of any applicable levy payable to the Office of the Superintendent of Bankruptcy as required by the BIA and the Trustee shall remit the amount of such levy to the Office of the Superintendent of Bankruptcy contemporaneous with the distributions to Unsecured Creditors.

**5.6 Discharge of Trustee**

Upon the payment by the Trustee of the amounts contemplated in this Article 5, the Trustee shall have discharged its duties as Trustee and the Trustee shall be entitled to apply for its discharge as Trustee. For greater certainty, the Trustee will not be responsible or liable for any obligations of the Debtor and will be exempt from any personal liability in fulfilling any duties or exercising any powers conferred upon it by this Proposal unless such acts have been carried out in bad faith and constitute a wilful or wrongful act or default.

**ARTICLE 6**  
**MISCELLANEOUS**

**6.1 Release in favour of the Second Mortgage holders**

The holders of the Second Mortgage have agreed to fund the Unsecured Creditors Cash Pool as noted in Article 2.6 in consideration for a full and final release. Acceptance of this Proposal by the Creditors shall constitute a full and final release of all claims by the Debtor or by the Unsecured Creditors as against the holders of the Second Mortgage arising out of or in connection with the Second Mortgage or the payment to be made to them by the Debtor on account of it.

**6.2 Release in favour of directors and officers**

Acceptance of this Proposal by the Creditors shall constitute a full and final release of all claims against any officer or director of the Debtor.

**6.3 Non-application of sections 95 to 101 of the BIA**

The provisions of sections 95 to 101 of the BIA shall not apply to this Proposal.

**6.4 Discharge of Trustee**

The provisions of this Proposal will be binding upon each Creditor, their heirs, executors, administrators, successors and assigns, for all purposes.

**6.5 Modification of Proposal**

The Debtor may propose an alteration or modification to the Proposal prior to the vote taking place on the Proposal.

**6.6 Consents, Waivers and Agreements**

As at 12:01 a.m. on the Implementation Date, each Unsecured Creditor, will be deemed:

- a. to have executed and delivered to the Debtor all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out this Proposal in its entirety;
- b. to have waived any default by the Debtor in any provision, express or implied, in any agreement or other arrangement, written or oral, existing between such Unsecured Creditor and the Debtor that has occurred on or prior to the Implementation Date;
- c. to have agreed, in the event that there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such Unsecured Creditor and the Debtor as at the Implementation Date (other than those entered into by the Debtor on, or with effect from, the



Implementation Date) and the provisions of this Proposal, that the provisions of this Proposal shall take precedence and priority and the provisions of such agreement or other arrangement shall be amended accordingly; and

- d. subject to the terms of the Proposal, to have released the Debtor, the Trustee and all of their respective affiliates, employees, agents, directors, officers, shareholders, advisors, consultants and solicitors from any and all demands, claims, actions, causes of action, counter-claims, suits, debts, sums of money, accounts, covenants, damages, judgements, expenses, executions, liens, set off rights and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Person may be entitled to assert, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Implementation Date, relating to or arising out of or in connection with the matters herein; provided that nothing herein shall release the Debtor of its obligation to make the distributions to Unsecured Creditors contemplated in this Proposal.

#### **6.7 Conditions to Proposal Implementation**

The implementation of the Proposal by the Debtor will be conditional upon the fulfilment or satisfaction of the following conditions:

- a. The Approval of the Sale Agreement by the Court;
- b. The acceptance of the Proposal by the Unsecured Creditors; and
- c. The making of the Approval Order and the expiry of all appeal periods.

#### **6.8 Effect of Proposal Generally**

As at 12:01 a.m. on the Implementation Date, the treatment of all Claims under the Proposal shall be final and binding on the Debtor and all Unsecured Creditors (along with their respective heirs, executors, administrators, legal personal representatives, successors and assigns).

#### **6.9 Conduct of the Debtor's Business**

Subject to any Order made by the Court and completion of the transaction contemplated by the Sale Agreement, the Debtor shall remain in possession and control of its property and assets at all times, both before and after implementation of this Proposal.

#### **6.10 Full Implementation**

This Proposal will be fully implemented by the Debtor upon payment of the Unsecured Creditor Cash Pool to the Trustee in accordance with Article 5.4.

**ARTICLE 7**

**GENERAL**

**7.1 Notices**

Any notices or communication to be made or given hereunder shall be in writing and shall refer to this Proposal and may, subject as hereinafter provided, be made or given by personal delivery, by prepaid mail or by telecopier (except for Proofs of Claim which may only be sent by personal delivery, telecopier or registered mail) addressed to the respective parties as follows:

- a) if to the Debtor:  
President: Jason Birboim  
c/o Goldman, Sloan, Nash and Haber LLP  
480 University Avenue  
Toronto ON M5G 1V2  
Attention: Brendan Bissell  
Email: [bissell@gsnh.com](mailto:bissell@gsnh.com)
  
- b) if to an Unsecured Creditor, to the address or telecopier number for such Unsecured Creditor specified in the Proof of Claim filed by such Unsecured Creditor or, if no proof of Claim has been filed, to such other address or telecopier number at which the notifying party may reasonably believe that the Unsecured Creditor may be contacted; and
  
- c) if to the Trustee:  
MNP Ltd.  
300-111Richmond St W  
Toronto, ON M5H 204  
Attention: Sheldon Title  
Telecopier: 416-596-7894  
E-mail:[sheldon.title@mnp.ca](mailto:sheldon.title@mnp.ca)

or to such other address or telecopier number as any party may from time to time notify the others in accordance with this section. In the event of any strike, lock-out and other event which interrupts postal service in any part of Canada, all notices and communications during such interruption may only be given or made by personal delivery or by telecopier and any notice or other communication given or made by prepaid mail within the five (5) Business Day period immediately preceding the commencement of such interruption will be deemed not to have been given or made. All such notices and communications will be deemed to have been received, in the case of notice by telecopier or by delivery prior to 5:00 p.m. (local time) on a Business Day, when received or if received after 5:00 p.m. (local time) on a Business Day or at any time on a non-Business Day, on the next following Business Day and in to case of notice mailed as aforesaid, on the fifth (5<sup>th</sup>)

Business Day following the date on which such notice or other communication is mailed. The unintentional failure to give a notice contemplated hereunder to any particular Creditor will not invalidate this Proposal or any action taken by any Person pursuant to this Proposal.

**7.2 Foreign Currency Obligations**

For purposes of this Proposal, Claims denominated in a currency other than Canadian funds will be converted to Canadian Dollars at the closing spot rate of exchange of the Bank of Canada on the Filing Date.

**7.3 Applicable Law**

This Proposal shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

**7.4 Deeming Provisions**

In this Proposal the deeming provisions are not rebuttable and are conclusive and irrevocable.

**DATED** at the City of Toronto, in the Province of Ontario, this 28<sup>th</sup> day of May, 2021.

**33 LAIRD INC.**

Per: 

Name: Jason Birnboim

Title: President

I have authority to bind the corporation.

Estate No. 31- 2693092

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
[IN BANKRUPTCY AND INSOLVENCY]  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE NOTICE OF INTENTION TO  
MAKE A PROPOSAL OF 33 LAIRD GP INC., A  
CORPORATION INCORPORATED UNDER THE ONTARIO  
*BUSINESS CORPORATIONS ACT***

**OF 33 LAIRD GP INC.**

**ARTICLE 1**

**DEFINITIONS**

**1.1 Definitions**

In this Proposal:

- a) "**Administrative Fees and Expenses**" means the proper fees, expenses, including legal fees and disbursements, of the Trustee and the Debtor on and incidental to the negotiation, preparation, presentation, consideration and implementation of the Proposal, and all proceedings and matters relating to or arising out of the Proposal;
- b) "**Approval Order**" means an Order of the Court approving the Proposal;
- c) "**BIA**" means the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended and in force as at the Filing Date;
- d) "**Beaux**" means Beaux Properties International Inc.;
- e) "**Business Day**" means a day, other than a Saturday or Sunday, on which banks are generally open for business in Toronto, Ontario;
- f) "**Canada Pension Plan**" means the Canada Pension Plan, R.S.C. 1985, c. C-8, as amended;
- 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;
- h) "**Court**" means the Ontario Superior Court of Justice [in Bankruptcy and Insolvency] (Commercial List);
  - i) "**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;
  - j) "**Creditors' Meeting**" means the meeting of the Unsecured Creditors called for the purpose of considering and voting upon the Proposal;
  - k) "**Creditors' Meeting Date**" means the date and time as may be called by the Trustee for the meeting of creditors to consider this Proposal, but in any event shall be no later than twenty-one (21) days following the Proposal Date;
  - l) "**Debtor**" means 33 Laird GP Inc.;
  - m) "**Employee Creditors**" means 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 BIA 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 travelling salesmen, disbursements properly incurred by those salesmen in and about the Debtor's business during the same period;
  - n) "**Employment Insurance Act**" means the *Employment Insurance Act*, S.C. 1996 c. 23, as amended;
  - o) "**Filing Date**" means 28 November 2020 (the date the Debtor filed a Notices of Intention to Make a Proposal);
  - p) "**Implementation Date**" means the date upon which the conditions set forth in Article 6.7 have been satisfied;
  - q) "**Income Tax Act**" means the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended;
  - r) "**Official Receiver**" shall have the meaning ascribed thereto in the BIA;
  - s) "**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;
  - t) "**Preferred Creditors**" means Creditors with Proven Claims that are required by the BIA to be paid in priority to all other claims under a proposal made by a debtor save and except for Employee Creditors and Source Deduction Creditors;
  - u) "**Proof of Claim**" shall mean the proof of claim required by the BIA to be mailed to each known Creditor prior to the Creditors' Meeting;
  - v) "**Property**" means the premises known municipally as 33 Laird Drive, Toronto, ON and owned by the Debtor;
  - w) "**Proposal**" means this proposal together with any amendments or additions thereto;
  - x) "**Proposal Date**" means the date of the filing of the Proposal with the Official Receiver;

- y) **"Purchaser"** means 33 Laird Development Inc. in its capacity as the general partner of 33 Laird Development Limited Partnership, a limited partnership under the laws of the Province of Ontario;
- z) **"Proven Claim"** of a Creditor means the amount of the Claim of such Creditor finally determined in accordance with the provisions of the BIA;
- aa) **"Related Creditor"** means Beaux and/or SeaLink;
- bb) **"SeaLink"** means SeaLink JV Ltd. in trust;
- cc) **"Sale Agreement"** means the agreement of purchase and sale dated May 11, 2021 between the Debtor and the Purchaser for the purchase of the Property and all other assets of the Debtor;
- dd) **"Second Mortgage"** means the mortgage held by Beaux and SeaLink and registered on title to the Property as instrument number AT5572805;
- ee) **"Source Deduction Creditors"** means Her Majesty in Right of Canada or a Province for all amounts that were outstanding at the time of the Filing Date and are of a kind that could be subject to a demand under,
  - a. subsection 224(1.2) of the *Income Tax Act*;
  - b. 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, penalties or other amounts; or
  - c. any provision of provincial legislation that has a similar purpose to **subsection 224(1.2)** of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum;
    - i. has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*; or
    - ii. is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in **subsection 3(1)** of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection;
- ff) **"Trustee"** means MNP Ltd. or its duly appointed successor or successors;
- gg) **"Unsecured Claim"** means a claim for which a creditor holds no security over the assets of the Debtor, or a claim for which any security held is valued at \$NIL within the meaning of Article 2.1, but for the purposes of the Proposal does not include the claim of the Related Creditor.
- hh) **"Unsecured Creditor Cash Pool"** means a fund of \$50,000 to be held by the Trustee for the distribution to the Unsecured Creditors in accordance with the terms of this Proposal.

- ii) "**Unsecured Creditors**" means the Preferred Creditors and any Creditor who holding an Unsecured Claim; and
- jj) "**Voting Letter**" shall mean the voting letter required by **subsection 51(1)** of the BIA to be mailed to each known Creditor prior to the Unsecured Creditors' Meeting.

## **1.2 Articles of Reference**

The terms "hereof", "hereunder", "herein" and similar expressions refer to the Proposal and not to any particular article, section, subsection, clause or paragraph of the Proposal and include any agreements supplemental hereto. In the Proposal, a reference to an article, section, subsection, clause or paragraph will, unless otherwise stated, refer to an article, section, subsection, clause or paragraph of the Proposal.

## **1.3 Interpretation Not Affected by Headings**

The division of the Proposal into articles, sections, subsections, clauses or paragraphs and the insertion of a table of contents and headings are for convenience of reference only and will not affect the construction or interpretation of this Proposal.

## **1.4 Date for Any Action**

In the event that any date on which any action is required to be taken hereunder is not a Business Day, such action will be required to be taken on the next succeeding day which is a Business Day.

## **1.5 Time**

All times expressed herein are local time in Toronto, Ontario, Canada unless otherwise stipulated. Where the time for anything pursuant to the Proposal on a particular date is unspecified herein, the time shall be deemed to be 5:00 p.m. local time in Toronto, Ontario, Canada.

## **1.6 Numbers**

In the Proposal, where the context requires, a word importing the singular number will include the plural and vice versa and a word or words importing gender will include all genders.

## **1.7 Currency**

Unless otherwise stated herein, all references to currency in the Proposal are to lawful money of Canada.

## **1.8 Statutory References**

Except as otherwise provided herein, any reference in the Proposal to a statute includes all regulations made thereunder, all amendments to such statute or regulation(s) in force from time to time, and any statute or regulation that supplements or supersedes such statute or regulation(s).

### **1.9 Successors and Assigns**

The Proposal will be binding upon and will enure to the benefit of the heirs, administrators, executors, legal personal representatives, successors and assigns of any Person named or referred to in the Proposal.

### **1.10 Proposals of 33 Laird Inc. 33 Laird GP Inc. and 33 Laird Limited Partnership**

33 Laird Inc. is the bare trustee of the Property for 33 Laird GP Inc. as beneficial owner, which is the general partner of 33 Laird Limited Partnership. These three entities will as a result have the same assets and the same obligations to creditors. This Proposal by the Debtor is being made in conjunction with the proposals by 33 Laird Inc. and 33 Laird Limited Partnership. The treatment of creditors in this Proposal and the Unsecured Creditor Cash Pool shall mirror the treatment of creditors in the proposals of the other two entities. Without limiting the generality of the foregoing, there shall only be one Unsecured Creditor Cash Pool of \$50,000 among all three such proposals.

## **ARTICLE 2**

### **CLASSIFICATION AND TREATMENT OF CREDITORS**

#### **2.1 Valuation of Security**

For the purposes of this Proposal, the value of the security held by any creditor with a security interest in the assets of the Debtor that is subordinate to the Second Mortgage will be \$Nil and any amount owing to such creditors will be treated as an Unsecured Claim.

#### **2.2 Secured Creditor**

Subject to Article 2.1, the Claim of any Creditor with an interest ranking in priority to the Second Mortgage (which shall include without limiting the generality of the foregoing: (i) any municipal taxes owed, (ii) any holdback owing to claimants under the *Construction Act*, (iii) any amounts owing to DUCA Financial Services Credit Union Ltd. and Centurion Mortgage Corporation in respect of a mortgage on the Property, (iv) amounts owing to the Restructuring Professionals within the meaning of the Court Order dated May 12, 2021, (v) amounts owing to the DIP Lender within the meaning of the Court Order dated December 16, 2020, and (iv) any valid and enforceable trust claims as against the estate of the Debtor) shall be paid by the Debtor in accordance with agreements between the Debtors and the Secured Creditor or as otherwise agreed between the Secured Creditor and the Debtor from the proceeds of sale of the Property pursuant to the Sale Agreement. For greater clarity, the Claims of any Creditor with an interest ranking in priority to the Second Mortgage are unaffected by this Proposal.



### **2.3 Classes of Creditors**

For the purposes of voting on the Proposal, there shall be one (1) class of Creditors. Class 1 will consist of the Unsecured Creditors.

### **2.4 Administrative Fees and Expenses**

The Administrative Fees and Expenses will be paid from the Unsecured Creditors Cash Pool to a maximum of \$15,000. Any further Administrative Fees and Expenses beyond that maximum amount will be paid pursuant to the charge granted by the Court in its order dated May 12, 2021.

### **2.5 Preferred Creditors**

The Proven Claims of the Preferred Creditors are to be paid in full in priority to the Proven Claims of the Unsecured Creditors in accordance with the BIA and the Proposal.

### **2.6 The Second Mortgage**

The Claim of each Related Creditor under the Second Mortgage shall be paid by the Debtor in accordance with agreements between the Debtor and the Related Creditor or as otherwise agreed between the Related Creditor and the Debtor from the proceeds of sale of the Property pursuant to the Sale Agreement, subject to the Related Creditor releasing an interest in the proceeds of sale of the Property in the amount of the Unsecured Creditor Cash Pool. The Claim of the Related Creditor is otherwise not affected by this Proposal.

### **2.7 Unsecured Creditors**

Unsecured Creditors will receive the funds from the Unsecured Creditor Cash Pool less the amounts referred to in Article 2.4 and 2.5, which shall be funded from the proceeds of sale of the Property pursuant to the Sale Agreement as noted in Article 2.6 on a pro rata basis on account of their respective Proven Claims.

## **ARTICLE 3**

### **PROCEDURE FOR VALIDATION OF CLAIMS**

#### **3.1 Filing of Proofs of Claims**

Each Creditor must file a Proof of Claim as required by the BIA to vote on, or receive a distribution under, the Proposal.

#### **3.2 Allowance or Disallowance of Claims by the Trustee**

Upon receipt of a completed Proof of Claim, the Trustee shall examine the Proof of Claim and shall deal with each Proof of Claim in accordance with the provisions of the BIA. The procedure

for valuing Claims of the Unsecured Creditors and resolving disputes with respect to such Claims will be as set forth in the BIA.

## **ARTICLE 4**

### **MEETING OF CREDITORS**

#### **4.1 Unsecured Creditors' Meeting**

On the Creditors' Meeting Date, the Debtor shall hold the Creditors' Meeting in order for the Creditors to consider and vote upon the Proposal.

#### **4.2 Time and Place of Meeting**

Unless otherwise ordered by the Court, the Creditors' Meeting shall be held at a time and place to be established by the Official Receiver, or the nominee thereof, and confirmed in the notice of Creditors' Meeting to be mailed to Creditors pursuant to the BIA.

#### **4.3 Conduct of Meeting**

The Official Receiver, or the nominee thereof, shall preside as the chair of the Creditors' Meeting and will decide all matters relating to the conduct of the Creditors' Meeting. The only persons entitled to attend the Creditors' Meeting are those persons, including the holders of proxies, entitled to vote at the Creditors' Meeting, the Secured Creditors and their respective legal counsel, if any, and the officers, directors, auditors and legal counsel of the Debtor, together with such representatives of the Trustee as the Trustee may appoint in its discretion, and such scrutineers as may be duly appointed by the chair of such meeting. Any other person may be admitted on invitation of the chair of the Creditors' Meeting or with the consent of the Unsecured Creditors.

#### **4.4 Adjournment of Meeting**

The Creditors' Meeting may be adjourned in accordance with Section 52 of the BIA.

#### **4.5 Voting by Creditors**

To the extent provided for herein, each Creditor will be entitled to vote in their respective class to the extent of the amount that is equal to that Creditor's Claim. Any Proof of Claim in respect of a Claim that is not a Proven Claim as at the Creditors' Meeting Date will be marked as objected to in accordance with subsection 108(3) of the BIA.

#### **4.6 Approval by Creditors**

In order that the Proposal be binding, it must be approved by Creditors in accordance with the BIA.

## **ARTICLE 5**

## **DISTRIBUTION**

### **5.1 Payment of Employee Creditors**

The Claims, if any, of the Employee Creditors shall be paid on the later of (i) the Implementation Date or (ii) the receipt of proceeds of the sale of the Property pursuant to the Sale Agreement.

### **5.2 Payment of Source Deduction Creditors**

Unless Her Majesty agrees otherwise, the Proven Claims, if any, of the Source Deduction Creditors shall be paid within six (6) months after the making of the Approval Order using proceeds from the sale of the Property pursuant to the Sale Agreement.

### **5.3 Payment of the Second Mortgage**

The amounts owing under the Second Mortgage shall be paid to the mortgage holder less the Unsecured Creditors Cash Pool on the later of the later of (i) Implementation Date or (ii) the receipt of proceeds of the sale of the Property pursuant to the Sale Agreement.

### **5.4 Payment of Unsecured Creditors**

On the later of (i) the Implementation Date or (ii) the receipt of proceeds of the sale of the Property pursuant to the Sale Agreement, the Debtor shall pay to the Trustee the Unsecured Creditor Cash Pool. The Trustee shall make the payments from the Unsecured Creditor Cash Pool to the Unsecured Creditors with a Proven Claim as soon as reasonably practicable.

### **5.5 Levy**

All payments to Unsecured Creditors shall be net of any applicable levy payable to the Office of the Superintendent of Bankruptcy as required by the BIA and the Trustee shall remit the amount of such levy to the Office of the Superintendent of Bankruptcy contemporaneous with the distributions to Unsecured Creditors.

### **5.6 Discharge of Trustee**

Upon the payment by the Trustee of the amounts contemplated in this Article 5, the Trustee shall have discharged its duties as Trustee and the Trustee shall be entitled to apply for its discharge as Trustee. For greater certainty, the Trustee will not be responsible or liable for any obligations of the Debtor and will be exempt from any personal liability in fulfilling any duties or exercising any powers conferred upon it by this Proposal unless such acts have been carried out in bad faith and constitute a wilful or wrongful act or default.

## ARTICLE 6

### MISCELLANEOUS

#### **6.1 Release in favour of the Second Mortgage holders**

The holders of the Second Mortgage have agreed to fund the Unsecured Creditors Cash Pool as noted in Article 2.6 in consideration for a full and final release. Acceptance of this Proposal by the Creditors shall constitute a full and final release of all claims by the Debtor or by the Unsecured Creditors as against the holders of the Second Mortgage arising out of or in connection with the Second Mortgage or the payment to be made to them by the Debtor on account of it.

#### **6.2 Release in favour of directors and officers**

Acceptance of this Proposal by the Creditors shall constitute a full and final release of all claims against any officer or director of the Debtor.

#### **6.3 Non-application of sections 95 to 101 of the BIA**

The provisions of sections 95 to 101 of the BIA shall not apply to this Proposal.

#### **6.4 Discharge of Trustee**

The provisions of this Proposal will be binding upon each Creditor, their heirs, executors, administrators, successors and assigns, for all purposes.

#### **6.5 Modification of Proposal**

The Debtor may propose an alteration or modification to the Proposal prior to the vote taking place on the Proposal.

#### **6.6 Consents, Waivers and Agreements**

As at 12:01 a.m. on the Implementation Date, each Unsecured Creditor, will be deemed:

- a. to have executed and delivered to the Debtor all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out this Proposal in its entirety;
- b. to have waived any default by the Debtor in any provision, express or implied, in any agreement or other arrangement, written or oral, existing between such Unsecured Creditor and the Debtor that has occurred on or prior to the Implementation Date;
- c. to have agreed, in the event that there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such Unsecured Creditor and the Debtor as at the Implementation Date (other than those entered into by the Debtor on, or with effect from, the

Implementation Date) and the provisions of this Proposal, that the provisions of this Proposal shall take precedence and priority and the provisions of such agreement or other arrangement shall be amended accordingly; and

- d. subject to the terms of the Proposal, to have released the Debtor, the Trustee and all of their respective affiliates, employees, agents, directors, officers, shareholders, advisors, consultants and solicitors from any and all demands, claims, actions, causes of action, counter-claims, suits, debts, sums of money, accounts, covenants, damages, judgements, expenses, executions, liens, set off rights and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Person may be entitled to assert, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Implementation Date, relating to or arising out of or in connection with the matters herein; provided that nothing herein shall release the Debtor of its obligation to make the distributions to Unsecured Creditors contemplated in this Proposal.

#### **6.7 Conditions to Proposal Implementation**

The implementation of the Proposal by the Debtor will be conditional upon the fulfilment or satisfaction of the following conditions:

- a. The Approval of the Sale Agreement by the Court;
- b. The acceptance of the Proposal by the Unsecured Creditors; and
- c. The making of the Approval Order and the expiry of all appeal periods.

#### **6.8 Effect of Proposal Generally**

As at 12:01 a.m. on the Implementation Date, the treatment of all Claims under the Proposal shall be final and binding on the Debtor and all Unsecured Creditors (along with their respective heirs, executors, administrators, legal personal representatives, successors and assigns).

#### **6.9 Conduct of the Debtor's Business**

Subject to any Order made by the Court and completion of the transaction contemplated by the Sale Agreement, the Debtor shall remain in possession and control of its property and assets at all times, both before and after implementation of this Proposal.

#### **6.10 Full Implementation**

This Proposal will be fully implemented by the Debtor upon payment of the Unsecured Creditor Cash Pool to the Trustee in accordance with Article 5.4.

**ARTICLE 7**

**GENERAL**

**7.1 Notices**

Any notices or communication to be made or given hereunder shall be in writing and shall refer to this Proposal and may, subject as hereinafter provided, be made or given by personal delivery, by prepaid mail or by telecopier (except for Proofs of Claim which may only be sent by personal delivery, telecopier or registered mail) addressed to the respective parties as follows:

- a) if to the Debtor:  
President: Jason Birboim  
c/o Goldman, Sloan, Nash and Haber LLP  
480 University Avenue  
Toronto ON M5G 1V2  
Attention: Brendan Bissell  
Email: [bissell@gsnh.com](mailto:bissell@gsnh.com)
  
- b) if to an Unsecured Creditor, to the address or telecopier number for such Unsecured Creditor specified in the Proof of Claim filed by such Unsecured Creditor or, if no proof of Claim has been filed, to such other address or telecopier number at which the notifying party may reasonably believe that the Unsecured Creditor may be contacted; and
  
- c) if to the Trustee:  
MNP Ltd.  
300-111Richmond St W  
Toronto, ON M5H 204  
Attention: Sheldon Title  
Telecopier: 416-596-7894  
E-mail:[sheldon.title@mnp.ca](mailto:sheldon.title@mnp.ca)

or to such other address or telecopier number as any party may from time to time notify the others in accordance with this section. In the event of any strike, lock-out and other event which interrupts postal service in any part of Canada, all notices and communications during such interruption may only be given or made by personal delivery or by telecopier and any notice or other communication given or made by prepaid mail within the five (5) Business Day period immediately preceding the commencement of such interruption will be deemed not to have been given or made. All such notices and communications will be deemed to have been received, in the case of notice by telecopier or by delivery prior to 5:00 p.m. (local time) on a Business Day, when received or if received after 5:00 p.m. (local time) on a Business Day or at any time on a non-Business Day, on the next following Business Day and in to case of notice mailed as aforesaid, on the fifth (5<sup>th</sup>)

Business Day following the date on which such notice or other communication is mailed. The unintentional failure to give a notice contemplated hereunder to any particular Creditor will not invalidate this Proposal or any action taken by any Person pursuant to this Proposal.

**7.2 Foreign Currency Obligations**

For purposes of this Proposal, Claims denominated in a currency other than Canadian funds will be converted to Canadian Dollars at the closing spot rate of exchange of the Bank of Canada on the Filing Date.

**7.3 Applicable Law**

This Proposal shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

**7.4 Deeming Provisions**

In this Proposal the deeming provisions are not rebuttable and are conclusive and irrevocable.

**DATED** at the City of Toronto, in the Province of Ontario, this 28<sup>th</sup> day of May, 2021.

**33 LAIRD GP INC.**

Per: 

Name: Jason Birnboim

Title: President

I have authority to bind the corporation.

Estate No. 31- 2693095

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
[IN BANKRUPTCY AND INSOLVENCY]  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE NOTICE OF INTENTION TO  
MAKE A PROPOSAL OF 33 LAIRD LIMITED  
PARTNERSHIP, A LIMITED PARTNERSHIP FORMED  
UNDER THE ONTARIO *LIMITED PARTNERSHIPS ACT***

**PROPOSAL 33 LAIRD LIMITED PARTNERSHIP.**

**ARTICLE 1**

**DEFINITIONS**

**1.1 Definitions**

In this Proposal:

- a) "**Administrative Fees and Expenses**" means the proper fees, expenses, including legal fees and disbursements, of the Trustee and the Debtor on and incidental to the negotiation, preparation, presentation, consideration and implementation of the Proposal, and all proceedings and matters relating to or arising out of the Proposal;
- b) "**Approval Order**" means an Order of the Court approving the Proposal;
- c) "**BIA**" means the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended and in force as at the Filing Date;
- d) "**Beaux**" means Beaux Properties International Inc.;
- e) "**Business Day**" means a day, other than a Saturday or Sunday, on which banks are generally open for business in Toronto, Ontario;
- f) "**Canada Pension Plan**" means the Canada Pension Plan, R.S.C. 1985, c. C-8, as amended;
- 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;
- h) "**Court**" means the Ontario Superior Court of Justice [in Bankruptcy and Insolvency] (Commercial List);
  - i) "**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;
  - j) "**Creditors' Meeting**" means the meeting of the Unsecured Creditors called for the purpose of considering and voting upon the Proposal;
  - k) "**Creditors' Meeting Date**" means the date and time as may be called by the Trustee for the meeting of creditors to consider this Proposal, but in any event shall be no later than twenty-one (21) days following the Proposal Date;
  - l) "**Debtor**" means 33 Laird Limited Partnership, collectively;
  - m) "**Employee Creditors**" means 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 BIA 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 travelling salesmen, disbursements properly incurred by those salesmen in and about the Debtor's business during the same period;
  - n) "**Employment Insurance Act**" means the *Employment Insurance Act*, S.C. 1996 c. 23, as amended;
  - o) "**Filing Date**" means 28 November 2020 (the date the Debtor filed a Notices of Intention to Make a Proposal);
  - p) "**Implementation Date**" means the date upon which the conditions set forth in Article 6.6 have been satisfied;
  - q) "**Income Tax Act**" means the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended;
  - r) "**Official Receiver**" shall have the meaning ascribed thereto in the BIA;
  - s) "**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;
  - t) "**Preferred Creditors**" means Creditors with Proven Claims that are required by the BIA to be paid in priority to all other claims under a proposal made by a debtor save and except for Employee Creditors and Source Deduction Creditors;
  - u) "**Proof of Claim**" shall mean the proof of claim required by the BIA to be mailed to each known Creditor prior to the Creditors' Meeting;
  - v) "**Property**" means the premises known municipally as 33 Laird Drive, Toronto, ON and owned by the Debtor;
  - w) "**Proposal**" means this proposal together with any amendments or additions thereto;
  - x) "**Proposal Date**" means the date of the filing of the Proposal with the Official Receiver;

- y) "**Purchaser**" means 33 Laird Development Inc. in its capacity as the general partner of 33 Laird Development Limited Partnership, a limited partnership under the laws of the Province of Ontario;
- z) "**Proven Claim**" of a Creditor means the amount of the Claim of such Creditor finally determined in accordance with the provisions of the BIA;
- aa) "**Related Creditor**" means Beaux and/or SeaLink;
- bb) "**SeaLink**" means SeaLink JV Ltd. in trust;
- cc) "**Sale Agreement**" means the agreement of purchase and sale dated May 11, 2021 between the Debtor and the Purchaser for the purchase of the Property and all other assets of the Debtor;
- dd) "**Second Mortgage**" means the mortgage held by Beaux and SeaLink and registered on title to the Property as instrument number AT5572805;
- ee) "**Source Deduction Creditors**" means Her Majesty in Right of Canada or a Province for all amounts that were outstanding at the time of the Filing Date and are of a kind that could be subject to a demand under,
  - a. subsection 224(1.2) of the *Income Tax Act*;
  - b. 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, penalties or other amounts; or
  - c. any provision of provincial legislation that has a similar purpose to **subsection 224(1.2)** of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum;
    - i. has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*; or
    - ii. is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in **subsection 3(1)** of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection;
- ff) "**Trustee**" means MNP Ltd. or its duly appointed successor or successors;
- gg) "**Unsecured Claim**" means a claim for which a creditor holds no security over the assets of the Debtor, or a claim for which any security held is valued at \$NIL within the meaning of Article 2.1, but for the purposes of the Proposal does not include the claim of the Related Creditor.
- hh) "**Unsecured Creditor Cash Pool**" means a fund of \$50,000 to be held by the Trustee for the distribution to the Unsecured Creditors in accordance with the terms of this Proposal.

- ii) "**Unsecured Creditors**" means the Preferred Creditors and any Creditor who holding an Unsecured Claim; and
- jj) "**Voting Letter**" shall mean the voting letter required by **subsection 51(1)** of the BIA to be mailed to each known Creditor prior to the Unsecured Creditors' Meeting.

## **1.2 Articles of Reference**

The terms "hereof", "hereunder", "herein" and similar expressions refer to the Proposal and not to any particular article, section, subsection, clause or paragraph of the Proposal and include any agreements supplemental hereto. In the Proposal, a reference to an article, section, subsection, clause or paragraph will, unless otherwise stated, refer to an article, section, subsection, clause or paragraph of the Proposal.

## **1.3 Interpretation Not Affected by Headings**

The division of the Proposal into articles, sections, subsections, clauses or paragraphs and the insertion of a table of contents and headings are for convenience of reference only and will not affect the construction or interpretation of this Proposal.

## **1.4 Date for Any Action**

In the event that any date on which any action is required to be taken hereunder is not a Business Day, such action will be required to be taken on the next succeeding day which is a Business Day.

## **1.5 Time**

All times expressed herein are local time in Toronto, Ontario, Canada unless otherwise stipulated. Where the time for anything pursuant to the Proposal on a particular date is unspecified herein, the time shall be deemed to be 5:00 p.m. local time in Toronto, Ontario, Canada.

## **1.6 Numbers**

In the Proposal, where the context requires, a word importing the singular number will include the plural and vice versa and a word or words importing gender will include all genders.

## **1.7 Currency**

Unless otherwise stated herein, all references to currency in the Proposal are to lawful money of Canada.

## **1.8 Statutory References**

Except as otherwise provided herein, any reference in the Proposal to a statute includes all regulations made thereunder, all amendments to such statute or regulation(s) in force from time to time, and any statute or regulation that supplements or supersedes such statute or regulation(s).

### **1.9 Successors and Assigns**

The Proposal will be binding upon and will enure to the benefit of the heirs, administrators, executors, legal personal representatives, successors and assigns of any Person named or referred to in the Proposal.

### **1.10 Proposals of 33 Laird Inc. 33 Laird GP Inc. and 33 Laird Limited Partnership**

33 Laird Inc. is the bare trustee of the Property for 33 Laird GP Inc. as beneficial owner, which is the general partner of 33 Laird Limited Partnership. These three entities will as a result have the same assets and the same obligations to creditors. This Proposal by the Debtor is being made in conjunction with the proposals by 33 Laird Inc. and 33 Laird GP Inc. The treatment of creditors in this Proposal and the Unsecured Creditor Cash Pool shall mirror the treatment of creditors in the proposals of the other two entities. Without limiting the generality of the foregoing, there shall only be one Unsecured Creditor Cash Pool of \$50,000 among all three such proposals.

## **ARTICLE 2**

### **CLASSIFICATION AND TREATMENT OF CREDITORS**

#### **2.1 Valuation of Security**

For the purposes of this Proposal, the value of the security held by any creditor with a security interest in the assets of the Debtor that is subordinate to the Second Mortgage will be \$Nil and any amount owing to such creditors will be treated as an Unsecured Claim.

#### **2.2 Secured Creditor**

Subject to Article 2.1, the Claim of any Creditor with an interest ranking in priority to the Second Mortgage (which shall include without limiting the generality of the foregoing: (i) any municipal taxes owed, (ii) any holdback owing to claimants under the *Construction Act*, (iii) any amounts owing to DUCA Financial Services Credit Union Ltd. and Centurion Mortgage Corporation in respect of a mortgage on the Property, (iv) amounts owing to the Restructuring Professionals within the meaning of the Court Order dated May 12, 2021, (v) amounts owing to the DIP Lender within the meaning of the Court Order dated December 16, 2020, and (iv) any valid and enforceable trust claims as against the estate of the Debtor) shall be paid by the Debtor in accordance with agreements between the Debtors and the Secured Creditor or as otherwise agreed between the Secured Creditor and the Debtor from the proceeds of sale of the Property pursuant to the Sale Agreement. For greater clarity, the Claims of any Creditor with an interest ranking in priority to the Second Mortgage are unaffected by this Proposal.

### **2.3 Classes of Creditors**

For the purposes of voting on the Proposal, there shall be one (1) class of Creditors. Class 1 will consist of the Unsecured Creditors.

### **2.4 Administrative Fees and Expenses**

The Administrative Fees and Expenses will be paid from the Unsecured Creditors Cash Pool to a maximum of \$15,000. Any further Administrative Fees and Expenses beyond that maximum amount will be paid pursuant to the charge granted by the Court in its order dated May 12, 2021.

### **2.5 Preferred Creditors**

The Proven Claims of the Preferred Creditors are to be paid in full in priority to the Proven Claims of the Unsecured Creditors in accordance with the BIA and the Proposal.

### **2.6 The Second Mortgage**

The Claim of each Related Creditor under the Second Mortgage shall be paid by the Debtor in accordance with agreements between the Debtor and the Related Creditor or as otherwise agreed between the Related Creditor and the Debtor from the proceeds of sale of the Property pursuant to the Sale Agreement, subject to the Related Creditor releasing an interest in the proceeds of sale of the Property in the amount of the Unsecured Creditor Cash Pool. The Claim of the Related Creditor is otherwise not affected by this Proposal.

### **2.7 Unsecured Creditors**

Unsecured Creditors will receive the funds from the Unsecured Creditor Cash Pool less the amounts referred to in Article 2.4 and 2.5, which shall be funded from the proceeds of sale of the Property pursuant to the Sale Agreement as noted in Article 2.6 on a pro rata basis on account of their respective Proven Claims.

## **ARTICLE 3**

### **PROCEDURE FOR VALIDATION OF CLAIMS**

#### **3.1 Filing of Proofs of Claims**

Each Creditor must file a Proof of Claim as required by the BIA to vote on, or receive a distribution under, the Proposal.

#### **3.2 Allowance or Disallowance of Claims by the Trustee**

Upon receipt of a completed Proof of Claim, the Trustee shall examine the Proof of Claim and shall deal with each Proof of Claim in accordance with the provisions of the BIA. The procedure

for valuing Claims of the Unsecured Creditors and resolving disputes with respect to such Claims will be as set forth in the BIA.

## **ARTICLE 4**

### **MEETING OF CREDITORS**

#### **4.1 Unsecured Creditors' Meeting**

On the Creditors' Meeting Date, the Debtor shall hold the Creditors' Meeting in order for the Creditors to consider and vote upon the Proposal.

#### **4.2 Time and Place of Meeting**

Unless otherwise ordered by the Court, the Creditors' Meeting shall be held at a time and place to be established by the Official Receiver, or the nominee thereof, and confirmed in the notice of Creditors' Meeting to be mailed to Creditors pursuant to the BIA.

#### **4.3 Conduct of Meeting**

The Official Receiver, or the nominee thereof, shall preside as the chair of the Creditors' Meeting and will decide all matters relating to the conduct of the Creditors' Meeting. The only persons entitled to attend the Creditors' Meeting are those persons, including the holders of proxies, entitled to vote at the Creditors' Meeting, the Secured Creditors and their respective legal counsel, if any, and the officers, directors, auditors and legal counsel of the Debtor, together with such representatives of the Trustee as the Trustee may appoint in its discretion, and such scrutineers as may be duly appointed by the chair of such meeting. Any other person may be admitted on invitation of the chair of the Creditors' Meeting or with the consent of the Unsecured Creditors.

#### **4.4 Adjournment of Meeting**

The Creditors' Meeting may be adjourned in accordance with Section 52 of the BIA.

#### **4.5 Voting by Creditors**

To the extent provided for herein, each Creditor will be entitled to vote in their respective class to the extent of the amount that is equal to that Creditor's Claim. Any Proof of Claim in respect of a Claim that is not a Proven Claim as at the Creditors' Meeting Date will be marked as objected to in accordance with subsection 108(3) of the BIA.

#### **4.6 Approval by Creditors**

In order that the Proposal be binding, it must be approved by Creditors in accordance with the BIA.

## **ARTICLE 5**

## **DISTRIBUTION**

### **5.1 Payment of Employee Creditors**

The Claims, if any, of the Employee Creditors shall be paid on the later of (i) the Implementation Date or (ii) the receipt of proceeds of the sale of the Property pursuant to the Sale Agreement.

### **5.2 Payment of Source Deduction Creditors**

Unless Her Majesty agrees otherwise, the Proven Claims, if any, of the Source Deduction Creditors shall be paid within six (6) months after the making of the Approval Order using proceeds from the sale of the Property pursuant to the Sale Agreement.

### **5.3 Payment of the Second Mortgage**

The amounts owing under the Second Mortgage shall be paid to the mortgage holder less the Unsecured Creditors Cash Pool on the later of the later of (i) Implementation Date or (ii) the receipt of proceeds of the sale of the Property pursuant to the Sale Agreement.

### **5.4 Payment of Unsecured Creditors**

On the later of (i) the Implementation Date or (ii) the receipt of proceeds of the sale of the Property pursuant to the Sale Agreement, the Debtor shall pay to the Trustee the Unsecured Creditor Cash Pool. The Trustee shall make the payments from the Unsecured Creditor Cash Pool to the Unsecured Creditors with a Proven Claim as soon as reasonably practicable.

### **5.5 Levy**

All payments to Unsecured Creditors shall be net of any applicable levy payable to the Office of the Superintendent of Bankruptcy as required by the BIA and the Trustee shall remit the amount of such levy to the Office of the Superintendent of Bankruptcy contemporaneous with the distributions to Unsecured Creditors.

### **5.6 Discharge of Trustee**

Upon the payment by the Trustee of the amounts contemplated in this Article 5, the Trustee shall have discharged its duties as Trustee and the Trustee shall be entitled to apply for its discharge as Trustee. For greater certainty, the Trustee will not be responsible or liable for any obligations of the Debtor and will be exempt from any personal liability in fulfilling any duties or exercising any powers conferred upon it by this Proposal unless such acts have been carried out in bad faith and constitute a wilful or wrongful act or default.

## ARTICLE 6

### MISCELLANEOUS

#### **6.1 Release in favour of the Second Mortgage holders**

The holders of the Second Mortgage have agreed to fund the Unsecured Creditors Cash Pool as noted in Article 2.6 in consideration for a full and final release. Acceptance of this Proposal by the Creditors shall constitute a full and final release of all claims by the Debtor or by the Unsecured Creditors as against the holders of the Second Mortgage arising out of or in connection with the Second Mortgage or the payment to be made to them by the Debtor on account of it.

#### **6.2 Non-application of sections 95 to 101 of the BIA**

The provisions of sections 95 to 101 of the BIA shall not apply to this Proposal.

#### **6.3 Discharge of Trustee**

The provisions of this Proposal will be binding upon each Creditor, their heirs, executors, administrators, successors and assigns, for all purposes.

#### **6.4 Modification of Proposal**

The Debtor may propose an alteration or modification to the Proposal prior to the vote taking place on the Proposal.

#### **6.5 Consents, Waivers and Agreements**

As at 12:01 a.m. on the Implementation Date, each Unsecured Creditor, will be deemed:

- a. to have executed and delivered to the Debtor all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out this Proposal in its entirety;
- b. to have waived any default by the Debtor in any provision, express or implied, in any agreement or other arrangement, written or oral, existing between such Unsecured Creditor and the Debtor that has occurred on or prior to the Implementation Date;
- c. to have agreed, in the event that there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such Unsecured Creditor and the Debtor as at the Implementation Date (other than those entered into by the Debtor on, or with effect from, the Implementation Date) and the provisions of this Proposal, that the provisions of this Proposal shall take precedence and priority and the provisions of such agreement or other arrangement shall be amended accordingly; and



- d. subject to the terms of the Proposal, to have released the Debtor, the Trustee and all of their respective affiliates, employees, agents, directors, officers, shareholders, advisors, consultants and solicitors from any and all demands, claims, actions, causes of action, counter-claims, suits, debts, sums of money, accounts, covenants, damages, judgements, expenses, executions, liens, set off rights and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Person may be entitled to assert, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Implementation Date, relating to or arising out of or in connection with the matters herein; provided that nothing herein shall release the Debtor of its obligation to make the distributions to Unsecured Creditors contemplated in this Proposal.

#### **6.6 Conditions to Proposal Implementation**

The implementation of the Proposal by the Debtor will be conditional upon the fulfilment or satisfaction of the following conditions:

- a. The Approval of the Sale Agreement by the Court;
- b. The acceptance of the Proposal by the Unsecured Creditors; and
- c. The making of the Approval Order and the expiry of all appeal periods.

#### **6.7 Effect of Proposal Generally**

As at 12:01 a.m. on the Implementation Date, the treatment of all Claims under the Proposal shall be final and binding on the Debtor and all Unsecured Creditors (along with their respective heirs, executors, administrators, legal personal representatives, successors and assigns).

#### **6.8 Conduct of the Debtor's Business**

Subject to any Order made by the Court and completion of the transaction contemplated by the Sale Agreement, the Debtor shall remain in possession and control of its property and assets at all times, both before and after implementation of this Proposal.

#### **6.9 Full Implementation**

This Proposal will be fully implemented by the Debtor upon payment of the Unsecured Creditor Cash Pool to the Trustee in accordance with Article 5.4.

**ARTICLE 7**

**GENERAL**

**7.1 Notices**

Any notices or communication to be made or given hereunder shall be in writing and shall refer to this Proposal and may, subject as hereinafter provided, be made or given by personal delivery, by prepaid mail or by telecopier (except for Proofs of Claim which may only be sent by personal delivery, telecopier or registered mail) addressed to the respective parties as follows:

a) if to the Debtor:

President: Jason Birboim  
c/o Goldman, Sloan, Nash and Haber LLP  
480 University Avenue  
Toronto ON M5G 1V2  
Attention: Brendan Bissell  
Email: [bissell@gsnh.com](mailto:bissell@gsnh.com)

b) if to an Unsecured Creditor, to the address or telecopier number for such Unsecured Creditor specified in the Proof of Claim filed by such Unsecured Creditor or, if no proof of Claim has been filed, to such other address or telecopier number at which the notifying party may reasonably believe that the Unsecured Creditor may be contacted; and

c) if to the Trustee:

MNP Ltd.  
300-111 Richmond St W  
Toronto, ON M5H 204  
Attention: Sheldon Title  
Telecopier: 416-596-7894  
E-mail: [sheldon.title@mnp.ca](mailto:sheldon.title@mnp.ca)

or to such other address or telecopier number as any party may from time to time notify the others in accordance with this section. In the event of any strike, lock-out and other event which interrupts postal service in any part of Canada, all notices and communications during such interruption may only be given or made by personal delivery or by telecopier and any notice or other communication given or made by prepaid mail within the five (5) Business Day period immediately preceding the commencement of such interruption will be deemed not to have been given or made. All such notices and communications will be deemed to have been received, in the case of notice by telecopier or by delivery prior to 5:00 p.m. (local time) on a Business Day, when received or if received after 5:00 p.m. (local time) on a Business Day or at any time on a non-Business Day, on the next following Business Day and in to case of notice mailed as aforesaid, on the fifth (5<sup>th</sup>)

Business Day following the date on which such notice or other communication is mailed. The unintentional failure to give a notice contemplated hereunder to any particular Creditor will not invalidate this Proposal or any action taken by any Person pursuant to this Proposal.

**7.2 Foreign Currency Obligations**

For purposes of this Proposal, Claims denominated in a currency other than Canadian funds will be converted to Canadian Dollars at the closing spot rate of exchange of the Bank of Canada on the Filing Date.

**7.3 Applicable Law**

This Proposal shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

**7.4 Deeming Provisions**

In this Proposal the deeming provisions are not rebuttable and are conclusive and irrevocable.

**DATED** at the City of Toronto, in the Province of Ontario, this 28<sup>th</sup> day of May, 2021.

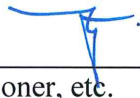
**33 LAIRD LIMITED PARTNERSHIP**

Per: 

Name: Beaux Properties International Inc., by Jason Birnboim in his capacities as director of the corporation and having capacity to bind the corporation

Title: Limited Partner

This is **Confidential Exhibit "1"** to the affidavit of Jason L. S. Birnboim sworn before me via Facetime this 4<sup>th</sup> day of June, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



A Commissioner, etc.

SOELTORGEO

[Omitted – Subject of sought sealing order]

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF 33 LAIRD INC. AND 33 LAIRD GP INC., CORPORATIONS INCORPORATED UNDER THE ONTARIO *BUSINESS CORPORATIONS ACT*, AND 33 LAIRD LIMITED PARTNERSHIP, A LIMITED PARTNERSHIP FORMED UNDER THE ONTARIO *LIMITED PARTNERSHIPS ACT***

Estate Nos. 31-2693094, 31-2693092, and  
31 2693095

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

**AFFIDAVIT OF JASON L. S. BIRNBOIM  
(sworn June 4<sup>th</sup>, 2021)**

**GOLDMAN SLOAN NASH & HABER LLP**  
480 University Avenue, Suite 1600  
Toronto ON M5G 1V6

**R. Brendan Bissell** (LSO# 40354V)  
Tel: (416) 597-6489  
Fax: (416) 597-3370  
Email: [bissell@gsnh.com](mailto:bissell@gsnh.com)

**Joël Turgeon** (LSO #80984R)  
Tel: (416) 597-6486  
Email: [turgeon@gsnh.com](mailto:turgeon@gsnh.com)

Lawyers for 33 Laird Inc., 33 Laird GP Inc. and  
33 Laird Limited Partnership

**TAB 3**

Draft approval and vesting order

Estate No. 31-2693094

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

THE HONOURABLE MR. ) FRIDAY, THE 11<sup>th</sup> DAY  
)  
JUSTICE PATTILLO ) OF JUNE, 2021

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF 33 LAIRD INC. AND 33 LAIRD GP INC., CORPORATIONS INCORPORATED UNDER THE ONTARIO *BUSINESS CORPORATIONS ACT*, AND 33 LAIRD LIMITED PARTNERSHIP, A LIMITED PARTNERSHIP FORMED UNDER THE ONTARIO *LIMITED PARTNERSHIPS ACT***

---

**APPROVAL AND VESTING ORDER**

---

**THIS MOTION**, made by 33 Laird Inc. (the “**Debtor**”), for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Debtor and 33 Laird Development Inc. *qua* general partner of 33 Laird Development Limited Partnership (in such capacity, the “**Purchaser**”) made as of May 11, 2021 and appended, without redactions, as Confidential Exhibit “1” to the affidavit of Jason L.S. Birnboim sworn June 4, 2021 (the “**Birnboim June Affidavit**”), and with minimal redactions as Exhibit “•” to the Birnboim June Affidavit, and vesting in the Purchaser the Debtor’s right, title and interest in and to the assets purchased described as such in the Sale Agreement (the “**Purchased Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario, by videoconference due to COVID-19.



**ON READING** the Birnboim June Affidavit and exhibits and the fifth report of MNP Ltd. in its capacity as proposal trustee (in such capacity, the “**Proposal Trustee**”), and on hearing the submissions of counsel for the Debtor, the Purchaser, the City of Toronto, and the Proposal Trustee, as well as such other counsel as may appear on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service, filed:

**I. NOTICE AND SERVICE**

1. THIS COURT ORDERS that the time for service of the motion record in respect of this motion and the Fifth Report is hereby abridged and validated so that the motion is properly returnable today, and that further service thereof is hereby dispensed with.

**II. APPROVAL AND VESTING ORDERS**

2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Debtor is hereby authorized and approved, with such minor amendments as the Proposal Trustee may deem necessary. The Debtor 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 Proposal Trustee’s certificate to the Purchaser substantially in the form attached as **Schedule A** hereto (the “**Proposal Trustee’s Certificate**”), all of the Debtor’s right, title and interest in and to the Purchased Assets 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, leases, 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 Orders of the Honourable Justice Conway dated December 16, 2020 or the Honourable Justice Dunphy dated May 21, 2021; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; (iii) any leases of all or part of the Real Property (as hereafter defined) and (vi) those Claims listed on **Schedule B** 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 C**) 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.

4. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Toronto of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in **Schedule D** hereto (the “**Real Property**”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule B 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 Proposal Trustee'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 Proposal Trustee to file with the Court a copy of the Proposal Trustee'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 the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

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 the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, 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.

**III. SEALING**

8. THIS COURT ORDERS that Confidential Appendix “1” to the Birnboim June Affidavit is sealed from the public record until the filing of the Receiver’s Certificate or further court order.

**IV. MISCELLANEOUS**

9. THIS COURT HEREBY REQUESTS the aid and recognition of 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 Debtor, the Proposal Trustee and their 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 Debtor and the Proposal Trustee as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Debtor, the Proposal Trustee and their agents in carrying out the terms of this Order.

10. THIS COURT ORDERS that this order is effective from its date at 12:01 am and is not required to be entered.

---

**Schedule A – Form of Proposal Trustee’s Certificate**

Estate No. 31-2693094

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

**IN THE MATTER OF THE NOTICES OF INTENTION TO  
MAKE A PROPOSAL OF 33 LAIRD INC. AND 33 LAIRD  
GP INC., CORPORATIONS INCORPORATED UNDER THE  
ONTARIO *BUSINESS CORPORATIONS ACT*, AND 33  
LAIRD LIMITED PARTNERSHIP, A LIMITED  
PARTNERSHIP FORMED UNDER THE ONTARIO  
*LIMITED PARTNERSHIPS ACT***

**RECITALS**

- A. 33 Laird Inc. (the “**Debtor**”) filed a Notice of Intention to make a proposal pursuant to the *Bankruptcy and Insolvency Act* (Canada) on November 28, 2020 under which MNP Ltd was named as trustee of that proposal (the “**Proposal Trustee**”);
- B. Pursuant to an Order of the Honourable Justice Conway dated December 16, 2020, a DIP Borrowing Charge was granted over the assets of the Debtor;
- C. Pursuant to an Order of the Honourable Justice Dunphy dated May 12, 2021 a charge in favour of certain restructuring professionals was granted over the assets of the Debtor;
- D. Pursuant to an Order of the Court dated •, the Court approved the agreement of purchase and sale made as of May 11, 2021 (the “**Sale Agreement**”) between the Debtor and 33 Laird Development Inc. *qua* general partner of 33 Laird Development Limited Partnership (in such capacity, the “**Purchaser**”) and provided for the vesting in the Purchaser of the Debtor’s 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 Proposal Trustee 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 the Sale Agreement have been satisfied or waived by the Debtor and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Proposal Trustee.

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

**THE PROPOSAL TRUSTEE CERTIFIES** the following:

- 1. The Purchaser has paid and the Debtor has received the Purchase Price for the Purchased Assets payable on the Date of Closing pursuant to the Sale Agreement;
- 1. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Debtor and the Purchaser;
- 2. The Transaction has been completed to the satisfaction of the Proposal Trustee; and
- 3. This Certificate was delivered by the Proposal Trustee at • on •.

**MNP Ltd., solely in its capacity as trustee of the proposal of 33 Laird Inc., and not in its personal or corporate capacity and without personal or corporate liability**

Per: \_\_\_\_\_  
Name:  
Title:

I have authority to bind the corporation.

**Schedule B – Specific Claims to be deleted and expunged from title to Real Property**

1. the following Financing Statements/Claims for Lien registered under the *Personal Property Security Act (Ontario)* (“**PPSA Registrations**”):

File Number	Registration Number	Secured Party
726410295	20170407 1137 1590 1354 20190911 1452 1590 4964	DUCA FINANCIAL SERVICES CREDIT UNION LTD.
726410313	20170407 1138 1590 1355 20190911 1452 1590 4963	DUCA FINANCIAL SERVICES CREDIT UNION LTD.

2. a Charge registered on title to the Real Property as Instrument No. **AT4550601** by DUCA Financial Services Credit Union Ltd. (the “**DUCA Charge**”);
3. a Notice of Assignment of Rents General registered on title to the Real Property as Instrument No. **AT4550614** by DUCA Financial Services Credit Union Ltd. (the “**DUCA Assignment of Rents**”);
4. Instruments Nos. **AT4815354**, **AT5243559**, **AT5247712** which are registered on title to the Real Property and which relate to the DUCA Charge and the DUCA Assignment of Rents;
5. the Charge registered on title to the Real Property as Instrument No. **AT5494803** by Sealink J.V. Ltd.;
6. the Charge registered on title to the Real Property as Instrument No. **AT5494804** by Beau Properties International Inc.;
7. a Charge registered on title to the Real Property as Instrument No. **AT5572805** by Beau Properties International Inc. and Sealink JV Ltd.;
8. Instrument No. AT5243555 (Site plan Agreement) registered on title to the Real Property;
9. a Construction Lien registered on title to the Real Property as Instrument No. **AT5569465** Maxxwel & Co. Inc. (the “**Maxwell Lien**”);
10. a Construction Lien registered on title to the Real Property as Instrument No. **AT5593811** by Aztec Structural Restoration Inc. (the “**Aztec Lien**”);
11. a Certificate of Action registered on title to the Real Property as Instrument No. **AT5594868** by Maxxwel & Co. Inc. in connection with the Maxwell Lien;
12. a Certificate of Action registered on title to the Real Property as Instrument No. **AT5635827** by Aztec Structural Restoration Inc. in connection with the Aztec Lien;

13. all leases entered into by the Debtor with tenants of the Real Property including without limiting the generality of the foregoing:
- a. Retail Lease dated January 1<sup>st</sup>, 2017 made between the Debtor, as landlord, 2557479 Ontario Inc., as tenant, and Organic Garage (Canada) Ltd., as indemnifier, as amended by Lease Amending Agreement made between the said parties dated May 16<sup>th</sup>, 2019;
  - b. Offer to Lease dated March 5<sup>th</sup>, 2019, between the Debtor, as landlord, and Aim RX Inc., as tenant, as amended by the said parties by a letter agreement dated March 13<sup>th</sup>, 2019, as amended by the said parties by a letter agreement dated May 16<sup>th</sup>, 2019, as amended by the said parties by a letter agreement dated August 9<sup>th</sup>, 2019, and as subsequently revived and amended between the said parties by a letter agreement dated August 9<sup>th</sup>, 2019;
  - c. Offer to Lease dated June 22, 2017 between the Debtor, as landlord, and Vivo Pizza Pasta Franchising Inc., as tenant, as amended by notice of waiver dated February 13<sup>th</sup>, 2019 signed by the Debtor;
  - d. Offer to Lease dated March 20<sup>th</sup>, 2017 made between the Debtor, as landlord, and Acuity Group Inc., as tenant, as revived and amended by a letter agreement dated September 27<sup>th</sup>, 2019 made between the parties;
  - e. Offer to Lease dated April 1<sup>st</sup>, 2019 made between the Debtor, as landlord, and Global Pet Food Stores Inc., as tenant, as amended by notice of waiver dated May 23<sup>rd</sup>, 2019 signed by Global Pet Food Stores Inc., as amended by notice of waiver dated July 2<sup>nd</sup>, 2019 signed by the Debtor;
  - f. Offer to Lease dated October 22<sup>nd</sup>, 2019 made between the Debtor, as landlord, and Nails For You Limited, as tenant;
  - g. Offer to Lease dated December 24<sup>th</sup>, 2019 made between the Debtor, as landlord, and 2730419 Ontario Inc., o/a Davina's Swim House, as tenant;
  - h. Retail Lease dated December 1<sup>st</sup>, 2017 made between the Debtor, as landlord, and Happy Bathrooms Inc., as tenant;
  - i. Offer to Lease dated June 14<sup>th</sup>, 2016 made between the Debtor, as landlord, and 0866825 Canada Corp., d/b/a "Glow Zone", as tenant, as amended by notice of waiver dated February 12<sup>th</sup>, 2018 signed by the Debtor, as amended by a letter agreement signed by the said parties dated December 6<sup>th</sup>, 2018, as revived and amended by a letter agreement dated September 27<sup>th</sup>, 2019;
  - j. Retail Lease dated April 1<sup>st</sup>, 2017 made between the Debtor, as landlord, and 2569773 Ontario Inc., as tenant, and Ernest Pozzobon, as indemnifier; and Indemnification Agreement dated April 1<sup>st</sup>, 2019 made between the Debtor and Ernest Pozzobon, as indemnifier; and



- k. Offer to Lease between the Debtor, as landlord, and Anesh Srikrishnakumar, as tenant, made on June 4<sup>th</sup>, 2020.

**Schedule C – Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Real Property**

**(unaffected by the Vesting Order)**

Any minor easements for the supply of domestic utility or telephone services to the Property or adjacent properties; and easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the use of the Property; and the following encumbrances registered on title to the Property

1. Instrument No. TL42961 (Bylaw) registered on title to the Real Property;
2. Instrument No. AT4643103 (Bylaw) registered on title to the Real Property;
3. Instrument No. AT4815350 (Notice) registered on title to the Real Property;
4. Instrument No. AT5243558 (Easement) registered on title to the Real Property; and
5. Instrument No. AT5274151 (Encroachment Agreement) registered on title to the Real Property.

**Schedule D – Legal Description**

PIN: 10369-0360 LT

Description PART LOTS 685, 686, 687, 688, 689, 690 AND 691 PLAN 2120, PART LOTS 12 & 13 CONCESSION 3 FROM THE BAY (YORK), PART LEASIDE ROAD PLAN 1535 AND PART CANVARCO ROAD PLAN 2921 (CLOSED BY BYLAW 627 AS IN EY173327), PARTS 2, 3, 4 & 5 PLAN 66R30829; TOGETHER WITH AN EASEMENT OVER PARTS 1 & 6, PLAN 66R30829 AS IN AT5243556; SUBJECT TO AN EASEMENT IN GROSS OVER PART 3, PLAN 66R30829 AS IN AT5243558; CITY OF TORONTO

**TAB 4**

Comparison between draft approval and vesting order and Commercial  
List model

Revised: January 21, 2014

Court File Estate No. ~~\_\_\_\_\_~~ 31-2693094

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

THE HONOURABLE ~~\_\_\_\_\_~~ ) ~~WEEKDAY~~FRIDAY, THE #11<sup>th</sup>  
 )  
MR. ) DAY

JUSTICE ~~\_\_\_\_\_~~PATTILLO OF ~~MONTH~~JUNE, ~~20YR~~2021

~~BETWEEN:~~

~~PLAINTIFF~~

Plaintiff

~~-and-~~

~~DEFENDANT~~

Defendant

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF 33 LAIRD INC. AND 33 LAIRD GP INC., CORPORATIONS INCORPORATED UNDER THE ONTARIO BUSINESS CORPORATIONS ACT, AND 33 LAIRD LIMITED PARTNERSHIP, A LIMITED PARTNERSHIP FORMED UNDER THE ONTARIO LIMITED PARTNERSHIPS ACT

---

**APPROVAL AND VESTING ORDER**

---

THIS MOTION, made by ~~[RECEIVER'S NAME]~~ in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of ~~[DEBTOR] (the "Debtor")~~ 33 Laird Inc. (the "Debtor"), for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale

(the "~~“Sale Agreement”~~) ~~between the Receiver and [NAME OF PURCHASER] (the “~~between the Debtor and 33 Laird Development Inc. qua general partner of 33 Laird Development Limited Partnership (in such capacity, the “Purchaser”) ~~dated [DATE]”~~) made as of May 11, 2021 and appended, without redactions, as Confidential Exhibit “1” to the ~~Report of the Receiver dated [DATE] (the “Report”~~affidavit of Jason L.S. Birnboim sworn June 4, 2021 (the “Birnboim June Affidavit”), and with minimal redactions as Exhibit “•” to the Birnboim June Affidavit, and vesting in the Purchaser the Debtor’s right, title and interest in and to the assets purchased described as such in the Sale Agreement (the "~~“Purchased Assets”~~"), was heard this day at 330 University Avenue, Toronto, Ontario, by videoconference due to COVID-19.

ON READING the ~~Report~~Birnboim June Affidavit and exhibits and the fifth report of MNP Ltd. in its capacity as proposal trustee (in such capacity, the “Proposal Trustee”), and on hearing the submissions of counsel for the ~~Receiver, [NAMES OF OTHER PARTIES APPEARING]~~Debtor, the Purchaser, the City of Toronto, and the Proposal Trustee, as well as such other counsel as may appear on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of ~~[NAME] sworn [DATE]~~service, filed<sup>†</sup>:

## I NOTICE AND SERVICE

<sup>†</sup>~~This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.~~

1. THIS COURT ORDERS that the time for service of the motion record in respect of this motion and the Fifth Report is hereby abridged and validated so that the motion is properly returnable today, and that further service thereof is hereby dispensed with.

## II. APPROVAL AND VESTING ORDERS

2. ~~1.~~ THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved,<sup>2</sup> and the execution of the Sale Agreement<sup>2</sup> by the Receiver<sup>3</sup>Debtor is hereby authorized and approved, with such minor amendments as the ReceiverProposal Trustee may deem necessary. The ReceiverDebtor 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. ~~2.~~ THIS COURT ORDERS AND DECLARES that upon the delivery of a ReceiverProposal Trustee's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "~~Receiver~~""Proposal Trustee's Certificate"), all of the Debtor's right, title and interest in and to the Purchased Assets ~~described in the Sale Agreement [and listed on Schedule B hereto]~~<sup>4</sup> 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,

<sup>2</sup>~~In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.~~

<sup>3</sup>~~In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.~~

<sup>4</sup>~~To allow this Order to be free standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.~~

or otherwise), liens, leases, 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"<sup>5</sup>) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the ~~Order~~Orders of the Honourable Justice ~~[NAME]~~ dated [DATE] Conway dated December 16, 2020 or the Honourable Justice Dunphy dated May 21, 2021; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; ~~and~~ (iii) any leases of all or part of the Real Property (as hereafter defined) and (vi) those Claims listed on **Schedule ~~CB~~** 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 ~~DC~~**) 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.

4. ~~3.~~ THIS COURT ORDERS that upon the registration in the Land Registry Office for the ~~[Registry Division of {LOCATION}] of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver~~ [Land Titles Division of ~~{LOCATION}~~ Toronto of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*]<sup>6</sup>, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real

<sup>5</sup> The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.

<sup>6</sup> Elect the language appropriate to the land registry system (Registry vs. Land Titles).



property identified in **Schedule BD** hereto (the “**Real Property**”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule **EB** hereto.

5. ~~4.~~ THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds<sup>7</sup> 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~~Proposal Trustee'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<sup>8</sup>, 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. ~~5.~~ THIS COURT ORDERS AND DIRECTS the ~~Receiver~~Proposal Trustee to file with the Court a copy of the ~~Receiver~~Proposal Trustee's Certificate, forthwith after delivery thereof.

~~6. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada Personal Information Protection and Electronic Documents Act, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "●" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a~~

<sup>7</sup>~~The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".~~

<sup>8</sup>~~This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.~~

~~manner which is in all material respects identical to the prior use of such information by the Debtor.~~

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 the Debtor and any bankruptcy order issued pursuant to any such applications; and
  - (c) any assignment in bankruptcy made in respect of the Debtor;

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 the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, 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.

### III. SEALING

8. THIS COURT ORDERS ~~AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario)~~that Confidential Appendix "1" to the Birnboim June Affidavit is sealed from the public record until the filing of the Receiver's Certificate or further court order.

IV. MISCELLANEOUS

9. THIS COURT HEREBY REQUESTS the aid and recognition of 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~~Debtor, the Proposal Trustee and ~~its~~their 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~~Debtor and the Proposal Trustee as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the ~~Receiver~~Debtor, the Proposal Trustee and ~~its~~their agents in carrying out the terms of this Order.

10. THIS COURT ORDERS that this order is effective from its date at 12:01 am and is not required to be entered.

Revised: January 21, 2014

Schedule A – Form of ~~Receiver~~ Proposal Trustee's Certificate

Court File No. \_\_\_\_\_ Estate No. 31-2693094

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

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF 33 LAIRD INC. AND 33 LAIRD GP INC., CORPORATIONS INCORPORATED UNDER THE ONTARIO BUSINESS CORPORATIONS ACT, AND 33 LAIRD LIMITED PARTNERSHIP, A LIMITED PARTNERSHIP FORMED UNDER THE ONTARIO LIMITED PARTNERSHIPS ACT

~~BETWEEN:-~~

~~PLAINTIFF~~

Plaintiff

~~-and-~~

~~DEFENDANT~~

Defendant

**RECEIVER'S CERTIFICATE**

**RECITALS**

~~A. Pursuant to an Order of the Honourable [NAME OF JUDGE] of the Ontario Superior Court of Justice (the "Court") dated [DATE OF ORDER], [NAME OF RECEIVER] was appointed as the receiver (the "Receiver") of the undertaking, property and assets of [DEBTOR] (the "Debtor").~~

A. 33 Laird Inc. (the "Debtor") filed a Notice of Intention to make a proposal pursuant to the Bankruptcy and Insolvency Act (Canada) on November 28, 2020 under which MNP Ltd was named as trustee of that proposal (the "Proposal Trustee");

B. Pursuant to an Order of the Honourable Justice Conway dated December 16, 2020, a DIP Borrowing Charge was granted over the assets of the Debtor;

C. Pursuant to an Order of the Honourable Justice Dunphy dated May 12, 2021 a charge in favour of certain restructuring professionals was granted over the assets of the Debtor;

D. ~~B.~~ Pursuant to an Order of the Court dated ~~[DATE]~~, the Court approved the agreement of purchase and sale made as of ~~[DATE OF AGREEMENT]~~ May 11, 2021 (the "~~“Sale Agreement”~~") between the ~~Receiver [Debtor] and [NAME OF PURCHASER] (the "~~ and 33 Laird Development Inc. qua general partner of 33 Laird Development Limited Partnership (in such capacity, the “Purchaser”) and provided for the vesting in the Purchaser of the Debtor’s 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~~ Proposal Trustee 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 ~~section 1 of~~ the Sale Agreement have been satisfied or waived by the ~~Receiver~~ Debtor and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the ~~Receiver~~ Proposal Trustee.

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

**THE ~~RECEIVER~~ PROPOSAL TRUSTEE CERTIFIES** the following:

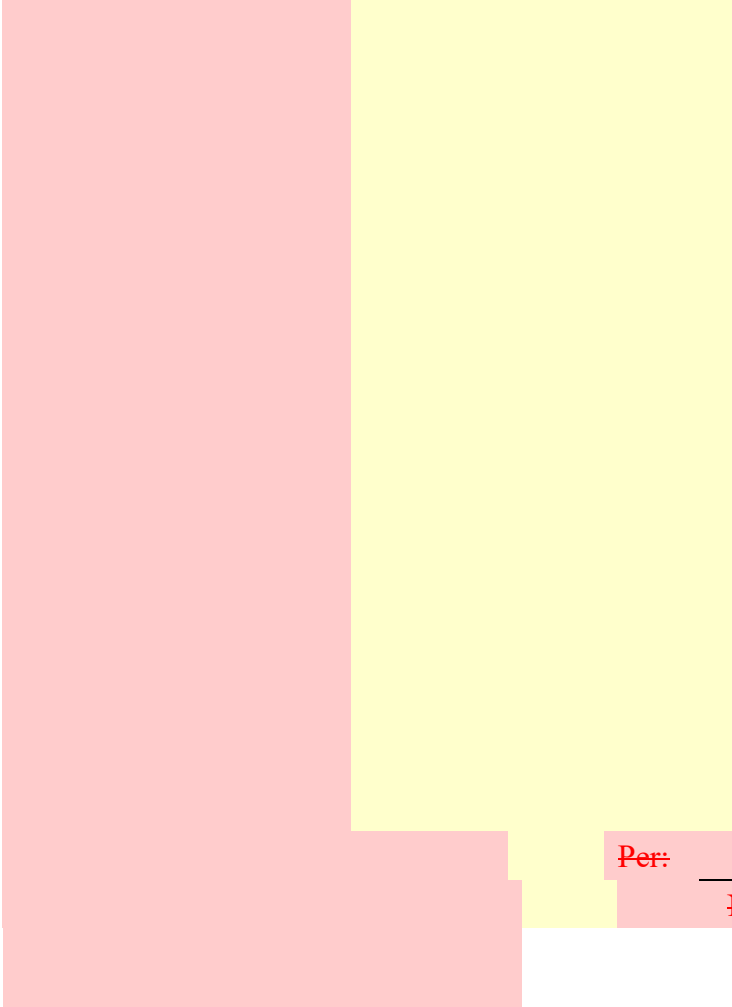
1. ~~1.~~ The Purchaser has paid and the ~~Receiver~~ Debtor has received the Purchase Price for the Purchased Assets payable on the Date of Closing ~~Date~~ pursuant to the Sale Agreement;

1. ~~2.~~ The conditions to Closing as set out in ~~section 1 of~~ the Sale Agreement have been satisfied or waived by the ~~Receiver~~ Debtor and the Purchaser; ~~and~~

2. ~~3.~~ The Transaction has been completed to the satisfaction of the ~~Receiver~~ Proposal Trustee; and

3. ~~4.~~ This Certificate was delivered by the ~~Receiver~~ Proposal Trustee at \_\_\_\_\_ ~~[TIME]~~ on \_\_\_\_\_ ~~[DATE]~~.

~~2~~  
3



MNP Ltd., solely in its capacity as trustee of the proposal of 33 Laird Inc., and not in its personal or corporate capacity and without personal or corporate liability

Per:

\_\_\_\_\_

Name:

Title:

I have authority to bind the corporation.

~~**[NAME OF RECEIVER], in its capacity as Receiver of the undertaking, property and assets of [DEBTOR], and not in its personal capacity**~~

Per:

\_\_\_\_\_

Name:-

Title:-

Revised: January 21, 2014

**Schedule B – ~~Purchased Assets~~ Specific Claims to be deleted and expunged from title to Real Property**

1. the following Financing Statements/Claims for Lien registered under the *Personal Property Security Act (Ontario)* (“PPSA Registrations”):

<u>File Number</u>	<u>Registration Number</u>	<u>Secured Party</u>
<u>726410295</u>	<u>20170407 1137 1590 1354</u> <u>20190911 1452 1590 4964</u>	<u>DUCA FINANCIAL SERVICES</u> <u>CREDIT UNION LTD.</u>
<u>726410313</u>	<u>20170407 1138 1590 1355</u> <u>20190911 1452 1590 4963</u>	<u>DUCA FINANCIAL SERVICES</u> <u>CREDIT UNION LTD.</u>

2. a Charge registered on title to the Real Property as Instrument No. **AT4550601** by DUCA Financial Services Credit Union Ltd. (the “**DUCA Charge**”);
3. a Notice of Assignment of Rents General registered on title to the Real Property as Instrument No. **AT4550614** by DUCA Financial Services Credit Union Ltd. (the “**DUCA Assignment of Rents**”);
4. Instruments Nos. **AT4815354**, **AT5243559**, **AT5247712** which are registered on title to the Real Property and which relate to the DUCA Charge and the DUCA Assignment of Rents;
5. the Charge registered on title to the Real Property as Instrument No. **AT5494803** by Sealink J.V. Ltd.;
6. the Charge registered on title to the Real Property as Instrument No. **AT5494804** by Beau Properties International Inc.;
7. a Charge registered on title to the Real Property as Instrument No. **AT5572805** by Beau Properties International Inc. and Sealink JV Ltd.;
8. Instrument No. **AT5243555** (Site plan Agreement) registered on title to the Real Property;
9. a Construction Lien registered on title to the Real Property as Instrument No. **AT5569465** Maxxwel & Co. Inc. (the “**Maxwell Lien**”);
10. a Construction Lien registered on title to the Real Property as Instrument No. **AT5593811** by Aztec Structural Restoration Inc. (the “**Aztec Lien**”);
11. a Certificate of Action registered on title to the Real Property as Instrument No. **AT5594868** by Maxxwel & Co. Inc. in connection with the Maxwell Lien;
12. a Certificate of Action registered on title to the Real Property as Instrument No. **AT5635827** by Aztec Structural Restoration Inc. in connection with the Aztec Lien;

13. all leases entered into by the Debtor with tenants of the Real Property including without limiting the generality of the foregoing:
- a. Retail Lease dated January 1<sup>st</sup>, 2017 made between the Debtor, as landlord, 2557479 Ontario Inc., as tenant, and Organic Garage (Canada) Ltd., as indemnifier, as amended by Lease Amending Agreement made between the said parties dated May 16<sup>th</sup>, 2019;
  - b. Offer to Lease dated March 5<sup>th</sup>, 2019, between the Debtor, as landlord, and Aim RX Inc., as tenant, as amended by the said parties by a letter agreement dated March 13<sup>th</sup>, 2019, as amended by the said parties by a letter agreement dated May 16<sup>th</sup>, 2019, as amended by the said parties by a letter agreement dated August 9<sup>th</sup>, 2019, and as subsequently revived and amended between the said parties by a letter agreement dated August 9<sup>th</sup>, 2019;
  - c. Offer to Lease dated June 22, 2017 between the Debtor, as landlord, and Vivo Pizza Pasta Franchising Inc., as tenant, as amended by notice of waiver dated February 13<sup>th</sup>, 2019 signed by the Debtor;
  - d. Offer to Lease dated March 20<sup>th</sup>, 2017 made between the Debtor, as landlord, and Acuity Group Inc., as tenant, as revived and amended by a letter agreement dated September 27<sup>th</sup>, 2019 made between the parties;
  - e. Offer to Lease dated April 1<sup>st</sup>, 2019 made between the Debtor, as landlord, and Global Pet Food Stores Inc., as tenant, as amended by notice of waiver dated May 23<sup>rd</sup>, 2019 signed by Global Pet Food Stores Inc., as amended by notice of waiver dated July 2<sup>nd</sup>, 2019 signed by the Debtor;
  - f. Offer to Lease dated October 22<sup>nd</sup>, 2019 made between the Debtor, as landlord, and Nails For You Limited, as tenant;
  - g. Offer to Lease dated December 24<sup>th</sup>, 2019 made between the Debtor, as landlord, and 2730419 Ontario Inc., o/a Davina's Swim House, as tenant;
  - h. Retail Lease dated December 1<sup>st</sup>, 2017 made between the Debtor, as landlord, and Happy Bathrooms Inc., as tenant;
  - i. Offer to Lease dated June 14<sup>th</sup>, 2016 made between the Debtor, as landlord, and 0866825 Canada Corp., d/b/a "Glow Zone", as tenant, as amended by notice of waiver dated February 12<sup>th</sup>, 2018 signed by the Debtor, as amended by a letter agreement signed by the said parties dated December 6<sup>th</sup>, 2018, as revived and amended by a letter agreement dated September 27<sup>th</sup>, 2019;
  - j. Retail Lease dated April 1<sup>st</sup>, 2017 made between the Debtor, as landlord, and 2569773 Ontario Inc., as tenant, and Ernest Pozzobon, as indemnifier; and



6

Indemnification Agreement dated April 1<sup>st</sup>, 2019 made between the Debtor and Ernest Pozzobon, as indemnifier; and

k. Offer to Lease between the Debtor, as landlord, and Anesh Srikrishnakumar, as tenant, made on June 4<sup>th</sup>, 2020.

Revised: January 21, 2014

~~Schedule C~~ ~~Claims to be deleted and expunged from title to Real Property~~

**Schedule DC – Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Real Property**

**(unaffected by the Vesting Order)**

Any minor easements for the supply of domestic utility or telephone services to the Property or adjacent properties; and easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the use of the Property; and the following encumbrances registered on title to the Property

1. Instrument No. TL42961 (Bylaw) registered on title to the Real Property;
2. Instrument No. AT4643103 (Bylaw) registered on title to the Real Property;
3. Instrument No. AT4815350 (Notice) registered on title to the Real Property;
4. Instrument No. AT5243558 (Easement) registered on title to the Real Property; and
5. Instrument No. AT5274151 (Encroachment Agreement) registered on title to the Real Property.

**Schedule D – Legal Description**

PIN: 10369-0360 LT

Description PART LOTS 685, 686, 687, 688, 689, 690 AND 691 PLAN 2120, PART LOTS 12 & 13 CONCESSION 3 FROM THE BAY (YORK), PART LEASIDE ROAD PLAN 1535 AND PART CANVARCO ROAD PLAN 2921 (CLOSED BY BYLAW 627 AS IN EY173327), PARTS 2, 3, 4 & 5 PLAN 66R30829; TOGETHER WITH AN EASEMENT OVER PARTS 1 & 6, PLAN 66R30829 AS IN AT5243556; SUBJECT TO AN EASEMENT IN GROSS OVER PART 3, PLAN 66R30829 AS IN AT5243558; CITY OF TORONTO

Document comparison by Workshare Compare on 4 juin 2021 19:01:38

Input:	
Document 1 ID	file:///U:\BBissell\102211.0001 - Beaux Properties International Inc. re 33 Laird\Pleadings\2021-06-xx AVO\Draft order\Approval and vesting\Drafts, etc\Model.doc
Description	Model
Document 2 ID	file:///U:\BBissell\102211.0001 - Beaux Properties International Inc. re 33 Laird\Pleadings\2021-06-xx AVO\Draft order\Approval and vesting\Drafts, etc\Draft approval and vesting order (from APS), v2.doc
Description	Draft approval and vesting order (from APS), v2
Rendering set	Standard

Legend:	
<a href="#">Insertion</a>	
<del>Deletion</del>	
<del>Moved from</del>	
<a href="#">Moved to</a>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	188
Deletions	135
Moved from	1
Moved to	1
Style change	0

Format changed	0
Total changes	325

**TAB 5**

Draft order re: approval of proposal trustee's fees and activities

Estate No. 31-2693094

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

THE HONOURABLE MR.	)	FRIDAY, THE 11 <sup>th</sup>
	)	
JUSTICE PATTILLO	)	DAY OF JUNE, 2021

**IN THE MATTER OF THE NOTICES OF INTENTION  
TO MAKE A PROPOSAL OF 33 LAIRD INC. AND  
33 LAIRD GP INC., CORPORATIONS INCORPORATED  
UNDER THE ONTARIO *BUSINESS CORPORATIONS  
ACT*, AND 33 LAIRD LIMITED PARTNERSHIP, A  
LIMITED PARTNERSHIP FORMED UNDER THE  
ONTARIO *LIMITED PARTNERSHIPS ACT***

---

**ORDER**  
**(approval of proposal trustee's reports, fees and activities)**

---

**THIS MOTION** by 33 Laird Inc., 33 Laird GP Inc., and 33 Laird Limited Partnership (together, the "**Laird Entities**") for the herein orders was heard this day by videoconference due to COVID-19.

**ON READING** the affidavit of Jason L. S. Birnboim sworn June 4, 2021 (the "**Birnboim June Affidavit**") and the fifth report (the "**Fifth Report**") of MNP Ltd. in its capacity as proposal trustee to the Laird Entities (in such capacity, the "**Proposal Trustee**"), and upon hearing the submissions of counsel for the Laird Entities and the Proposal Trustee as well as those other parties present, as indicated in the counsel slip, no other parties being present although duly served as appears from the affidavit of service, filed:



**NOTICE AND SERVICE**

1. **THIS COURT ORDERS** that the time for service of the motion record in respect of this motion and the Fifth Report is hereby abridged and validated so that the motion is properly returnable today, and that further service thereof is hereby dispensed with.

**APPROVAL OF PROPOSAL TRUSTEE'S FEES AND ACTIVITIES**

2. **THIS COURT ORDERS** that the third and fourth reports of the Proposal Trustee respectively dated March 23, 2021 and May 10, 2021, as well as the Fifth Report, together with the Proposal Trustee's activities and those of its independent legal counsel, Weisz Fell Kour LLP ("**WFK**"), as set out in such reports, be and are hereby approved, provided, however, that only the Proposal Trustee and WFK in their personal capacity and only with respect to their own personal liability, shall be entitled to rely upon or utilize in any way such approval.

3. **THIS COURT ORDERS** that the professional fees and disbursements of the Proposal Trustee and WFK, as set out in the Fee Affidavits (term defined in the Fifth Report), be and are hereby approved, and that the Laird Entities pay all such fees and disbursements from available funds.

4. **THIS COURT ORDERS** that this order is effective from its date at 12:01 a.m. and is not required to be entered.

---

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF 33 LAIRD INC. AND 33 LAIRD GP INC., CORPORATIONS INCORPORATED UNDER THE ONTARIO *BUSINESS CORPORATIONS ACT*, AND 33 LAIRD LIMITED PARTNERSHIP, A LIMITED PARTNERSHIP FORMED UNDER THE ONTARIO *LIMITED PARTNERSHIPS ACT***

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST  
Proceeding commenced in TORONTO**

**ORDER  
(approval of proposal trustee's reports, fees and activities)**

**GOLDMAN SLOAN NASH & HABER LLP**

480 University Avenue, Suite 1600

Toronto (ON) M5G 1V2

Fax: (416) 597-3370

**R. Brendan Bissell** (LSO# 40354V)

Tel: (416) 597-6489

Email: [bissell@gsnh.com](mailto:bissell@gsnh.com)

**Joël Turgeon** (LSO #80984R)

Tel: (416) 597-6486

Email: [turgeon@gsnh.com](mailto:turgeon@gsnh.com)

Lawyers for 33 Laird Inc., 33 Laird GP Inc. and  
33 Laird Limited Partnership

**TAB 6**

Notice to disclaim an agreement dated June 4, 2021 regarding the site  
plan agreement

FORM 44.1

Notice by Debtor to Disclaim or Resiliate an Agreement  
(Section 65.11 of the Act; Rule 94.1)


To the City of Toronto (trustee and party(ies) to the agreement)

Take notice that:

1. A proposal (or a notice of intention to make a proposal) in respect of 33 Laird Inc. (*name of debtor*) was filed under subsection 62(1) (or 50.4) of the Act on the 28th day of November, 2021. \_\_\_\_\_.
2. Pursuant to subsection 65.11(1) of the Act, the debtor gives you notice of his/her intention to disclaim or resiliate the following agreement (*provide sufficient details of the agreement to enable it to be identified*):  
Site Plan Agreement made as of the 23rd day of July, 2019 between 33 Laird Inc. and the City of Toronto, of which a copy is attached hereto as Schedule "A".  
\_\_\_\_\_  
\_\_\_\_\_
3. Pursuant to subsection 65.11(3) of the Act, within 15 days after the date on which this notice is given, any party to the agreement may, with notice to the other parties to the agreement and the trustee, apply to the Court for an order that the agreement is not to be disclaimed or resiliated.
4. Pursuant to subsection 65.11(6) of the Act, if no application for an order is made in accordance with subsection 65.11(3) of the Act, the disclaimer or resiliation of the agreement will become effective on the 4th day of July, 2021 (being 30 days after the date on which this notice has been given).

Dated at Toronto, this 4th day of June, 2021


\_\_\_\_\_



Debtor

The trustee approves the proposed disclaimer or resiliation.

Dated at Richmond Hill, this 4<sup>th</sup> day of June 2021.



\_\_\_\_\_  
Licensed Insolvency Trustee

# Schedule “A”

*[See next page]*

The applicant(s) hereby applies to the Land Registrar.

**Properties**

*PIN* 10369 - 0198 LT

*Description* LT 685 PL 2120 TWP OF YORK; PT LT 686 PL 2120 TWP OF YORK; PT LT 687 PL 2120 TWP OF YORK; PT LT 688 PL 2120 TWP OF YORK; PT LT 689 PL 2120 TWP OF YORK; PT LT 690 PL 2120 TWP OF YORK; PT LT 691 PL 2120 TWP OF YORK; PT LT 692 PL 2120 TWP OF YORK; PT LT 12 CON 3 FTB TWP OF YORK; PT LT 13 CON 3 FTB TWP OF YORK; PT LEASIDE RD PL 1535 TWP OF YORK AS IN TL46644; PT CANVARCO RD PL 2921 TWP OF YORK CLOSED BY EY173327, AS IN EY184825; TORONTO , CITY OF TORONTO

*Address* 33 LAIRD DRIVE  
TORONTO

**Consideration**

*Consideration* \$0.00

**Applicant(s)**

The notice is based on or affects a valid and existing estate, right, interest or equity in land

*Name* CITY OF TORONTO

*Address for Service* Legal Services  
55 John Street  
Stn. 1260, 26th Flr., Metro Hall  
Toronto ON M5V 3C6

This document is not authorized under Power of Attorney by this party.

This document is being authorized by a municipal corporation Brian Haley, Solicitor for the City of Toronto.

**Statements**

This notice is pursuant to Section 71 of the Land Titles Act.

This notice is for an indeterminate period

Schedule: See Schedules

**Signed By**

David Kwok-Wai Lee	55 John St., 26th Floor Toronto M5V 3C6	acting for Applicant(s)	Signed	2019 09 23
--------------------	---	----------------------------	--------	------------

Tel 416-392-8047

Fax 416-397-5624

I have the authority to sign and register the document on behalf of the Applicant(s).

**Submitted By**

CITY OF TORONTO	55 John St., 26th Floor Toronto M5V 3C6	2019 09 23
-----------------	---	------------

Tel 416-392-8047

Fax 416-397-5624

**Fees/Taxes/Payment**

*Statutory Registration Fee* \$64.40

*Total Paid* \$64.40

**File Number**

*Applicant Client File Number :* PSP2-700-2018-5058 (ID 205002565)

**SITE PLAN AGREEMENT** made this 23<sup>rd</sup> day of July, 2019.

08/13

29/03/2018

**B E T W E E N:**

**33 LAIRD INC.**

(the "Owner")

- and -

**CITY OF TORONTO**

(the "City")

**WHEREAS:**

- (A) The Owner is the owner of the land known as 33 Laird Drive, in the City of Toronto, more particularly described in Schedule "A" to this Agreement (the "Land");
- (B) Pursuant to Subsection 114(2) of the *City of Toronto Act, 2006*, S.O. Chapter 11, Schedule A, the Council for the City of Toronto by enactment of By-law No. 774-2012 designated the City of Toronto as a site plan control area;
- (C) The Owner has applied to the City under Section 41 of the *Planning Act* and Section 114 of the *City of Toronto Act, 2006*, for site plan approval in respect of its development for a new two-storey building containing commercial space and retain the existing heritage building (the "Project");
- (D) Section 114(17)(b) of the *City of Toronto Act, 2006*, states that the City may by by-law delegate any of the City of Toronto's powers or authority in Section 114 to an appointed official;
- (E) Article 415-19 of the Toronto Municipal Code delegates the powers and authority granted to Council with respect to site plan approval, to the Chief Planner or his/her designates, the Directors of Community Planning;
- (F) The Director of Community Planning, North York District, (the "Director") on February 27, 2018 issued Notice of Approval Conditions and further revised on July 27, 2018 with respect to application No. 15 222368 NNY 26 SA, wherein the Director indicated that he/she would be in a position to issue the Statement of Approval with respect to the Plans and Drawings listed in Schedule "B" to this Agreement (the "Plans and Drawings") once the Owner has satisfied all of the pre-approval conditions set out in the Notice of Approval Conditions, including the entering into of this Agreement;
- (G) Subsection 114(14) of the *City of Toronto Act, 2006*, provides that an agreement entered into to secure the provision of facilities, works or matters may be registered on the title of the land to which it applies.

**IN CONSIDERATION** of the premises and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

**DEVELOPMENT OF PROJECT**

1. The Owner agrees to develop the Land and construct the Project in substantial conformity with the Plans and Drawings and in accordance with the conditions set out in Schedule "C" to this Agreement, including, without limiting the

generality of the foregoing, those Plans and Drawings setting out the approved exterior design and sustainable design features of the Project.

2. The Owner acknowledges and agrees that minor variations from the requirements of this Agreement including the Plans and Drawings may be consented to by the Chief Building Official for the City on amendments necessary to satisfy the requirements of the Ontario Building Code, or in other cases by the Chief Planner or designate, provided that in the opinion of the said Official, the general intent and purpose of this Agreement is maintained.

#### **MAINTENANCE OF THE PROJECT**

3. The Owner agrees to maintain the Project in substantial conformity with the Plans and Drawings and in accordance with the conditions set out in Schedule "C" to this Agreement, in default of which the Owner acknowledges that the City may exercise its rights set out in this Agreement.

#### **COMPLETION OF THE PROJECT**

4. The Owner agrees to complete the Project as set out in this Agreement within two years from the date of issuance of the Statement of Approval failing which this approval shall require an extension by the Director prior to the issuance of any building permit and the City may exercise the other remedies set out in this Agreement.

#### **SECURITY FOR PERFORMANCE OF OBLIGATIONS**

5. Upon execution of this Agreement, the Owner shall, if required in Schedule "C" of this Agreement, submit to the City a letter of credit or cash deposit in an amount satisfactory to the Director to secure the Owner's obligations (the "Security"). Any letter of credit shall be provided in a format acceptable to the City Treasurer and Chief Financial Officer. The Owner acknowledges and agrees security submitted in the form of a cash deposit when returned will not include interest.
6. Where required by Schedule "C" to this Agreement, the Owner agrees to guarantee the performance of the Owner's obligations to the satisfaction of the Director. The City may in its sole discretion reduce the Security and retain the balance until the conclusion of the guarantee period, if required by Schedule "C", and the Owner has completed its obligations to the satisfaction of the City.
7. The Security, or such remaining balance, shall be returned upon the satisfactory completion of the Owner's obligations under this Agreement. If the security is submitted to the City in the form of a cash deposit, it shall be returned to the person or Company having submitted the security, unless a signed Direction is provided to the City indicating otherwise. If the security is submitted in the form of a letter of credit, it will be returned to the Financial Institution.

#### **RIGHT TO ENTER**

8. The Owner acknowledges and agrees that the City may enter onto the Land at any time to inspect the Project to ensure substantial conformity with the Plans and Drawings and compliance with the obligations of this Agreement.

#### **NON-COMPLETION**

9. If in the opinion of the City, the Project is not being completed within the specified time or not in accordance with the approved Plans and Drawings, or should the Owner neglect or abandon the Project before completion or unreasonably delay the same so that the conditions of this Agreement are being violated, or should the Owner, in any manner, in the opinion of the City, default in the performance of any of the terms of this Agreement, then in such case, the City shall notify the Owner by prepaid registered mail in writing, specifying with reasonable



particularity the nature of such default or neglect and require the Owner to remedy the same.

10. If such default or neglect is not remedied within ten (10) working days after such notice or within such greater time period as may be specified by the City, the City thereupon shall have full authority and power immediately to draw on the Financial Security to purchase such materials, tools and machinery and to employ such people as in the City's opinion shall be required for the proper completion of the outstanding obligations in this Agreement.
11. The cost of completion of any outstanding obligations of the Project shall be calculated by the City whose decision shall be final and such costs may be deducted from the Letter of Credit or other Financial Securities provided herein. In the event that the said Letter of Credit or other securities are insufficient to reimburse the City for all expenses incurred by the City to carry out the terms and obligations of this Agreement, then the Owner agrees to pay to the City such additional costs forthwith upon demand and the provisions of Section 386 of the *City of Toronto Act 2006*, c.11 as amended, shall apply.

#### **REMEDIES OF CITY**

12. The Owner agrees that the City may recover the total cost of all labour and materials in carrying out and completing the obligations of the Owner as set out in this Agreement, plus a management fee equal to 15% of the costs and to do so, may from time to time draw without notice on the Security, in whole or in part, and retain the money secured by the Security.

#### **ADJACENT MUNICIPAL PROPERTY**

13. The Owner shall rectify, restore and repair any adjacent municipal property damaged in implementing this Agreement.

#### **INDEMNITY**

14. The Owner agrees to defend, indemnify and save the City harmless from and against all claims, demands, losses, costs, charges, expenses, actions and other proceedings made, brought against, suffered by or imposed on the City in respect of any failure by the Owner to fulfill any of its obligations (including the failure to maintain) under this Agreement.
15. The Owner agrees to pay to the City on demand, any loss, costs, or damages which may be sustained, incurred or paid by the City in consequence of the Owner's failure to fulfill any of its obligations (including the failure to maintain) under this Agreement.

#### **NO OBLIGATION TO INSPECT**

16. Nothing in this Agreement imposes upon the City any duty or obligation to inspect or examine the Land for compliance, or non-compliance or to provide an opinion or view respecting any condition of development or to request or require compliance with the conditions of this Agreement.

#### **WAIVER**

17. The waiver by the City of any provision of this Agreement in one instance shall not constitute a waiver of any other instance and any waiver shall be in writing.
18. No delay or omission by the City in exercising any right or remedy shall operate as a waiver of the right or remedy or of any other right or remedy.

**REGISTRATION OF AGREEMENT**

- 19. The Owner consents to the registration of this Agreement against the title of the Land and agrees to pay all of the City's costs with respect to the registration of this Agreement and any other required documents, including but not limited to any applicable subsearch, execution search and registration fees.

**NOTICE**

- 20. Any notice given by the City to the Owner pursuant to this Agreement is sufficiently given if sent by prepaid first class mail (addressed to the Owner at the address shown for the Owner on the assessment rolls of the City or on any application for building permit) or by means of facsimile transmission. The notice shall be conclusively deemed to have been received on the third business day following mailing or respectively, the date of transmission contained on the facsimile confirmation printout.

**VALIDITY**

- 21. The invalidity of any particular provision of this Agreement shall not affect any other provision, but this Agreement shall be construed as if the invalid provision had been omitted.

**SUCCESSORS, ASSIGNS**

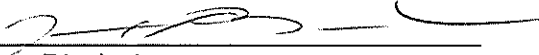
- 22. This Agreement enures to the benefit of the City and is binding upon the Owner and its successors and assigns. Notwithstanding anything in this Agreement to the contrary, in the event that the City acquires any part of the Land for any municipal purpose, including a road widening, the City shall not be bound by this Agreement as an Owner.

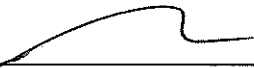
**INTERPRETATION**

- 23. This Agreement is to be read with all changes in gender or number as required by the context.
- 24. Schedules "A", "B" and "C" shall form part of this Agreement.
- 25. Notwithstanding anything in this Agreement to the contrary, in the event the City acquires any part of the Land for any municipal purpose, including streets, pedestrian walkways or connections and parks, or for the purposes of any of its boards, commissions, authorities, or agencies, the City shall not be bound by this Agreement as an Owner.
- 26. The Owner acknowledges that the entering into of this Agreement does not in itself constitute the approval of the Plans and Drawings under Section 114 of the *City of Toronto Act*.

**IN WITNESS WHEREOF** the Owner and the City have executed this document under the hands of their officers duly authorized in that behalf.

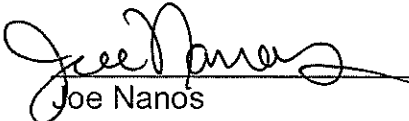
**33 LAIRD INC.**

  
\_\_\_\_\_  
Jason Birnboim  
President

  
\_\_\_\_\_  
Barry Godfrey  
Secretary

We have the authority to bind the Corporation.

**CITY OF TORONTO**

  
\_\_\_\_\_  
Joe Nanos  
Director, Community Planning  
North York District

I have authority to bind the Corporation.

**SCHEDULE "A"**

**DESCRIPTION OF LAND**

**Municipal Address**

33 Laird Drive, Toronto

**Legal Description**

Lot 685, Plan 2120, Township of York; Part of Lot 686, Plan 2120, Township of York; Part of Lot 687, Plan 2120, Township of York; Part of Lot 688, Plan 2120, Township of York; Part of Lot 689, Plan 2120, Township of York; Part of Lot 690, Plan 2120, Township of York; Part of Lot 691, Plan 2120, Township of York; Part of Lot 692, Plan 2120, Township of York; Part of Lot 12, Concession 3 FTB, Township of York; Part of Lot 13, Concession 3 FTB, Township of York; Part of Leaside Road, Plan 1535, Township of York as in TL46644; Part of Canvarco Road, Plan 2921, Township of York closed by EY173327, as in EY184825; City of Toronto.

**PIN 10369-0198 (LT)**

- 7 -

## SCHEDULE "B"

APPROVED PLANS AND DRAWINGS

<b>Drawing No.</b>	<b>Title</b>	<b>Produced By</b>	<b>Date</b>	<b>Date Stamped</b>
A101	Site Plan	SMV Architects	June 19, 2018	July 4, 2018
A202	Main Level Floor Plan	SMV Architects	October 30, 2017	November 1, 2017
A205	Roof Plan	SMV Architects	October 30, 2017	November 1, 2017
A301	Building Elevations	SMV Architects	October 27, 2017	November 1, 2017
L-1	Landscape Plan	MHBC	October 31, 2017	November 1, 2017
L-2	Landscape Plan	MHBC	October 31, 2017	November 1, 2017
LE-1	Site Lighting Plan and Details	Tristar Engineering	October 27, 2017	November 1, 2017

**SCHEDULE "C"**

**SITE SPECIFIC CONDITIONS**

**PRE-APPROVAL CONDITIONS**

**City Planning**

1. **Prior to final site plan approval**, the Owner shall submit a financial guarantee in the form of an irrevocable letter of credit or certified cheque, payable to the Treasurer, City of Toronto, in the amount of **\$206,965.00**, to guarantee the provision of landscape development including (but not limited to) any planting, fencing, decorative paving, retaining walls, terraces, and/or other landscape features as detailed on the approved Landscape Plan to the satisfaction to the Director.

**Heritage Preservation Services**

2. **Prior to final site plan approval**, the Owner shall:
  - a. provide final site plan drawings including drawings related to the approved Conservation Plan, to the satisfaction of the Senior Manager, Heritage Preservation Services;
  - b. provide a Lighting Plan that describes how the heritage property will be sensitively illuminated to enhance its heritage character to the satisfaction of the Senior Manager, Heritage Preservation Services and shall implement such Plan to the satisfaction of the Senior Manager, Heritage Preservation Services; and
  - c. provide a detailed landscape plan for the subject property, satisfactory to the Senior Manager, Heritage Preservation Services.
3. **Prior to final site plan approval**, the Owner shall, prior to the issuance of any permit for all or any part of the property at 33 Laird Drive, including a heritage permit or a building permit, but excluding permits for repairs and maintenance and usual and minor works for the existing heritage building as are acceptable to the Senior Manager, Heritage Preservation Services:
  - a. provide full building permit drawings, including notes and specifications for the conservation and protective measures keyed to the approved Conservation Plan, including a description of materials and finishes, to be prepared by the project architect and a qualified heritage consultant to the satisfaction of the Senior Manager, Heritage Preservation Services;
  - b. provide an Interpretation Plan for the subject property, to the satisfaction of the Senior Manager, Heritage Preservation Services and shall implement such Plan to the satisfaction of the Senior Manager, Heritage Preservation Services; and
  - c. provide a Letter of Credit, including provision for upwards indexing, in a form and amount satisfactory to the Senior Manager, Heritage Preservation Services to secure all work included in the approved Conservation Plan, Lighting Plan and Interpretation Plan.

**Urban Forestry**

4. **Prior to final site plan approval**, the Owner shall submit, to the Supervisor, Urban Forestry, Tree Protection and Plan Review (TPPR), a complete "Application to Remove Healthy City-owned Trees" and an application fee in the amount of **\$1,002.18** in the form of a certified cheque payable to the Treasurer,

City of Toronto, for three (3) trees inventoried as Tree Numbers 1, 2 and 5, to the satisfaction of the General Manager or Parks, Forestry & Recreation (PF&R). If the application is approved, the Owner shall submit a payment in the amount of **\$4,074.00** in the form of a certified cheque payable to the Treasurer, City of Toronto, for the Tree Appraisal Value of Tree Numbers 1, 2 and 5. The Owner further acknowledges and agrees to submit a complete "Agreement for Private Contractor to Perform Work on City-owned Trees" prior to removing any City-owned tree.

5. **Prior to final site plan approval**, the Owner shall submit, to the Supervisor, Urban Forestry, TPPR, a tree planting security deposit in the form of an irrevocable letter of credit or certified cheque payable to the Treasurer, City of Toronto, in the amount of **\$6,413.00** for eleven (11) new City trees to be planted within the City road allowance, to the satisfaction of the General Manager, PF&R.
6. **Prior to final site plan approval**, the Owner shall submit, to the Supervisor, Urban Forestry, TPPR, a complete "Application to Injure or Destroy Trees on Private Property" and an application fee in the amount of **\$2,066.74** in the form of a certified cheque payable to the Treasurer, City of Toronto, for four (4) trees inventoried as Tree Numbers 3, 4, 15 and 16 to the satisfaction of the General Manager, PF&R.

### **Engineering & Construction Services**

#### *Widening of Highways that abut on the Land*

7. **Prior to final site plan approval**, the Owner shall prepare all documents and convey to the City, at nominal consideration and at no cost to the City, in fee simple, the following road widening:
  - a. a 4.96m road allowance widening along the Laird Drive frontage south of the existing building; and
  - b. and a 5.0 m corner rounding at the south-east corner of the Canvarco and Laird Drive intersection,

namely **Parts 1 and 6 on Plan 66R-30829** (Road Widening Lands).

Said lands to be free and clear of all physical and title encumbrances, and subject to a right-of-way for access in favour of the Owner until such time as said lands have been dedicated as a public highway, all to the satisfaction to the Chief Engineer & Executive Director, Engineering & Construction Services (E&CS) and the City Solicitor

8. **Prior to final site plan approval**, the Owner shall retain a Qualified Person to conduct environmental site assessments for the Road Widening Lands to be conveyed to the City.
9. **Prior to final site plan approval**, the Owner shall submit all environmental site assessment reports prepared in accordance with the Record of Site Condition Regulation (O. Reg. 153/04) describing the current conditions of the Road Widening Lands to be conveyed to the City and the proposed remedial action plan based on the site condition standards approach, to the Chief Engineer & Executive Director, E&CS, for peer review.
10. **Prior to final site plan approval**, the Owner shall pay all costs associated with the City retaining a third-party peer reviewer including all administrative costs to the City (7%), and submit an initial deposit of **\$8,000.00** towards the cost of the Peer Review in the form of a certified cheque, to the Chief Engineer & Executive Director, E&CS. The Owner further agrees to submit further deposits when requested to cover all costs of retaining a third-party peer reviewer (unused funds will be refunded to the applicant by the City).

11. **Prior to final site plan approval**, the Owner shall submit, to the satisfaction of the City's peer reviewer, all Environmental Site Assessment reports prepared in accordance with the Record of Site Condition Regulation (Ontario Regulation 153/04, as amended) describing the current conditions of the Road Widening Lands to be conveyed to the City and the proposed Remedial Action Plan based on the site condition standards approach, to the Chief Engineer & Executive Director, E&CS.
12. **Prior to final site plan approval**, the Owner shall, at the completion of the site assessment/remediation process, submit a Statement from the Qualified Person based on the submitted environmental documents, to the Chief Engineer & Executive Director, E&CS for Peer Review and concurrence, which states:
- a. In the opinion of the Qualified Person:
    - i. It is either likely or unlikely that there is off-site contamination resulting from past land uses on the development site that has migrated onto adjacent City lands that would exceed the applicable Site Condition Standards; and
    - ii. To the extent that the possible or unlikely that such off-site contamination on adjacent City lands poses an adverse effect to the environment or human health.
  - b. Land to be conveyed to the City meets either:
    - i. the applicable Ministry Generic Site Condition Standards (Tables 1, 2, 3, 6, 7, 8 and 9; subject to applicable exemptions as stated in O. Reg. 153/04) for the most environmentally sensitive adjacent land use; or
    - ii. the Property Specific Standards as approved by the Ministry for a Risk Assessment/Risk Management Plan which was conducted in accordance with the conditions set out herein.
13. **Prior to final site plan approval**, the Owner shall include a Reliance Letter, with the Qualified Person's statement, referenced in Condition 12.a above, that is dated and signed by the applicant's Qualified Person, as defined in O. Reg. 153/04, as amended, confirming that both the City and the City's peer reviewer can rely on the environmental documentation submitted, consistent with O. Reg. 153/04 requirements, and the Qualified Person's opinion as to the conditions of the site; all environmental documentation consistent with O. Reg. 153/04 requirements and opinions shall be submitted with reliance extended to the City and its peer reviewer and any limitation on liability and indemnification is to be consistent with Ontario Regulation 153/04, as amended, insurance requirements or such greater amount specified by the Chief Engineer & Executive Director, E&CS.

*Facilities to Provide Access to and from the Land*

14. **Prior to final site plan approval**, the Owner shall make satisfactory arrangements with E&CS for work on the City's right-of-way to provide access to and from the land and submit a financial guarantee in the form of an irrevocable letter of credit or certified cheque payable to the Treasurer, City of Toronto, in the amount of **\$106,208.00**, to guarantee the access to and from the land, to the satisfaction of the Chief Engineer & Executive Director, E&CS.
15. **Prior to final site plan approval**, the Owner shall submit a certified cheque payable to the Treasurer, City of Toronto, in the amount of **\$5,301.00**, as engineering and inspection fees and provide insurance, as required, to the satisfaction of the Chief Engineer & Executive Director, E&CS.



16. **Prior to final site plan approval**, the Owner shall submit a certified cheque payable to the Treasurer, City of Toronto, in the amount of **\$1,731.63**, for pavement marking and signage on Canvarco Road, as required by Transportation Services, to the satisfaction of the Chief Engineer & Executive Director, E&CS.

*Easements conveyed to City*

17. **Prior to final site plan approval**, the Owner shall prepare all documents and convey to the City a 9.0m easement for 1200mm combined sewer easement (the "Combined Sewer Easement") for the purpose of maintaining the storm and sanitary sewers and appurtenances for nominal consideration and at no cost to the City, in respect of those lands comprising **Part 3 on Plan 66R-30829** (the "Easement Lands"). The Easement Lands are to be free and clear of all physical and title encumbrances, all to the satisfaction to the Chief Engineer & Executive Director, E&CS and the City Solicitor.
18. **Prior to final site plan approval**, the Owner shall retain a Qualified Person to conduct environmental site assessments for the Easement Lands to be conveyed to the City;
19. **Prior to final site plan approval**, the Owner shall pay all costs associated with the City retaining a third-party peer reviewer including all administrative costs to the City (7%), and submit an initial deposit of **\$8,000.00** towards the cost of the Peer Review in the form of a certified cheque, to the Chief Engineer & Executive Director, E&CS. The Owner further agrees to submit further deposits when requested to cover all costs of retaining a third-party peer reviewer (unused funds will be refunded to the applicant by the City).
20. **Prior to final site plan approval**, the Owner shall submit, to the satisfaction of the City's peer reviewer, all Environmental Site Assessment reports prepared in accordance with the Record of Site Condition Regulation (Ontario Regulation 153/04, as amended) describing the current conditions of the Easement Lands to be conveyed to the City and the proposed Remedial Action Plan based on the site condition standards approach, to the Chief Engineer & Executive Director, E&CS.
21. **Prior to final site plan approval**, the Owner shall, at the completion of the site assessment/remediation process, submit a Statement from the Qualified Person based on the submitted environmental documents, to the Chief Engineer & Executive Director, E&CS for Peer Review and concurrence, which states:
- a. In the opinion of the Qualified Person:
    - i. It is either likely or unlikely that there is off-site contamination resulting from past land uses on the development site that has migrated onto adjacent City lands that would exceed the applicable Site Condition Standards; and
    - ii. To the extent that the opinion in Condition 21.a.i above is that past migration is likely, it is either possible or unlikely that such off-site contamination on adjacent City lands poses an adverse effect to the environment or human health.
  - b. Lands to be conveyed to the City meets either:
    - i. the applicable Ministry Generic Site Condition Standards (Tables 1, 2, 3, 6, 7, 8 and 9; subject to applicable exemptions as stated in O. Reg. 153/04) for the most environmentally sensitive adjacent land use; or

- ii. the Property Specific Standards as approved by the Ministry for a Risk Assessment/Risk Management Plan which was conducted in accordance with the conditions set out herein.

22. **Prior to final site plan approval**, the Owner shall include a Reliance Letter, with the Qualified Person's statement, referenced in Condition 21.a above, that is dated and signed by the applicant's Qualified Person, as defined in O. Reg. 153/04, as amended, confirming that both the City and the City's peer reviewer can rely on the environmental documentation submitted, consistent with O. Reg. 153/04 requirements, and the Qualified Person's opinion as to the conditions of the site; all environmental documentation consistent with O. Reg. 153/04 requirements and opinions shall be submitted with reliance extended to the City and its peer reviewer and any limitation on liability and indemnification is to be consistent with Ontario Regulation 153/04, as amended, insurance requirements or such greater amount specified by the Chief Engineer & Executive Director, E&CS.

*Stormwater Management, Grading and Site Servicing*

23. **Prior to final site plan approval**, the Owner shall submit a financial guarantee in the form of an irrevocable letter of credit or certified cheque, payable to the Treasurer, City of Toronto, in the amount of **\$500,000.00**, for security of the existing 1200mm combined sewer infrastructure within the proposed easement area to the satisfaction to the Chief Engineer & Executive Director, E&CS. The Owner further acknowledges and agrees that that it will perform post construction CCTV of the two sewer legs and manholes and submit to Toronto Water for review and that the security will be released after the review of the CCTV satisfactory to the General Manager, Toronto Water.

*Other Conditions*

24. **Prior to final site plan approval**, the Owner shall enter into a canopy agreement for the canopy within the Canvarco Road and Laird Drive boulevard with the Right-of-Way Management section of the City.
25. **Prior to final site plan approval**, the Owner shall enter into an encroachment agreement for the raised planter curbs, benches and decorative concrete treatment in the Laird Drive and Canvarco Road boulevard.

**POST APPROVAL CONDITIONS**

**Heritage Preservation Services**

26. Prior to the release of the Letter of Credit, the Owner shall:
  - a. provide a letter of substantial completion, prepared and signed by a qualified heritage consultant, confirming that the required conservation work, heritage lighting work, and the required interpretive work has been completed in accordance with the Conservation Plan, Heritage Lighting Plan, and Interpretation Plan and that an appropriate standard of conservation has been maintained, all to the satisfaction of the Senior Manager, Heritage Preservation Services; and
  - b. provide replacement Heritage Easement Agreement photographs to the satisfaction of the Senior Manager, Heritage Preservation Services.

**Engineering & Construction Services**

*Combined Sewer Easement*

27. Subject to Conditions 28 to 39 below and to the terms of this Agreement, the

Owner acknowledges and agrees that the building as illustrated in the approved Plans and Drawings and subject to this Agreement (the "Permitted Structure") shall be the only structure permitted to encroach upon the Easement Lands being the lands upon which the Combined Sewer Easement as depicted by approved Site Plan Drawing No. A101 is to be located.

28. The Owner shall not interfere with the City's rights under the Combined Sewer Easement during the development as contemplated in this Agreement.
29. The Owner shall, at its expense and in the same manner and to the same extent as a prudent owner, maintain and operate all structures and building elements within and related to the Permitted Structure and keep the same in good and substantial repair and in the event of damage to or destruction of the Permitted Structure, repair or reconstruct the Permitted Structure to provide full and proper access to that part of the Combined Sewer Easement as required by the terms of this Agreement.
30. Prior to the commencement of any repair, maintenance, restoration or reconstruction of the Permitted Structure located on the Easement Lands, the Owner shall submit the plans and drawings for the proposed work to the General Manager, Toronto Water, for approval and shall make all revisions thereto as may be required. The Owner shall repair, maintain, restore or reconstruct any such integral or structural elements, or any elements affecting such integral or structural elements, of the Permitted Structure in accordance with the plans and drawings approved by the General Manager, Toronto Water.
31. The Owner shall restore, at the Owner's cost, the affected Easement Lands after any repair, maintenance, restoration or reconstruction of the Permitted Structure to the satisfaction of the General Manager, Toronto Water.
32. The Owner acknowledges and agrees to permit the City to enter the Permitted Structure to inspect the state of repair and maintenance upon giving the Owner reasonable notice in writing. In the event that the Owner fails to repair or maintain the Permitted Structure so as to properly provide access to that part of the Combined Sewer Easement located beneath the Permitted Structure or to properly restore the affected Easement Lands as required by this Agreement, and, in the event the City has provided the Owner with not less than thirty (30) days prior notice in writing setting out the failure or defect and the Owner has not commenced and diligently continued to remedy such failure or defect, then the City may enter the Permitted Structure and any adjacent land necessary for access to the Permitted Structure and do such repair or maintenance work as is necessary to provide the required access and the City may restore the affected Easement Lands all at the cost of the Owner. The Owner acknowledges that this Section imposes no obligation upon the City to do any such work and neither does this Section in any way release the Owner from any of its obligations under this Agreement or under any easement granted to the City nor does it diminish the responsibility of the Owner in respect hereof and that notwithstanding the City's rights under this Section, the City, its officials, employees, agents and those under its direction are under no obligation whatsoever to inspect the Permitted Structure nor to make any determination as to the proper construction of or necessary repairs and maintenance to the Permitted Structure including without limitation the ability of the Permitted Structure to provide the access required for the affected Easement Lands.
33. In the event of an emergency situation where the life or safety of the public is endangered or the public right-of-way is in imminent danger of collapse or damage, the City, without having given notice to the Owner, shall be entitled to enter the Permitted Structure and perform such emergency work as is necessary to deal with the emergency situation at the cost of the Owner. The Owner acknowledges that this Section imposes no obligation or duty on the City. In addition, in the event of an emergency, the General Manager, Toronto Water, may direct the Owner to commence maintenance and repair work

notwithstanding that the plans and drawings submission requirements of this Section have not been satisfied.

34. The Owner shall insure and keep insured the Permitted Structure for its full replacement cost without deduction for depreciation and against loss or damage under an "all risks" insurance policy, acceptable as to form, limits and conditions to the City.
35. The Owner shall take out and thereafter maintain, at its expense, commercial general liability insurance acceptable as to form, limits and conditions to the City for a limit of not less than five million dollars (\$5,000,000.00) per occurrence (such limit to be increased from time to time to reflect an amount which would be maintained by a prudent owner as determined by the City) covering possible damages, losses, claims and expenses for or in connection with any personal injury, death or property damage that might be incurred on or about the affected Easement Lands in connection with the maintenance, repair, reconstruction or operation of the Permitted Structure including but not limited to any damages arising from the failure of the Permitted Structure to provide the access to the affected Easement Lands as required by this Agreement.
36. The Owner shall ensure that such liability insurance policy noted above shall include the City as an additional insured. Such "all risks" property insurance policy shall contain, as applicable, a waiver of any subrogation rights which the Owner's insurer may have against the City. Such liability insurance policy shall contain a cross-liability and severability of interest clause and include contractual liability coverage. Such liability insurance policy shall provide that any breach of a condition of the policy by any insured shall not affect the protection given by the policy to any other insured. Such liability insurance policy shall contain a clause providing that the insurer will not cancel or refuse to renew the said insurance without first giving the City thirty (30) days prior written notice thereof. The Owner shall supply the City with satisfactory evidence of such insurance upon request by the City, and a certificate of insurance shall be remitted to the General Manager, Toronto Water, within thirty (30) days of issuance and evidence of continuance shall be remitted to the City at least thirty (30) days prior to the expiration of any insurance policy.
37. If at any time the City determines that the required insurance has not been taken out or if the City receives notice from the insurer that it has cancelled or refused to renew the said insurance, or that it intends to do so, or if the City otherwise determines that the said insurance has lapsed, been cancelled or is about to lapse or be cancelled without renewal or replacement, the City may, on written notice to the Owner, at the sole cost and expense of the Owner, obtain new insurance or add the necessary insurance coverage to the City's blanket insurance. The Owner shall forthwith upon receipt of written notice thereof from the City arrange for new insurance pursuant to this subsection and shall reimburse the City for the cost of any insurance arranged by the City and payable as noted above. Such insurance shall be cancelled by the City upon receipt of both a certificate of insurance as herein above required together with payment of any cost incurred by the City.
38. The Owner shall remise, release, and forever discharge the City from all manner of actions, causes of action, suits, proceedings, claims and demands whatsoever which the Owner or its successors or assigns shall or may have against the City by reason of any damage to the Permitted Structure, or associated structure arising in any way from the normal course of operation, maintenance or existence of the Combined Sewer Easement or related infrastructure.
39. In addition to any other indemnification requirements of this Agreement, the Owner, in respect of any Permitted Structure constructed by the Owner over the Easement Lands, for itself as well as for its successors and assigns, hereby agrees that it will, from time to time and at all times, hereafter save, keep harmless, and fully indemnify the City, its elected officials, officers, employees

and agents, and its successors and assigns, from and against all causes of action, suits, proceedings, claims and demands whatsoever which may be brought against or made upon the City, its elected officials, officers, employees and agents, and against all loss, liability, judgments, costs, charges, demands, damages or expenses which the City, its elected officials, officers, employees and agents, may sustain, suffer or be put to resulting from or arising out of:

- a. The exercise of rights in the nature of the easements that may be reserved by the Owner to effect the maintenance, repair or replacement of the Permitted Structure;
- b. Any construction, maintenance, repair or replacement by the Owner of the Permitted Structure;
- c. The failure of the Owner to design, construct and maintain that part of the Permitted Structure over the affected Easement Lands in the form approved by the General Manager, Toronto Water; and
- d. The failure of the Owner to provide access to the affected Easement Lands as contemplated in this Agreement.

*Facilities to Provide Access to and from the Land*

40. The Owner shall provide and maintain traffic operations measures/facilities as recommended in the accepted Traffic Impact Study, prepared by Dionne Bacchus & Associates, dated November 22, 2016, to the satisfaction of the Chief Engineer & Executive Director, E&CS.
41. The Owner shall remove all existing accesses, curb cuts, traffic control sign(s) along the development site frontage that are no longer required and reinstate the curb, gutter and boulevard within the City's right-of-way, in accordance with City standards and to the satisfaction of the Chief Engineer & Executive Director, E&CS.

*Off-street Vehicular Loading and Parking Facilities and Access/Driveways*

42. The Owner shall provide and maintain off-street vehicular loading and parking facilities and access driveways in accordance with the approved plans and drawings, to the satisfaction of the Chief Engineer & Executive Director, E&CS.
43. The Owner shall install and maintain appropriate signage and pavement markings on-site directing such as but not limited to: vehicle stopping and circulation, designated disabled parking, loading, and pedestrian walkways, to the satisfaction of the Chief Engineer & Executive Director, E&CS.

*Facilities for the Landscaping of the Lands or the Protection of Adjoining Lands*

44. The Owner acknowledges and agrees that it will be responsible for removing and replacing the shrubs within the easement area, if Toronto Water staff need to maintain the combined sewer.

*Facilities for the Storage of Garbage and Other Waste Material*

45. The Owner shall advise all owners and tenants/future purchasers of the commercial units that refuse and recyclable materials generated by this building must be collected by a private refuse collection firm.

*Stormwater Management, Grading and Site Servicing*

46. The Owner acknowledges and agrees that Staff have reviewed this application on the understanding it will comprise one parcel of land upon completion. The Owner shall not convey or transfer any part of the Development Site in any other

manner than that agreed to above if to do so would result in either the retained parcel or the conveyed or the transferred parcel ceasing to comply with Chapters 681 or 851 of the City of Toronto Municipal Code, as amended, which prohibit a private service connection, that connects to a municipal water or sewer system, from servicing more than one property. Each parcel shall have separate service connections to the municipal water and sewer systems, including any associated stormwater management systems, to the satisfaction of the Chief Engineer & Executive Director, E&CS, at the sole cost to the Owner. Further, the Owner shall prepare all plans and studies as required by the City for the servicing at the sole cost of the Owner.

47. The Owner shall submit an application to Toronto Water (Environmental Monitoring & Protection) for any permanent dewatering system that is required for the building, and enter into an agreement and/or permit to discharge groundwater as required by the General Manager, Toronto Water.
48. The Owner shall construct and maintain stormwater management measures/facilities and site grading as recommended in the accepted Functional Servicing and Stormwater Management Report, dated December 2016 and Site Grading Plan, Drawing No. C03, revision 6, dated October 30, 2017, prepared by The Crozier & Associates Consulting Engineers.
49. The Owner shall construct and maintain site servicing indicated on the accepted Site Servicing Plan, Drawing No. C02, revision 6, dated October 30, 2017, prepared by Crozier & Associates Consulting Engineers.
50. The Owner shall provide post-construction CCTV of the two sewer legs of 1200mm combined sewer and manholes and submit to the Chief Engineer & Executive Director, E&CS for review.
51. The Owner shall provide certification to the Chief Engineer & Executive Director, E&CS by the Professional Engineer who designed and supervised the construction that the stormwater management facilities and site grading have been constructed in accordance with the accepted Stormwater Management Report and the accepted Grading Plans.
52. The Owner shall provide certification to the Chief Engineer & Executive Director, E&CS by the Professional Engineer who designed and supervised the construction, that the site servicing facilities have been constructed in accordance with the accepted drawings.

*Other Condition*

53. The Owner shall provide a signed and stamped letter from a Professional Engineer (Structural), licensed to practice in Ontario and qualified in the subject matter to the Chief Engineer & Executive Director (c/o Manager, Development Engineering), E&CS and copy to General Manager (c/o Manager, Environmental Monitoring and Protection Unit), Toronto Water:

"I \_\_\_\_\_, confirm that *all buildings on the subject lands (33 LAIRD DRIVE) have been constructed completely water-tight below grade in a manner that will resist hydrostatic pressure without any necessity for foundation drains (weeping tiles, sub-floor drains), groundwater collections systems (groundwater collection sump(s), pump(s), etc.) or any other type of permanent drainage system or any direct or indirect connection to the City's sewage works.*"

**TAB 7**

Service list as of June 4, 2021

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE  
A PROPOSAL OF 33 LAIRD INC. A CORPORATION  
INCORPORATED UNDER THE ONTARIO *BUSINESS  
CORPORATIONS ACT***

**SERVICE LIST  
(as at June 4, 2021)**

<p><b>GOLDMAN SLOAN NASH &amp; HABER LLP</b> 480 University Avenue, Suite 1600 Toronto, ON M5G 1V2 Fax: 416.597.3370</p> <p><b>R. Brendan Bissell</b> (LSO# 40354V) Tel: 416.597.6489 Email: <a href="mailto:bissell@gsnh.com">bissell@gsnh.com</a></p> <p><b>Joël Turgeon</b> (LSO #80984R) Tel: 416.597.6486 Email: <a href="mailto:turgeon@gsnh.com">turgeon@gsnh.com</a></p> <p>Lawyers for 33 Laird Inc., 33 Laird GP Inc. and 33 Laird Limited Partnership</p>	<p><b>MNP LTD.</b> 111 Richmond Street West Suite 300 Toronto, ON M5H 2G4</p> <p><b>Sheldon Title</b> Tel: 416.263.6945 Email: <a href="mailto:Sheldon.title@mnp.ca">Sheldon.title@mnp.ca</a></p> <p><b>Matthew Lem</b> Email: <a href="mailto:Matthew.Lem@mnp.ca">Matthew.Lem@mnp.ca</a></p> <p>Proposal Trustee</p>
<p><b>WEISZ FELL KOUR LLP</b> 100 King Street W. Suite 5600 Toronto, ON M5X 1C9</p> <p><b>Sharon Kour</b> Tel: 416.613.8283 Email: <a href="mailto:skour@wfkaw.ca">skour@wfkaw.ca</a></p> <p>Lawyers for the Proposal Trustee, MNP Ltd.</p>	<p><b>CITY OF TORONTO</b> Legal Services Metro Hall, 26<sup>th</sup> Floor, 55 John Street Toronto, ON M5V 3C6</p> <p><b>Christopher J. Henderson</b> Tel: 416-397-7106 Email: <a href="mailto:Christopher.henderson@toronto.ca">Christopher.henderson@toronto.ca</a></p> <p><b>Matthew Longo</b> Tel: 416-392-5624 Email: <a href="mailto:matthew.longo@toronto.ca">matthew.longo@toronto.ca</a></p>



<p><b>ATTORNEY GENERAL OF CANADA</b>  <b>Department of Justice Canada</b>  <b>Ontario Regional Office, Tax Law Section</b>  120 Adelaide Street West, Suite 400  Toronto, ON</p> <p><b>Diane Winters</b>  Tel: 647.256.7459  Email: <a href="mailto:diane.winters@justice.gc.ca">diane.winters@justice.gc.ca</a></p> <p><b>Rakhee Bhandari</b>  Tel: 416.952.8563  Email: <a href="mailto:Rakhee.bhandari@justice.gc.ca">Rakhee.bhandari@justice.gc.ca</a></p>	<p><b>MINISTRY OF FINANCE (ONTARIO)</b>  Legal Services Branch  777 Bay Street, 11<sup>th</sup> Floor  Toronto, ON M5G 2C8</p> <p><b>Kevin O'Hara</b>  Tel: 416.327.8463  Email: <a href="mailto:kevin.ohara@ontario.ca">kevin.ohara@ontario.ca</a></p>
<p><b>DUCA FINANCIAL SERVICES CREDIT UNION LTD.</b>  5255 Yonge Street, 4<sup>th</sup> Floor  Toronto, ON  Email: <a href="mailto:commercialadmin@duca.com">commercialadmin@duca.com</a></p>	<p><b>MAXXWEL &amp; CO. INC.</b>  c/o Margie Strub Construction Law LLP  21 St. Clair Ave. E., Suite 100  Toronto, ON M4T 1L9</p> <p><b>John Margie</b>  Tel: 416.473.7963  Email: <a href="mailto:jmargie@margiestrub.com">jmargie@margiestrub.com</a></p>
<p><b>DEVRY SMITH FRANK LLP</b>  95 Barber Greene Rd., Suite 100  Toronto, ON M3C 3E9</p> <p><b>Oren Chaimovitch</b>  Tel: 416.449.1400  Email: <a href="mailto:oren.chaimovitch@devrylaw.ca">oren.chaimovitch@devrylaw.ca</a></p> <p><b>Lawrence Hansen</b>  Tel: 416-446-5097  Email: <a href="mailto:lawrence.hansen@devrylaw.ca">lawrence.hansen@devrylaw.ca</a></p> <p>Lawyers for DUCA Financial Services Credit Union Ltd.</p>	<p><b>A. CONTE PROFESSIONAL CORPORATION</b>  242 Applewood Crescent, Unit 12  Concord, ON L4K 4E5</p> <p><b>Antonio Conte (LSO# 19472)</b>  Tel: 905.660.4775  Email: <a href="mailto:a.conte@contelaw.ca">a.conte@contelaw.ca</a></p> <p>Lawyers for the Aztec Structural Restoration Inc.</p>

<p><b>WEIRFOULDS LLP</b> 4100 – 66 Wellington Street West Toronto, ON M5K 1B7</p> <p><b>Wojtek Jaskiewicz</b> Tel: 416-947-5094 Email: <a href="mailto:wjaskiewicz@weirfoulds.com">wjaskiewicz@weirfoulds.com</a></p> <p>Lawyers for 2730419 Ontario Inc. o/a Davina's Swim House, proposed tenant</p>	<p><b>CLYDE &amp; CO CANADA LLP</b> 401 Bay Street, Suite 2500 Toronto, ON M5H 2Y4</p> <p><b>Jamie Spotswood</b> Tel: 647 789 4830 Email: <a href="mailto:jamie.spotswood@clydeco.ca">jamie.spotswood@clydeco.ca</a></p> <p>Lawyers for Organic Garage (Canada) Ltd. and 2557479 Ontario Inc., Proposed tenant</p>
<p><b>SCHINDLER ELEVATOR CORPORATION</b> 3640 McNicoll Avenue Toronto, ON M1X 1G5</p> <p><b>Daniel Rowntree</b> Vice President and General Counsel</p> <p>Tel: 647.217.5808 Email: <a href="mailto:daniel.rowntree@schindler.com">daniel.rowntree@schindler.com</a></p> <p>Elevator supplier</p>	<p><b>HAPPY BATHROOM INC.</b> 160 Vanderhoof Ave. Toronto, ON M4G 0B7</p> <p>Email: <a href="mailto:happybathrooms@gmail.com">happybathrooms@gmail.com</a></p> <p>(Broker: John Robb Email: <a href="mailto:j.robbs@bosleyrealestate.com">j.robbs@bosleyrealestate.com</a>)</p> <p>Proposed tenant</p>
<p><b>AIM RX INC.</b> c/o Royal Lepage 2320 Bloor St. W. Toronto, ON M6S 1P2</p> <p>Alex Porritt Email: <a href="mailto:alex@redsquareteam.com">alex@redsquareteam.com</a></p> <p>Proposed tenant</p>	<p><b>2569773 ONTARIO INC. o/a/ SALONS BY JC</b> 1021 Summit Ridge Drive Oakville, ON L6M 3K9</p> <p>Ernest Pozzobon Email: <a href="mailto:nick@nwaretail.com">nick@nwaretail.com</a></p> <p>Proposed tenant</p>
<p><b>9866825 CANADA INC. o/a GLOWZONE 360</b> 9446 McLachlin Road North, Unit 7 Brampton, ON L6X 4H9</p> <p>Mohab Youssef Email: <a href="mailto:mohabyoussef@gmail.com">mohabyoussef@gmail.com</a></p> <p>Proposed tenant</p>	<p><b>2065620 ONTARIO INC. o/a DOVE DEPOT CLEANERS</b> 175 Dallimore Circle Toronto, ON M3C 4E5</p> <p>Email: <a href="mailto:info@dovecleaners.com">info@dovecleaners.com</a></p> <p>Proposed tenant</p>

<p><b>VIVO PIZZA FRANCHISING INC.</b>  c/o Behar Group Realty Inc.  1170 Sheppard Ave. W., Unit 24  Toronto, ON M3K 2A3</p> <p>Kelly Farraj  Email: <a href="mailto:kfarraj@thebehargroup.com">kfarraj@thebehargroup.com</a></p> <p>Proposed tenant</p>	<p><b>GLOBAL PET FOODS</b>  294 Walker Drive, Unit 2  Brampton, ON L6T 4Z2</p> <p>Derek Wong, Director of Franchising and  Development  Email: <a href="mailto:dwong@globalbancorp.ca">dwong@globalbancorp.ca</a></p> <p>Proposed tenant</p>
<p><b>DOGTOPIA</b>  c/o Acuity Group Inc.  22 Elderwood Dr.  Toronto, ON M5P 1W5</p> <p>Michael Waitzer  Email: <a href="mailto:waitzer@rogers.com">waitzer@rogers.com</a></p> <p>Proposed tenant</p>	<p><b>K9 EXPEDITIONS</b>  112 Glenvale Blvd.  Toronto, ON M4G 2V9</p> <p>Anesh Srikirshnakumar  Email: <a href="mailto:info@k9expeditions.com">info@k9expeditions.com</a></p> <p>Proposed tenant</p>
<p><b>NAILS FOR YOU</b>  c/o JLL 22 Adelaide Street West, Suite 2600  Toronto, ON M5H 4E3</p> <p>David Bishop, Executive Vice President  Email: <a href="mailto:davidr.bishop@am.jll.com">davidr.bishop@am.jll.com</a></p> <p>Proposed tenant</p>	

**EMAIL ADDRESS LIST**

[bissell@gsnh.com](mailto:bissell@gsnh.com); [turgeon@gsnh.com](mailto:turgeon@gsnh.com); [Sheldon.title@mnp.ca](mailto:Sheldon.title@mnp.ca); [Matthew.Lem@mnp.ca](mailto:Matthew.Lem@mnp.ca);  
[diane.winters@justice.gc.ca](mailto:diane.winters@justice.gc.ca); [Rakhee.bhandari@justice.gc.ca](mailto:Rakhee.bhandari@justice.gc.ca); [kevin.ohara@ontario.ca](mailto:kevin.ohara@ontario.ca);  
[commercialadmin@duca.com](mailto:commercialadmin@duca.com) ; [jmargie@margiestrub.com](mailto:jmargie@margiestrub.com) ; [oren.chaimovitch@devrylaw.ca](mailto:oren.chaimovitch@devrylaw.ca);  
[skour@wfkaw.ca](mailto:skour@wfkaw.ca) ; [A.Conte@contelaw.ca](mailto:A.Conte@contelaw.ca); [wjaskiewicz.com](mailto:wjaskiewicz.com) ; [jamie.spotswood@clydeco.ca](mailto:jamie.spotswood@clydeco.ca)  
[Christopher.henderson@toronto.ca](mailto:Christopher.henderson@toronto.ca) [matthew.longo@toronto.ca](mailto:matthew.longo@toronto.ca) [daniel.rowntree@schindler.com](mailto:daniel.rowntree@schindler.com)  
[happybathrooms@gmail.com](mailto:happybathrooms@gmail.com) [j.robb@bosleyrealestate.com](mailto:j.robb@bosleyrealestate.com) [alex@redsquareteam.com](mailto:alex@redsquareteam.com)  
[nick@nwaretail.com](mailto:nick@nwaretail.com) [mohabyoussef@gmail.com](mailto:mohabyoussef@gmail.com) [info@dovecleaners.com](mailto:info@dovecleaners.com)  
[kfarraj@thebehargroup.com](mailto:kfarraj@thebehargroup.com) [dwong@globalbancorp.ca](mailto:dwong@globalbancorp.ca) [waitzer@rogers.com](mailto:waitzer@rogers.com)  
[info@k9expeditions.com](mailto:info@k9expeditions.com) [davidr.bishop@am.jll.com](mailto:davidr.bishop@am.jll.com)

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF 33 LAIRD INC. AND 33 LAIRD GP INC., CORPORATIONS INCORPORATED UNDER THE ONTARIO *BUSINESS CORPORATIONS ACT*, AND 33 LAIRD LIMITED PARTNERSHIP, A LIMITED PARTNERSHIP FORMED UNDER THE ONTARIO *LIMITED PARTNERSHIPS ACT***

Estate File No. 31-2693094

---

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST  
Proceeding commenced in TORONTO**

---

**MOTION RECORD  
(approval and vesting order, approval of proposal trustee's fees and activities, sealing)  
(motion returnable June 11, 2021)**

---

**GOLDMAN SLOAN NASH & HABER LLP**  
480 University Avenue, Suite 1600  
Toronto (ON) M5G 1V2

**R. Brendan Bissell** (LSO# 40354V)  
Tel: (416) 597-6489  
Fax: (416) 597-3370  
Email: [bissell@gsnh.com](mailto:bissell@gsnh.com)

**Joël Turgeon** (LSO #80984R)  
Tel: (416) 597-6486  
Email: [turgeon@gsnh.com](mailto:turgeon@gsnh.com)

Lawyers for 33 Laird Inc., 33 Laird GP Inc. and  
33 Laird Limited Partnership