

**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

**(extension of time to file a proposal, administration charge, approval of trustee's fees and
activities, sealing)
(returnable May 12, 2021)**

May 7, 2021

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33 Laird Limited Partnership

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF THE NOTICES OF INTENTION TO
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GP INC., CORPORATIONS INCORPORATED UNDER THE
ONTARIO *BUSINESS CORPORATIONS ACT*, AND 33 LAIRD
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TAB 1

Notice of Motion returnable May 12, 2021

Estate No. 31-2693094

**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
(extension of time to file a proposal, administration charge, approval of trustee's fees
and activities, sealing)
(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 a judge of the Commercial List on Wednesday, May 12, 2021, at 10:30am 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 in suggested accordance with the draft in the motion record:

- 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 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.

- b. creating an administration charge (the “**Administration Charge**”) on the Property (as defined in the draft order) in favour of counsel for the Laird Entities, the Proposal Trustee, and counsel to the Proposal Trustee in connection with any unpaid fees and disbursements up to a maximum amount of \$150,000, which Administration Charge is to 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 (the “**December 16 Order**”)), meaning for avoidance of doubt 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 Encumbrances in favour of any Person (as also defined in the December 16 Order) that primes or ranks ahead of DUCA’s security interest, the whole in accordance with the December 16 Order.
- c. sealing Confidential Exhibit “1” and “2” to the affidavit of Jason L. S. Birnboim sworn May 7, 2021 (the “**Birnboim May 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.
- d. 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.

THE GROUND FOR THE MOTION ARE:

1. For the reasons set out in the Fourth Report, the Proposal Trustee supports the relief sought. Counsel are not aware of any opposition.
2. **Extension of time** – The extension is to bring an ongoing, court-approved sale process to completion, and finalize a sale of the Property (as defined in the Birnboim May Affidavit). As more fully set out in the Birnboim May Affidavit, the Laird Entities have acted, and are acting, in good faith and with due diligence and no creditor would be materially prejudiced if the extension being applied for were granted.
3. **Administration Charge** – The Administration Charge is to secure payment of the fees of the professionals involved, whose continued engagement is integral to the completion of the sale process and the Laird Entities’ restructuring generally. While the December 16 Order approved a debtor-in-possession (“**DIP**”) financing facility and created a DIP financing charge, which facility was intended to pay for, among other things, the fees of the professionals, the Laird Entities have requested that some of those fees be paid from the proceeds of any sale of assets, which is currently contemplated but not yet finalized, as more fully appears from the Birnboim May Affidavit and the Fourth Report. The sought quantum (\$150,000) and rank (immediately behind any security interest in favour of DUCA, as set out in the December 16 Order) of the Administration Charge would affect creditors no differently than if advances were made under the DIP charge. The Administration Charge is fair and reasonable in the circumstances. The statutory criteria for this head of relief are met.

4. **Sealing Orders** – Confidential Exhibits “1” and “2” to the Birnboim May Affidavit contain commercially sensible information that, if disclosed, could *inter alia* affect the integrity of the ongoing sale process or any further sale efforts, as the case may be.

5. **Approval of Proposal Trustee’s reports, fees and activities** – The activities of the Proposal Trustee were reported to the court and stakeholders including in the Third and Fourth Reports. Such activities are appropriate, commercially reasonable, and conducted in the best interest of stakeholders. On February 10, 2021, this court approved the Proposal Trustee’s two prior 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, Weisz Fell Kour LLP, are proportionate, fair and reasonable, as more fully appears from the Fee Affidavits (term defined in the Fourth Report). This court may therefore approve the Proposal Trustee’s reports, activities and fees, which would, *inter alia*, streamline the administration of the estates.

MAIN STATUTORY PROVISIONS

6. BIA s. 50.4 (extension of time) and 64.2 (Administration Charge), *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 Birnboim May Affidavit,

- b. the Fourth Report, and

- c. such further and other materials as counsel may advise and the court may permit.

May 7, 2021

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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/96172377491?pwd=MjR0NzFpMVRNMU0vaDZzTXRhWnIrQT09>

Meeting ID: 961 7237 7491

Passcode: 488966

One tap mobile

+14388097799,,96172377491#,,,,*488966# Canada

+15873281099,,96172377491#,,,,*488966# Canada

Dial by your location

+1 438 809 7799 Canada

+1 587 328 1099 Canada

+1 647 374 4685 Canada

+1 647 558 0588 Canada

+1 778 907 2071 Canada

+1 204 272 7920 Canada

Meeting ID: 961 7237 7491

Passcode: 488966

Find your local number: <https://zoom.us/u/aF8BiWb8d>

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
(extension of time to file a proposal, administration charge, approval of trustee's fees and activities, sealing)
(returnable May 12, 2021)**

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

TAB 2

Affidavit of Jason L. Birnboim sworn May 7, 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
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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 7th 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)

This is **Exhibit "A"** to the affidavit of Jason L. S. Birnboim sworn before me via Zoom this 7th day of May, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



A Commissioner, etc.

JOEL 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 Entities 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 10th 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)

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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 Zoom this 7th day of May, 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 TH
)	
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.



**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)**

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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 Zoom this 7th day of May, 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 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 ^{FaceTime}~~Zoom~~ at the City of Toronto, in the Province of Ontario, this 6th 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

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Joël Turgeon (LSO #80984R)
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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 Zoom this 7th day of May, 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 th
)	
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
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Joël Turgeon (LSO #80984R)
Tel: (416) 597-6486
Email: 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 Zoom this 7th day of May, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



A Commissioner, etc.

JOEL TURGEON

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

THE HONOURABLE MR.)	FRIDAY, THE 26 th
)	
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.

 Digitally signed by
Peter Cavanagh

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

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

GOLDMAN SLOAN NASH & HABER LLP
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R. Brendan Bissell (LSO# 40354V)
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Joël Turgeon (LSO #80984R)
Tel: (416) 597-6486
Email: 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 Zoom this 7th day of May, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



A Commissioner, etc.

Joël Turgeon

Joel Turgeon

De: JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>
Envoyé: 16 avril 2021 15:14
À: Brendan Bissell
Cc: skour@wfkllaw.ca; Oren.chaimovitch@devrylaw.ca
Objet: FW: 33 Laird Inc. et al. - Estate No. 31-2693094

Please see revised endorsement from Justice Cavanagh .

Thank you

Alsou Anissimova

Superior Court of Justice
Commercial & Estates Trial coordinator
330 University Ave , 7th floor
Civil Trial office , 7th floor
Toronto, Ontario
M5G 1R7
Tel: (416) 327-5047
Fax: (416) 327-5697
Email: toronto.commerciallist@jus.gov.on.ca

From: Cavanagh, Justice Peter (SCJ) <Peter.Cavanagh@scj-csj.ca>
Sent: April 16, 2021 2:27 PM
To: JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>
Subject: RE: 33 Laird Inc. et al. - Estate No. 31-2693094

Alsou – I have reviewed Mr. Bissel’s email and the requested endorsement is proper. Would you please send the Endorsement below to counsel? Thanks.

Endorsement:

I made an order on February 10, 2021 ordering the sale process with respect to the marketing, negotiation for sale and sale of the Laird Entities’ (as defined in the Order) assets. The sale process provides for a second bid deadline set 5 business days following the review of bids from the first bid deadline. Counsel for Laird Entities, with the consent of the Proposal Trustee and DUCA, a mortgagee, requests that the sale process in my Order be revised to provide that the date for the second bid deadline be *within* 5 business days following the review of bids from the first bid deadline. I am advised that the listing agent recommends that the second round of bids take place next Tuesday or Wednesday.

I am satisfied that my Order should be amended as requested. Schedule "A" to my February 10, 2021 Order is hereby amended to delete the words "Second bid deadline set 5 business days following the review of bids from the first bid deadline" as they appear and replace them with the words "Second bid deadline set within 5 business days following the review of bids from the first bid deadline".



Cavanagh J.

From: JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>
Sent: April 16, 2021 2:07 PM
To: Cavanagh, Justice Peter (SCJ) <Peter.Cavanagh@scj-csj.ca>
Subject: FW: 33 Laird Inc. et al. - Estate No. 31-2693094

Your Honour!
Please see to your attention if you can direct.

Thank you

Alsou Anissimova

Superior Court of Justice
Commercial & Estates Trial coordinator
330 University Ave , 7th floor
Civil Trial office , 7th floor
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M5G 1R7
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Email: toronto.commerciallist@jus.gov.on.ca

From: Brendan Bissell <bissell@gsnh.com>
Sent: April 16, 2021 1:24 PM
To: JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>
Cc: Sharon Kour <skour@wflaw.ca>; Oren Chaimovitch (Oren.chaimovitch@devrylaw.ca)
<Oren.chaimovitch@devrylaw.ca>
Subject: RE: 33 Laird Inc. et al. - Estate No. 31-2693094

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.

Alsou: I act for the debtor companies in this matter. Sharon Kour acts for the Proposal Trustee and Oren Chaimovitch acts for DUCA as the ranking secured creditor. They are both copied and I write with their consent.

I am writing to request an endorsement (which may even be an email if the Court is so inclined) in connection with the sale process contained in an order that Justice Cavanagh granted on Feb. 10, 2021, attached.

The reason is that we are in the midst of the bidding process right now, and the listing agent, JLL, has advised that it would be preferable to have the next (second) round of bids take place on Tuesday or Wednesday next week. The sale process terms in the order, however, seem to require that five business days expire after the first round of bids are evaluated, because it provides in Schedule "A" as follows:

"Second bid deadline set 5 business days following the review of bids from the first bid deadline." (emphasis added)

Most other deadlines in that process were expressed as being "by" or "within" the periods noted, so counsel believe that this may have been our oversight in not so providing on this deadline. Nonetheless, counsel believe it would be inappropriate to do otherwise without something further from the Court.

If appropriate, the parties request an endorsement that the phrasing of the deadline for the second bid deadline be revised to "within 5 business days following the review..."

I would be grateful if you could advise whether, and if so how, the Court might be prepared to deal with this? The parties would ideally like to be able to advise bidders of the new deadline today or on the weekend, but that is obviously subject to the Court's views and timing.

Please of course let counsel know if the Court has any questions or concerns.

Thank you, and regards,

R. Brendan Bissell



Suite 1600 | 480 University Avenue | Toronto ON | M5G 1V2

Direct [416 597 6489](tel:4165976489) | Fax [416 597 3370](tel:4165973370) | Mobile: [416 992 4979](tel:4169924979) | www.gsnh.com

Assistant | Karen Jones | [416 597 9922 ext. 101](tel:4165979922) | jones@gsnh.com

NOTICE OF CONFIDENTIALITY: This email and any attachment contain information which is privileged and confidential. It is intended only for the use of the individual to whom it is addressed. If you are not the intended recipient or the person responsible for delivering this document to the intended recipient, you are hereby advised that any disclosure, reproduction, distribution or other use of this email is strictly forbidden. If you have received this email by error, please notify us immediately by telephone or email and confirm that you have destroyed the original transmission and any copies that have been made. Thank you for your cooperation. Should you not wish to receive commercial electronic messages from GSNH, please [unsubscribe](#).

This is **Confidential Exhibit "1"** to the affidavit of Jason L. S. Birnboim sworn before me via Zoom this 7th day of May, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



A Commissioner, etc.

Joel Tulocan

[Omitted – Subject of sought sealing order]

This is **Confidential Exhibit "2"** to the affidavit of Jason L. S. Birnboim sworn before me via Zoom this 7th day of May, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



A Commissioner, etc.

JOËL TURGEON

[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 May 7, 2021)**

GOLDMAN SLOAN NASH & HABER LLP
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Joël Turgeon (LSO #80984R)
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Lawyers for 33 Laird Inc., 33 Laird GP Inc. and
33 Laird Limited Partnership

TAB 3
Draft Order

Estate No. 31-2693094

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

THE HONOURABLE MR.)	WEDESNDAY, THE 12 th
)	
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

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, 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 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

6. **THIS COURT ORDERS** that the third report of the Proposal Trustee dated March 23, 2021 and the Fourth 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.

7. **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 (term defined in the Fourth Report), be and are hereby approved, and that the Laird Entities pay all such fees and disbursements from available funds.

MISCELLANEOUS

8. **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.

9. **THIS COURT ORDERS** that this order is effective from its 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, administration charge, approval of trustee's fees and activities, sealing)**

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

TAB 4

Service list as of March 5, 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 March 5, 2021)**

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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
(extension of time to file a proposal, administration charge, approval of trustee's fees and activities, sealing)
(returnable May 12, 2021)

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