

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

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

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

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

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

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

**NOTICE AND SERVICE**

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

## **PROCEDURAL CONSOLIDATION**

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

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

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

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

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

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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***

”

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

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

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

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

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

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

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

#### **DIP FINANCING AND CHARGE**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **MISCELLANEOUS**

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

20. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the NOI Entities, the Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the NOI Entities and to the Trustee, as an officer of this Court,

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

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



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

Estate File No. 31-2693094

***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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