

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

THE HONOURABLE MR.) TUESDAY, THE 15th DAY
)
JUSTICE MCEWEN) OF JUNE, 2021

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

APPROVAL AND VESTING ORDER

THIS MOTION, made by 33 Laird Inc. (the “**Debtor**”), for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Debtor and 33 Laird Development Inc. *qua* general partner of 33 Laird Development Limited Partnership (in such capacity, the “**Purchaser**”) made as of May 10, 2021 and appended, without redactions, as Confidential Exhibit “1” to the affidavit of Jason L.S. Birnboim sworn June 4, 2021 (the “**Birnboim June Affidavit**”), and with minimal redactions as Exhibit “I” to the Birnboim June Affidavit, and vesting in the Purchaser the Debtor’s right, title and interest in and to the assets purchased described as such in the Sale Agreement (the “**Purchased Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario, by videoconference due to COVID-19.

ON READING the Birnboim June Affidavit and exhibits and the fifth report of MNP Ltd. in its capacity as proposal trustee (in such capacity, the “**Proposal Trustee**”), and on hearing the submissions of counsel for the Debtor, the Purchaser, the City of Toronto, and the Proposal Trustee, as well as such other counsel as may appear on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service, filed:

I. NOTICE AND SERVICE

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

II. APPROVAL AND VESTING ORDERS

2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Debtor is hereby authorized and approved, with such minor amendments as the Proposal Trustee may deem necessary. The Debtor is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Proposal Trustee’s certificate to the Purchaser substantially in the form attached as **Schedule A** hereto (the “**Proposal Trustee’s Certificate**”), all of the Debtor’s right, title and interest in and to the Purchased Assets shall vest absolutely in the Purchaser, free and clear of and

from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, leases, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Orders of the Honourable Justice Conway dated December 16, 2020 or the Honourable Justice Dunphy dated May 21, 2021; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; (iii) any leases of all or part of the Real Property (as hereafter defined) and (vi) those Claims listed on **Schedule B** hereto (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule C**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

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

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

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

7. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act*

(Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

III. SEALING

8. THIS COURT ORDERS that Confidential Appendix "1" to the Birnboim June Affidavit is sealed from the public record until the filing of the Proposal Trustee's Certificate or further court order.

IV. MISCELLANEOUS

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

10. THIS COURT ORDERS that this order is effective from its date at 12:01 am and is not required to be entered.



Schedule A – Form of Proposal Trustee’s Certificate

Estate No. 31-2693094

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

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

CERTIFICATE OF THE PROPOSAL TRUSTEE

RECITALS

- A. 33 Laird Inc. (the “**Debtor**”) filed a Notice of Intention to make a proposal pursuant to the *Bankruptcy and Insolvency Act* (Canada) on November 28, 2020 under which MNP Ltd was named as trustee of that proposal (the “**Proposal Trustee**”);
- B. Pursuant to an Order of the Honourable Justice Conway dated December 16, 2020, a DIP Borrowing Charge was granted over the assets of the Debtor;
- C. Pursuant to an Order of the Honourable Justice Dunphy dated May 12, 2021 a charge in favour of certain restructuring professionals was granted over the assets of the Debtor;
- D. Pursuant to an Order of the Court dated •, the Court approved the agreement of purchase and sale made as of May 10, 2021 (the “**Sale Agreement**”) between the Debtor and 33 Laird Development Inc. *qua* general partner of 33 Laird Development Limited Partnership (in such capacity, the “**Purchaser**”) and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Proposal Trustee to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets;

(ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Debtor and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Proposal Trustee.

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

THE PROPOSAL TRUSTEE CERTIFIES the following:

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

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

Per: _____
Name:
Title:

I have authority to bind the corporation.

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

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

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

2. a Charge registered on title to the Real Property as Instrument No. **AT4550601** by DUCA Financial Services Credit Union Ltd. (the “**DUCA Charge**”);
3. a Notice of Assignment of Rents General registered on title to the Real Property as Instrument No. **AT4550614** by DUCA Financial Services Credit Union Ltd. (the “**DUCA Assignment of Rents**”);
4. Instruments Nos. **AT4815354**, **AT5243559**, **AT5247712** which are registered on title to the Real Property and which relate to the DUCA Charge and the DUCA Assignment of Rents;
5. the Charge registered on title to the Real Property as Instrument No. **AT5494803** by Sealink J.V. Ltd.;
6. the Charge registered on title to the Real Property as Instrument No. **AT5494804** by Beau Properties International Inc.;
7. a Charge registered on title to the Real Property as Instrument No. **AT5572805** by Beau Properties International Inc. and Sealink JV Ltd.;
8. a Construction Lien registered on title to the Real Property as Instrument No. **AT5569465** Maxxwel & Co. Inc. (the “**Maxwell Lien**”);
9. a Construction Lien registered on title to the Real Property as Instrument No. **AT5593811** by Aztec Structural Restoration Inc. (the “**Aztec Lien**”);
10. a Certificate of Action registered on title to the Real Property as Instrument No. **AT5594868** by Maxxwel & Co. Inc. in connection with the Maxwell Lien;
11. a Certificate of Action registered on title to the Real Property as Instrument No. **AT5635827** by Aztec Structural Restoration Inc. in connection with the Aztec Lien;
12. all leases entered into by the Debtor with tenants of the Real Property including without limiting the generality of the foregoing:

- a. Retail Lease dated January 1st, 2017 made between the Debtor, as landlord, 2557479 Ontario Inc., as tenant, and Organic Garage (Canada) Ltd., as indemnifier, as amended by Lease Amending Agreement made between the said parties dated May 16th, 2019;
- b. Offer to Lease dated March 5th, 2019, between the Debtor, as landlord, and Aim RX Inc., as tenant, as amended by the said parties by a letter agreement dated March 13th, 2019, as amended by the said parties by a letter agreement dated May 16th, 2019, as amended by the said parties by a letter agreement dated August 9th, 2019, and as subsequently revived and amended between the said parties by a letter agreement dated August 9th, 2019;
- c. Offer to Lease dated June 22, 2017 between the Debtor, as landlord, and Vivo Pizza Pasta Franchising Inc., as tenant, as amended by notice of waiver dated February 13th, 2019 signed by the Debtor;
- d. Offer to Lease dated March 20th, 2017 made between the Debtor, as landlord, and Acuity Group Inc., as tenant, as revived and amended by a letter agreement dated September 27th, 2019 made between the parties;
- e. Offer to Lease dated April 1st, 2019 made between the Debtor, as landlord, and Global Pet Food Stores Inc., as tenant, as amended by notice of waiver dated May 23rd, 2019 signed by Global Pet Food Stores Inc., as amended by notice of waiver dated July 2nd, 2019 signed by the Debtor;
- f. Offer to Lease dated October 22nd, 2019 made between the Debtor, as landlord, and Nails For You Limited, as tenant;
- g. Offer to Lease dated December 24th, 2019 made between the Debtor, as landlord, and 2730419 Ontario Inc., o/a Davina's Swim House, as tenant;
- h. Retail Lease dated December 1st, 2017 made between the Debtor, as landlord, and Happy Bathrooms Inc., as tenant;
- i. Offer to Lease dated June 14th, 2016 made between the Debtor, as landlord, and 9866825 Canada Inc. dba "Glow Zone 360" as tenant, as amended by notice of waiver dated February 12th, 2018 signed by the Debtor, as amended by a letter agreement signed by the said parties dated December 6th, 2018, as revived and amended by a letter agreement dated September 27th, 2019;
- j. Retail Lease dated April 1st, 2017 made between the Debtor, as landlord, and 2569773 Ontario Inc., as tenant, and Ernest Pozzobon, as indemnifier; and Indemnification Agreement dated April 1st, 2019 made between the Debtor and Ernest Pozzobon, as indemnifier;
- k. Offer to Lease between the Debtor, as landlord, and Anesh Srikrishnakumar, as tenant, made on June 4th, 2020; and

1. Offer to Lease dated May 19, 2017 made between the Debtor, as landlord, and 2065620 Inc., as tenant.

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

(unaffected by the Vesting Order)

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

1. Instrument No. TL42961 (Bylaw) registered on title to the Real Property;
2. Instrument No. AT4643103 (Bylaw) registered on title to the Real Property;
3. Instrument No. AT4815350 (Notice) registered on title to the Real Property;
4. Instrument No. AT5243558 (Easement) registered on title to the Real Property;
5. Instrument No. AT5274151 (Encroachment Agreement) registered on title to the Real Property; and
6. Instrument No. AT5243555 (Site plan Agreement) registered on title to the Real Property.

Schedule D – Legal Description

PIN: 10369-0360 LT

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

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

15 June 21

The order shall go, on an unopposed basis, as per the draft filed and signed. I have reviewed it with counsel.

There has been a robust sales process and the Soundair principles have been met.

The Proposal Trustee supports the transaction.

The order is, however, being made on a without prejudice basis to Schindler Elevator Corporation's right to pursue its cross motion and the approval of this order does not, in any way, determine its rights to the equipment in dispute and Schindler reserves all rights in this regard.



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

APPROVAL AND VESTING ORDER

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