

Estate No.: 31-2693094, 31-2693092, 31-2693095
Court No.: 31-2693094, 31-2693092, 31-2693095

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

**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
REPORT OF TRUSTEE TO THE CREDITORS
(Section 50(5) of the Bankruptcy and Insolvency Act)**

Enclosed are the following documents for each of 33 Laird Inc. (“**INC**”) 33 Laird GP Inc. (“**GP**”) and 33 Laird Limited Partnership (“**LP**”, and together with INC and GP, hereinafter collectively referred to as the “**33 Laird Group**” or the “**Companies**”):

- ♦ The Notice of Proposal to Creditors;
- ♦ The proposal under Part III, Division I, of the *Bankruptcy and Insolvency Act* (the “**BIA**”) lodged with MNP Ltd. (the “**Trustee**”) by each of the Companies, and filed with the Office of the Superintendent of Bankruptcy on May 28, 2021 (individually hereinafter referred to as the “**Proposal**” or collectively as the “**Proposals**”);
- ♦ A statement of assets and liabilities as at May 28, 2021;
- ♦ A proof of claim;
- ♦ A voting letter in the event that you wish to vote in advance of the meeting; and
- ♦ A general proxy.

The following is an outline of the background and financial position of the Companies, including relevant information that should be of assistance to the creditors in considering their position with respect to the Proposals.

In preparing this Report and making the comments herein, the Trustee has been provided with, and has relied upon, certain unaudited, draft and/or internal financial information, the Company’s books and records, discussions with management and information from other third-party sources (collectively, the “**Information**”). Except as described in this Report, the Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the

Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook.

Generically, INC, GP or LP as an individual entity are referred to as the “**Company**”.

Capitalized terms used in this Report are the same as those referenced in the Proposals.

SECTION A - Background

On November 28, 2020, Inc., GP and LP each filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”). MNP Ltd. was named proposal trustee in each of the NOI proceedings (the “**Proposal Trustee**”).

The 33 Laird Group was established in connection with an 80,000 square foot retail/commercial redevelopment project (the “**Project**”) associated with the redevelopment of a two-story building on lands municipally known as 33 Laird Drive, Toronto, Ontario (the “**Property**”).

Title to the Property is held by INC, in trust for GP. Under LP, GP is the general partner and Beaux Properties International Inc. (“**Beaux**”), 2344011 Ontario Inc. and Sealink JV Ltd (“**Sealink**”), in Trust (collectively, the “**Related Creditors**”) are the limited partners. The main asset of the 33 Laird Group is its interest in the Property.

The primary purpose (the “**NOI Proceedings Objectives**”) of these proceedings was to create a stabilized environment to allow the Companies to conduct a Court approved public sale and marketing process for the Property in order to repay its creditors, including DUCA Financial Services Credit Union Ltd. (“**DUCA**”) and Centurion Mortgage Capital Corporation (“**Centurion**” and together with DUCA, hereinafter collectively referred to as the “**Secured Lenders**”).

In order to fulfill the NOI Proceedings Objectives, the 33 Laird Group sought approval for, and on February 10, 2021, obtained the Court’s authority to enter into a listing agreement with Jones Lang Lasalle Real Estate Services Inc. (“**JLL**”), and with JLL acting as its agent, carry out a sale process (the “**Sale Process**”) in respect of the Property. The Sale Process culminated in the 33 Laird Group entering into an agreement of purchase and sale dated May 11, 2021 (the “**Sale Agreement**”) with the 33 Laird Development Inc., in its capacity as general partner of 33 Laird Development Limited Partnership. The Sale Agreement is now subject to Court approval, with the Court scheduled to hear the 33 Laird Group’s motion for, *inter alia*, approval of the Sale Agreement on June 11, 2021 (the “**June 11th Motion**”).

SECTION B - Summary of the Proposals

As noted above, INC. holds the Property as nominee and bare trustee for and on behalf of GP, as beneficial owner of the Property. The three entities in the 33 Laird Group will as a result have the same assets and the same obligations to creditors. As a consequence, and even though there were three separate proposals filed, such proposals are being made in conjunction with one another. As a result, the treatment of creditors is mirrored in the proposals of all three entities and the Unsecured Creditor Cash Pool (as defined below) is shared. Accordingly, the below summary applies to each of the proposals.

This section contains a brief summary of the Proposal filed by each of the entities in the 33 Laird Group, the terms of which would be effective only if:

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

"**Implementation Date**" means the date upon which the foregoing conditions have been satisfied

As set out in the Proposal, the Proposal provides for the following:

- (i) **Unsecured Creditor Cash Pool** - On the later of (i) the Implementation Date or (ii) the receipt of proceeds of the sale of the Property pursuant to the Sale Agreement, the Company shall pay to the Proposal Trustee an amount of \$50,000 (the "**Unsecured Creditor Cash Pool**").

There is only one (1) Unsecured Creditor Cash Pool of \$50,000 among all three proposals.

- (ii) **Secured Creditors** -The value of the security held by any creditor with a security interest in the Property that is subordinate to the Second Mortgage (as defined below) will be \$Nil and any amount owing to such creditors will be treated as an Unsecured Claim.

The Claim of any Creditor with an interest ranking in priority to the Second Mortgage (collectively, the "**Priority Creditors**") (which shall include without limiting the generality of the foregoing: (i) any municipal taxes owed, (ii) any holdback owing to claimants under the *Construction Act*, (iii) any amounts owing to the Secured Lenders in respect of a mortgage on the Property, (iv) amounts owing to the Restructuring Professionals within the meaning of the Court Order dated May 12, 2021 (the "**Restructuring Professionals Charge**"), (v) amounts owing to the DIP Lender, and (iv) any valid and enforceable trust claims as against the estate of the Debtor) shall be paid by the Company in accordance with agreements between the Company and the Secured Creditor or as otherwise agreed between the Secured Creditor and the Company from the proceeds of sale of the Property pursuant to the Sale Agreement. For greater clarity, the Claims of the Priority Creditors are unaffected by the Proposal.

- (iii) **Related Creditors** -shall not be entitled to receive any distribution under the Proposal.
- (iv) **Administrative Fees and Expenses** - The Administrative Fees and Expenses will be paid from the Unsecured Creditors Cash Pool to a maximum of \$15,000. Any further Administrative Fees and Expenses beyond that maximum amount will be paid pursuant to the Restructuring Professionals Charge.
- (v) **Employee Creditors** - The Claims, if any, of the Employee Creditors shall be paid on the later of (i) the Implementation Date or (ii) the receipt of proceeds of the sale of the Property pursuant to the Sale Agreement. Based on the SOA, the Company does not have any Employee Creditors.
- (vi) **Source Deduction Creditors** - Unless Her Majesty agrees otherwise, the Proven Claims, if any, of the Source Deduction Creditors shall be paid within six (6) months after the making of the Approval Order using proceeds from the sale of the Property pursuant to the Sale

Agreement. Based on the SOA, the Company does not have any obligation to Canada Revenue Agency in respect of unpaid source deductions.

- (vii) **Preferred Creditors** – The Proven Claims of the Preferred Creditors are to be paid in full in priority to the Proven Claims of the Unsecured Creditors in accordance with the BIA and the Proposal.
- (viii) **Unsecured Creditors** –Unsecured Creditors will receive the funds from the Unsecured Creditor Cash Pool less the amounts referred to in (iv) and (vii) above, on a pro rata basis on account of their respective Proven Claims.
- (ix) **Release of Directors** - The acceptance of the Proposal by the Creditors shall constitute a full and final release of all claims against any officer or director of the Company.
- (x) **Preferences and Transactions at Under Value** - Sections 95-101 of the BIA will not apply in respect of this Proposal.

The above description of the Proposal is a summary only, and readers are cautioned that in the event that there is inconsistency between this report and the Proposal, the terms of the Proposal shall govern.

SECTION C - Financial Position and Causes of Difficulties

The Companies attribute their financial difficulties primarily to underlying financial issues with the Project, including cost overruns exacerbated by the impact of the COVID-19 pandemic on costs, timeline to complete, and the potential viability of the prospective tenants; all of which raised concern for the Secured Lenders and led to DUCA issuing demands and Notices of Intention to Enforce Security under section 244 of the BIA on November 19, 2020.

During the term of the NOI Proceedings, the 33 Laird Group has arranged for interim financing up to a maximum of \$250M (the “**DIP Loan**”) from BP Capital Inc. (the “**DIP Lender**”) for the purpose of funding the costs of the restructuring, including but not limited to the cost of maintaining and protecting the Property, the fees and disbursements of the Restructuring Professionals (as defined below) up to the end of the NOI stay period and granting a second-ranking charge over all of the Companies’ property, assets and undertakings. To date, the 33 Laird Group has borrowed \$98,000 pursuant to the DIP Loan.

SECTION D - Interim Receiver

Not Applicable.

SECTION E - Identification and Evaluation of Assets

As noted above, the main asset of the 33 Laird Group is its interest in the Property. The Property is subject to the Sale Agreement. The value ascribed to the Property by the Companies as per their respective sworn statement of affairs (“**SOA**”) is based on the sale price under the Sale Agreement. Given the commercially sensitive nature of certain information, including the proposed sale price, in the event that the transaction does not close, as part of the June 11th Motion, the Companies are seeking that the Court seal, among other things, the sale price, pending the closing of the transaction contemplated by the Sale Agreement and or further order of this Court. Accordingly, the package of documents distributed by the Proposal Trustee to the

Companies' creditors includes a redacted version of the SOA, redacting certain information relating to the value of the Property, pending the outcome of the June 11th Motion.

Based on the SOAs, the Companies' other assets are described below:

<u>Description</u>	<u>Estimated Realizable Value</u>
Cash	\$ 40,993
Deposits held in trust	72,440
Property tax refund	6,989
Deposits-City of Toronto	1,500
DUCA Class A Bonus Share	6,413

SECTION F - Conduct of the Company

The conduct of the Company does not appear to be subject to censure.

SECTION G - Creditors' Claims

According to the SOA, the Company's creditors largely consist of the claims in favour of the Priority Creditors, which on the basis of a search of the Ontario *Personal Property Security Act* registry, file currency date of December 8, 2020, a Parcel Register, dated December 8, 2020 (the "**Parcel Register**") and the Company's records, indicate the following:

(a) The Secured Lenders

- a. a mortgage charge on the Property underlying the Project in the amount of \$22MM;
- b. a personal property charge over all of INC's chattels, except consumer goods; and
- c. a personal property charge over all of LP's accounts and other.

(b) The Related Creditors

The Related Creditor holds together a second ranking mortgage (the "**Second Mortgage**") on the Property underlying the Project in the amount of \$5.2MM.

(c) Maxxwell & Co Inc.

Relates to a construction lien claim in the amount of \$113,336.

(d) Others

Other Priority Creditors include amounts owing to:

- (i) 2730419 Ontario Inc. o/a Davina Swim House in respect to a deposit that was to be held trust;

- (ii) Aztec Structural Restoration Inc. in respect of a construction holdback payable;
- (iii) the DIP Lender; and
- (iv) the Restructuring Professionals subject to the Restructuring Professionals Charge.

At this time, the Proposal Trustee is reviewing the mortgages in favour of the Secured Lenders and the Related Creditors. In respect of the mortgage in favour of the Related Creditors, the Proposal Trustee has not completed a review of all advances purportedly made under that mortgage. The Proposal Trustee will seek a legal opinion as to the validity and enforceability of the security in favour of the Secured Lenders and the Related Creditors if and when necessary for the purposes of the meeting of creditors or any subsequent distribution. The comments in Section L below are based on the current status of the Proposal Trustee's review.

The contingent debts largely relate to potential damages that may be sustained by prospective tenants of the Project. At this time, the Proposal Trustee is unable to comment on the extent of these potential damages, if any.

SECTION H - Previous Business Dealings with the Company

Prior to becoming involved in the NOI Proceedings, the Proposal Trustee has had no previous dealings with the Company.

SECTION I - Informal Meeting with Major Creditors

Not Applicable.

SECTION J - Remuneration of Trustee

The Proposal Trustee's fees and expenses related to the administration of the Proposal, including legal fees, will be paid from the Unsecured Creditor Cash Pool to a maximum of \$15,000. Any further Administrative Fees and Expenses beyond that maximum amount will be paid pursuant to the Restructuring Professionals Charge;

The Proposal Trustee's fees and expenses during the NOI Proceedings have been paid from proceeds made available to the Companies pursuant to the DIP Loan. The Trustee and Weisz Fell Kour LLP, its counsel, hold retainers of \$27,500 and \$7,500, respectively to be applied against ongoing professional fees. These retainers are not included as an asset on the Company's statement of affairs.

SECTION K - Other

Not applicable.

SECTION L - Statement of Estimated Realizations

Set out below is the Trustee's estimate of the distribution to ordinary unsecured creditors if the Proposals are accepted by the creditors and approved by the Court:

Proposal Fund	\$50,000
Less: Estimated Administrative Fees and Expenses	<u>15,000</u>
Net Funds Available for Distribution	<u>\$35,000</u>
Estimated Claims of Unsecured Creditors	\$914,184
	3.8%

If the Proposal is rejected by the Creditors, the Company will be deemed bankrupt.

As noted above, as part of the June 11th Motion, the Companies seek an order of the Court sealing certain information, including the sale price under the Sale Agreement. Accordingly, in providing the comments herein, including as to whether in the Proposal Trustee's opinion the Proposal is advantageous to creditors, the Proposal Trustee is limited in certain disclosure it can provide to creditors.

As the contemplated sale is outside of the ordinary course of business, the Proposal Trustee, as an Officer of the Court, must file a report to the Court providing the Court with its observations and recommendations with the respect to the transaction. In deciding whether to approve the transaction, the Court considers, among other things, whether the Proposal Trustee filed with the Court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy. As will be detailed in the Proposal Trustee's Fifth Report to the Court in these proceedings, the Proposal Trustee has concluded that the contemplated sale transaction is more beneficial to creditors than a sale under a bankruptcy.

The Proposal Trustee must also evaluate whether to recommend the Proposal on the basis that it is advantageous to unsecured creditors. The Proposal Trustee has carried out a review of the anticipated recoveries arising from the proposed transaction and the projected distribution arising from those proceeds, having regard to, among other things, the costs of realization and the extent the proceeds are subject to claims of Priority Creditors. After carrying out this review, the Proposal Trustee is of the opinion that the unsecured creditors would likely receive no recovery in the event of the Company's bankruptcy.

Preferences and Transactions at Under Value

The Proposal provides that sections 95-101 are not applicable. Accordingly, and to assess the appropriateness of the inclusion of this clause, the Trustee has carried out a review of the Company's bank statements and cancelled cheques for the period one year prior to the filing of the NOI and ending on April 30, 2021 in order to enable it to be in a position to report to the creditors on any potential preferences or transfers at undervalue identified.. Based on its preliminary review of these records, nothing has come to the Proposal Trustee's attention that gives rise to any concerns respecting potential preference payments or transfers at undervalue.

SECTION M - Recommendations

Based on the above, the Proposal Trustee recommends the acceptance of the Proposal as the Proposal likely contemplates a more certain and greater distribution to the creditors than a bankruptcy.

SECTION N – Technical Requirements for a Successful Proposal

This Proposal will become effective only if it is accepted by a resolution of the Unsecured Creditors and approved by the Court. To obtain Creditor approval, a simple majority in the number of Unsecured Creditors voting, with this majority representing at least 2/3 of the dollar value of the Unsecured Creditors voting, must vote in favour of the Proposal. If the Unsecured Creditors do not accept the Proposal, then the Company will be deemed to have made an assignment in bankruptcy and a meeting of creditors in the matter of the bankruptcy will immediately take place.

If the Unsecured Creditors vote to accept the Proposal, Court approval of the Proposal must then be sought. If the Court does not approve the Proposal, the Company would be deemed to have made an assignment in bankruptcy and the Trustee of the bankruptcy estate will then call a meeting of creditors in the matter of the bankruptcy.

When completing the Proof of Claim form submitted herewith, Creditors should include all outstanding amounts as at November 28, 2020, the date of the filing of the NOI. It is expressly noted and should be clearly understood that MNP Ltd., in its capacity as Proposal Trustee, assumes no personal liability for any claims that Creditors may have against the Company, filed, proven, deemed or otherwise, either before or after the filing of the Proposal.

Creditors may attend, in person or by proxy, the meeting to consider the Proposal, which will be held on **Friday, June 18, 2021 at 2:00 p.m. (Toronto, Ontario Time) by video/telephone conference (via Microsoft Teams Meetings)**. Instructions for joining the meeting can be found at:

<https://mnpdebt.ca/-/media/files/mnpdebt/corporate/corporate-engagements/proposal/33-laird-group/video-and-telephone-conference-instructions-june-18-2021.pdf>

In order to participate and vote at the meeting, Creditors must file their claims in prior to the start of the meeting. Creditors who do not wish to attend or be represented at the meeting but who wish to vote, may forward their Proofs of Claim and voting letters by either email to fatemah.khalfan@mnp.ca or fax to (416) 596-7894, to the Proposal Trustee so as to be received prior to 2:00 pm (Toronto Time) on June 18, 2021.

Should you have any questions or comments on the Proposal or this report, please do not hesitate to contact the undersigned.

Dated at Toronto, Ontario, the 8th day of June, 2021.

MNP Ltd.

**Trustee acting *in re* the Proposals of
33 Laird Inc., 33 Laird GP Inc. and 33 Laird Limited Partnership
and not in its personal or corporate capacity**

Per:



Sheldon Title, CA, CIRP, LIT

Encl.