

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 C. C.43, AS AMENDED**

**BETWEEN:**

**C & K MORTGAGE SERVICES INC.  
and 975393 ONTARIO INC.**

Applicants

- and -

**AXESS PICKERING LTD,**

Respondent

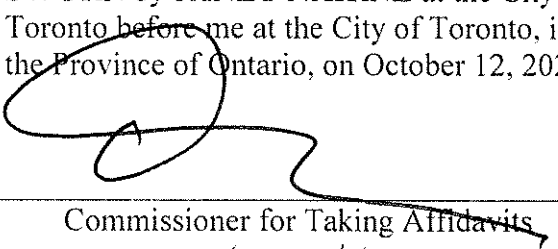
**AFFIDAVIT OF JANET NAIRNE**  
*(Sworn October 12, 2021)*

**I, JANET NAIRNE** of the City of Mississauga, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a legal assistant at the firm of Dickinson Wright LLP, lawyers for the Applicants and, as such, I have personal knowledge of the matters to which I hereinafter depose.
2. Attached as **Exhibit “A”** is copy of correspondence received from counsel for the Third Mortgagee dated October 7, 2021.


3. Attached as **Exhibit "B"** is a copy of an email received from the Second Mortgagee dated October 7, 2021.
4. Attached as **Exhibit "C"** is a copy of a notice of appearance received from Daniel Robert Hughes and a copy of an agreement of purchase and sale received together therewith this morning.
5. Attached as **Exhibit "D"** are copies of an email Gary Greneir received this morning together with an unsigned agreement of purchase and sale.

**SWORN** by **JANET NAIRNE** at the City of  
Toronto before me at the City of Toronto, in  
the Province of Ontario, on October 12, 2021

  
\_\_\_\_\_  
Commissioner for Taking Affidavits  
(or as may be)

  
\_\_\_\_\_  
**JANET NAIRNE**

This is Exhibit "A" referred to in the Affidavit of JANET NAIRNE sworn, before me at the City of Toronto, in the Province of Ontario, on October 12, 2021.

A handwritten signature in black ink, consisting of a stylized 'D' followed by a horizontal line.

---

*Commissioner for Taking Affidavits (or as may be)*

**DAVID P. PREGER**

# MRH | BARRISTER AND SOLICITOR INSOLVENCY AND COMMERCIAL LAWYER

**MATTHEW R. HARRIS**

B.A. (HONS.), J.D. (HONS.), LL.M. (Bankruptcy & Insolvency)

*Matthew R. Harris Professional Corporation*

**DELIVERED VIA EMAIL**

Thursday, October 07, 2021

**DICKINSON WRIGHT LLP**

Barristers & Solicitors  
199 Bay Street  
Suite 2200, Box 447  
Commerce Court Postal Station  
Toronto, ON M5L 1G4

**Attn: David P. Preger and David Z. Seifer**

Dear Sirs:

**RE: C&K Mortgage Services Inc. and 975393 Ontario Inc. v. Axxess Pickering Ltd.  
Application No. CV-21-00669408-00CL  
My File No. 2021-01972**

---

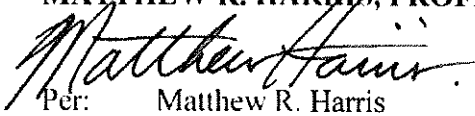
I have been retained by RNV Investments, LLC and Gina Batista, the third mortgagees on the pickering parkway property, to act in this matter.

I intend on appearing on October 12, 2021 at 12:00 pm via ZOOM. At the current time, my instructions are to simply observe the proceeding and not take an active role. While this is subject to change at my client's instructions, I do not currently anticipate that being the case, and, at least for the moment, I do not anticipate filing a Notice of Appearance.

Please add me to the service list, and keep me apprised of the situation.

Yours Truly,

**MATTHEW R. HARRIS, PROFESSIONAL CORPORATION**



Per: Matthew R. Harris

MRH/cc

4789 YONGE STREET, SUITE 1208, TORONTO, ONTARIO M2N 0G3  
Tel: 416-733-8778 Fax: 416-665-8965  
matthew@mrhlawyer.com Web: www.matthewrharrislawyer.com

his is Exhibit "B" referred to in the Affidavit of JANET NAIRNE  
sworn, before me at the City of Toronto, in the Province of Ontario,  
on October 12, 2021.



---

*Commissioner for Taking Affidavits (or as may be)*

**DAVID P. PREGER**

## Janet C. Nairne

---

**From:** Dr. Georgewill <admin@sagewisecapital.com>  
**Sent:** Thursday, October 7, 2021 12:01 AM  
**To:** Janet C. Nairne  
**Cc:** Olutoyin Ehinlaiye; Abraham King  
**Subject:** EXTERNAL: Fwd: C & K Mortgage Services Inc. and 975393 Ontario Inc. and Axxess Pickering Ltd. Court File No: CV-21-669408-00CL  
**Attachments:** image3a719f.JPG; image3a719f.JPG; 4810-7439-0525 v3 Application Record of C & K Mortgage Services Inc. et al.pdf

Dear Janet,

Greetings and trusting you are doing well.

We refer to your email regarding the matter between C & K Mortgage Services Inc. and 975393 Ontario Inc. and Axxess Pickering Ltd. Court File No: CV-21-669408-00C and wish to inform that Sagewise Capital intend to participate and will be represented by Olutoyin Ehinlaiye of Ehinlaiye Law Professional Corporation also copied this email.

Kindly direct correspondence on the matter accordingly.

With kind regards,  
Dr. Dawaye Georgewill  
Sagewise Capital Corp.

----- Forwarded message -----

**From:** Janet C. Nairne <JNairne@dickinson-wright.com>  
**Date:** Fri, 1 Oct 2021, 11:18 pm  
**Subject:** C & K Mortgage Services Inc. and 975393 Ontario Inc. and Axxess Pickering Ltd. Court File No: CV-21-669408-00CL  
**To:** [danhughes@libertyhamlets.ca](mailto:danhughes@libertyhamlets.ca) <[danhughes@libertyhamlets.ca](mailto:danhughes@libertyhamlets.ca)>, [grantanthony@rogers.com](mailto:grantanthony@rogers.com) <[grantanthony@rogers.com](mailto:grantanthony@rogers.com)>, [support@sagewisecapital.com](mailto:support@sagewisecapital.com) <[support@sagewisecapital.com](mailto:support@sagewisecapital.com)>, [batitsa.gina@yahoo.com](mailto:batitsa.gina@yahoo.com) <[batitsa.gina@yahoo.com](mailto:batitsa.gina@yahoo.com)>, [richard@rnvinvestments.com](mailto:richard@rnvinvestments.com) <[richard@rnvinvestments.com](mailto:richard@rnvinvestments.com)>, [sferguson@alvarezandmarsal.com](mailto:sferguson@alvarezandmarsal.com) <[sferguson@alvarezandmarsal.com](mailto:sferguson@alvarezandmarsal.com)>  
**Cc:** David P. Preger <[DPreger@dickinson-wright.com](mailto:DPreger@dickinson-wright.com)>, David Z. Seifer <[DSeifer@dickinson-wright.com](mailto:DSeifer@dickinson-wright.com)>

Dear Service List,

Please find attached the application record of C & K Mortgage Services Inc. and 975393 Ontario Inc., which is served pursuant to the *Rules*.

This application is for the appointment by the Ontario Superior Court of Justice of Alvarez & Marsal Canada Inc. as receiver and manager of the assets, property and undertaking of Axess Pickering Ltd., including the property municipally known as 1525 Pickering Parkway in Pickering Ontario. The application is scheduled to be heard on October 12, 2021 at 12:00 p.m. via zoom video conference at zoom link: <https://dickinsonwright.zoom.us/j/85918088374?pwd=UDRWdUxNbVR4TINFYXRwUWFWMjc3Zz09>

Would you please confirm whether you intend to participate.

Regards,

**Janet C. Nairne** Legal Assistant

199 Bay Street	Phone 416-646-6866
Suite 2200	Fax 844-670-6009
Commerce Court West	Email <a href="mailto:JNairne@dickinsonwright.com">JNairne@dickinsonwright.com</a>
Toronto ON M5L 1G4	

Confidential Warning: This message and any attachments are intended only for the use of the intended recipient(s). Any disclosure without my or my firm's approval is strictly prohibited. If you are not the intended recipient please do not, in any way, disseminate, copy, retransmit, reproduce, use, alter, create derivative works from, delete any copies of this message and any attachments from your system.

Information confidentielle: Le présent message, ainsi que tout fichier y étant joint, est envoyé à l'intention exclusive de son(s) de ses destinataire(s) et de nature confidentielle et peut contenir une information privilégiée. Toute divulgation à une personne autre que la destinataire prévu, qu'elle résulte d'une réimpression, d'une copie, d'une distribution ou toute autre utilisation de ce message est strictement interdite. Si vous n'êtes pas le destinataire prévu, veuillez en aviser immédiatement l'expéditeur par retour de courriel et supprimer le message et tout document joint de votre système.

--

*Dr. Dawaye Georgewill*

Sagewise Capital Corporation

This is Exhibit "C" referred to in the Affidavit of JANET NAIRNE sworn, before me at the City of Toronto, in the Province of Ontario, on October 12, 2021.

A handwritten signature in black ink, consisting of a stylized 'D' followed by a horizontal line.

---

*Commissioner for Taking Affidavits (or as may be)*

**DAVID P. PREGER**



FORM 38A  
*Courts of Justice Act*  
NOTICE OF APPEARANCE

*(General heading)*

NOTICE OF APPEARANCE

The respondent intends to respond to this application.

*October 7, 2021*

*Daniel Robert Hughes  
108 Noake Crescent  
Ajax, ON L1T 3L7  
And  
Blair Gagnon  
973 Brock Road Unit 12  
Pickering, ON L1W 3A4*

TO Dickinson Wright LLP  
Barristers & Solicitors  
199 Bay Street  
Suite 2200, Box 447  
Commerce Court Postal Station  
Toronto, ON M5L 1G4

RCP-E 38A (July 1, 2007)

October 8, 2021

**AGREEMENT OF PURCHASE AND SALE**

**THIS AGREEMENT** dated as of the 8th day of October, 2021.

**BETWEEN:**

**AXESS PICKERING LTD.**

(collectively, the "Vendor")

OF THE FIRST PART

- and -

**OBG AXESS LIMITED PARTNERSHIP**

(the "Purchaser")

OF THE SECOND PART

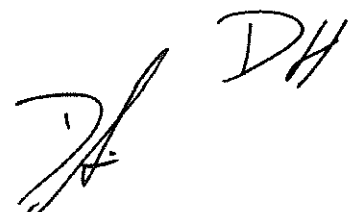
**IN CONSIDERATION OF** the mutual covenants and agreements herein set out, the sum of Two Dollars (\$2.00) now paid by each of the parties hereto to the other and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each party hereto), the parties hereto hereby agree as follows:

**ARTICLE 1**  
**INTERPRETATION**

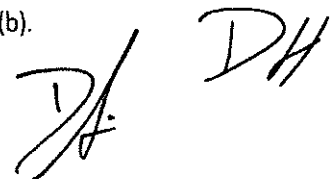
**1.1 DEFINITIONS**

In this Agreement the following terms shall have the respective meanings ascribed thereto as follows:

- (a) **"Acceptance Date"** means the date of execution and delivery of this Agreement by both the Purchaser and the Vendor.
- (b) **"Agreement"** means this agreement of purchase and sale and the schedules attached hereto, as same may be amended, supplemented and restated from time to time.
- (c) **"Business Day"** means any day other than a Saturday, a Sunday or a statutory or municipal holiday in the municipality in which the Property is situate.
- (d) **"Claims"** means, collectively, all actions, causes of action, claims, losses, demands, damages, liabilities, penalties, costs and expenses of every nature and kind suffered or incurred by a party.
- (e) **"Closing"** means the completion of the within transaction of purchase and sale of the Property.

Handwritten signature and initials. The signature appears to be 'JH' and the initials are 'DH'.

- (f) **"Closing Date"** means the date for completion of the transaction of purchase and sale herein contemplated, as set out in Section 8.1, or such other date for completion as may be agreed upon by the Vendor and the Purchaser.
- (g) **"Deposits"** has the meaning ascribed thereto in Section 4.2(a).
- (h) **"Due Diligence Conditions"** has the meaning ascribed thereto in Section 5.1(a).
- (i) **"Due Diligence Conditions Date"** means the date which is forty-five (45) days following the date of the Acceptance Date.
- (j) **"ETA"** means Part IX of the *Excise Tax Act* (Canada), as amended from time to time.
- (k) **"First Deposit"** has the meaning ascribed thereto in Section 4.2(a).
- (l) **"Governmental Authority"** means any municipal, regional, provincial or federal government and any regulatory authority, agency, commission, board, branch or department thereof having or claiming jurisdiction over the Property.
- (m) **"H.S.T."** means all goods and services tax, harmonized sales tax or other sales or value added tax imposed under the ETA and under any provincial legislation similar to the ETA.
- (n) **"Notice"** has the meaning ascribed thereto in Section 9.5.
- (o) **"Permitted Encumbrances"** means the encumbrances set out in Schedule B appended hereto.
- (p) **"Person"** means any individual, sole proprietorship, partnership, limited partnership, limited liability company, corporation, firm, unincorporated association or organization, trust or Governmental Authority.
- (q) **"Project Consultants"** means any and all professionally-designated consultants engaged in respect of the Property, including, without limitation, accredited appraisers, quantity surveyors, surveyors, planners, architects, engineers and other accredited consultants and professionals.
- (r) **"Proof of Funds"** means verification, by October 19, 2021, that the Purchaser has sufficient funds in its bank account to pay the Purchase Price.
- (s) **"Property"** means the vacant lands owned by the Vendor municipally known as 1525 Pickering Parkway, Pickering Ontario, registered in the land registry office for the Land Titles Division of Durham No. 40, legally described in PIN 26330-0016 (LT) and more particularly described in Schedule A appended hereto.
- (t) **"Purchaser's Proposed Development"** means the Purchaser's proposed development and use of the Property, as a three storey podium and two tower mixed use project, including approximately 320 residential units, approximately 16,500 sq. ft. of commercial/office space, and a four level underground parking facility.
- (u) **"Purchase Price"** has the meaning ascribed thereto in Article 2.
- (v) **"Second Payment"** has the meaning ascribed thereto in Section 4.2(b).



## 1.2 CERTAIN RULES OF INTERPRETATION

In this Agreement:

- (a) the division into Articles and Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement;
- (b) the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement and not to any particular portion of this Agreement; and
- (c) unless specified otherwise or the context otherwise requires:
  - (i) references to any Article, Section or Schedule are references to the Article or Section of, or Schedule to, this Agreement; and
  - (ii) words in the singular include the plural and vice-versa and words in one gender include all genders.

## 1.3 PERFORMANCE ON BUSINESS DAYS

If any action is required to be taken pursuant to this Agreement on or by a specified date that is not a Business Day, the action is valid if taken on or by the next succeeding Business Day.

## 1.4 CURRENCY

All references to currency in this Agreement, unless specified otherwise, shall be deemed to be references to amounts in Canadian dollars.

## 1.5 SCHEDULES

The following Schedules are attached to and form part of this Agreement:

- Schedule A - Legal Description of the Property
- Schedule B - Permitted Encumbrances

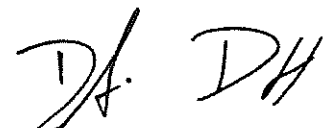
## ARTICLE 2 PURCHASE AND SALE

### 2.1 PURCHASE AND SALE OF THE PROPERTY

The Vendor agrees to sell the Property to the Purchaser and the Purchaser agrees to buy the Property from the Vendor for the sum of **Sixteen Million Dollars (\$16,000,000.00)**, exclusive of HST and subject to adjustments as set out herein (the "**Purchase Price**"), on and subject to the terms and conditions herein contained.

### 2.2 "AS IS, WHERE IS" CONDITION

The Purchaser acknowledges and agrees that the Property is being purchased on an "as is, where is" basis, subject to Permitted Encumbrances. The Purchaser acknowledges that it has not relied upon any representation or warranty or upon any offering material or other information furnished to the Purchaser by the Vendor or the Vendor's agent or any other person or entity including, without limitation, any reports, studies or assessments provided to the Purchaser by or on behalf of the Vendor. The provisions of this Section shall survive the closing of the within transaction.

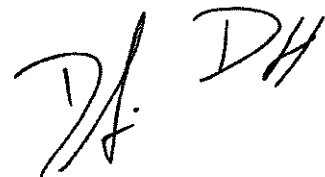


**ARTICLE 3**  
**DELIVERIES AND ACCESS**

**3.1 DELIVERIES BY VENDOR**

- (a) Within two (2) Business Days after the Acceptance Date, the Vendor shall deliver to the Purchaser, or shall provide the Purchaser with access to its secure website containing any such materials to the Purchaser, all information or documentation within the Vendor's possession or control pertaining to the Property, including, without limitation, the following:
- (i) all contracts and other material agreements relating to the Property, including, without limitation, any development agreements and other similar agreements with the municipality in respect of the Property;
  - (ii) all surveys, drawings, plans and specifications related to the Property in the possession or control of the Vendor including a current Real Property Report for the Property;
  - (iii) copies of the realty tax bills for the Property for the current year and the previous two years and any and all files in the Vendor's possession or control in respect of any business or realty tax contestations for such taxation years;
  - (iv) copies of all notices, accounts, assessments, valuations and any other documents related to property taxes and local improvements for the Property;
  - (v) copies of all financial statements, tax information and corporate records;
  - (vi) all plans, reports, drawings and other materials all other reports (including any soil and environmental reports, geotechnical reports,), statements or documents which relate to or materially affect the potential development of the Property
  - (vii) any and all reports, plans and correspondence relating to any storm water management, current and future access and egress to the Property, municipal services to the Property and any other correspondence relating to any charges that would be triggered by a development permit or sub-division application for the Property or the sale of the Property; and
  - (viii) all material information relating to the proposed design, development, construction and use or operation of the Property, including without limitation, other reports, studies designs, plans and other materials or information prepared by Project Consultants.

If additional information, reports, plans or surveys are subsequently obtained by the Vendor, same shall be provided forthwith to the Purchaser or copies shall be posted forthwith to the Vendor's secure website to which Purchaser has access, as the case may be.



- (b) Within two (2) Business Days of receipt of a request from the Purchaser, the Vendor shall execute and deliver to the Purchaser authorizations permitting Governmental Authorities to release information respecting the Property to the Purchaser.

### 3.2 ACCESS TO THE PROPERTY

The Vendor shall permit the Purchaser and its employees, agents, representatives, consultants and contractors to have access to the Property, from time to time, at the sole expense and risk of the Purchaser, on at least two (2) Business Days' prior written notice to the Vendor, for the purpose of conducting such tests, inspections and investigations as the Purchaser may deem necessary or desirable, including without limitation soil tests, environmental audits, inspections and studies. The Vendor acknowledges that the tests and studies may involve the drilling of holes or similar investigations. The Purchaser agrees to restore the Property to its condition as at the date of any such inspection or test immediately thereafter. The Purchaser agrees to indemnify the Vendor from and against all Claims arising as a result of or in connection with any entry, tests, inspections and investigations or other activity on the Property by the Purchaser or by its employees, agents, representatives, consultants or contractors. This indemnity shall not merge on completion and shall survive termination of this Agreement, as the case may be, notwithstanding anything herein contained to the contrary.

## ARTICLE 4 PAYMENT AND DEPOSITS

### 4.1 PURCHASE PRICE

The purchase price for the Property as set out in Article 2 shall be exclusive of HST and subject to adjustments as set out herein (the "**Purchase Price**").

### 4.2 PAYMENT OF PURCHASE PRICE

The Purchase Price shall be payable in lawful money of Canada as follows:

- (a) The Purchaser shall submit a deposit of Fifty Thousand Dollars (\$50,000.00) (the "**First Deposit**") along with the Proof of Funds, by wire transfer payable to the Vendor's solicitors, in trust, to be invested by the Vendor's solicitors in an interest-bearing trust account. The First Deposit shall be credited against the Purchase Price on Closing.
- (b) Within Five (5) Business Days following the Closing the Purchaser shall submit a payment of Four Million Dollars (\$4,000,000.00) (the "**Second Payment**") by wire transfer payable to the Vendor's solicitors in trust. The Second Payment shall be credited against the purchase of fifty-one percent interest in the limited partnership, with Liberty Hamlets Inc. issued a forty-nine percent interest in the limited partnership.
- (c) The balance of the Purchase Price, subject to adjustments as herein set out, shall be payable by wire transfer to the Vendor or as it directs, on Closing.

In the event that the conditions set out in Article 5 are not satisfied or waived or in the event that this Agreement is terminated by reason of a default of the Vendor, the Deposits shall be returned to the Purchaser, without deduction, abatement or set-off. In the event that this Agreement is terminated for any other reason, the Deposits shall be paid to the Vendor as liquidated damages and not as a penalty. If the transaction contemplated by this Agreement is completed, the Deposits shall be credited against the Purchase Price due on Closing and the Vendor shall cause the interest accrued thereon to be paid by the Vendor's solicitors directly to the Purchaser forthwith after the Closing Date.

#### 4.3 HARMONIZED SALES TAX

H.S.T. payable in connection with the purchase of the Property shall be the sole responsibility of the Purchaser. In this regard:

- (a) The Purchaser represents that it is registered under the ETA for the collection and remittance of H.S.T.
- (b) The Purchaser covenants and agrees to be liable for, self-assess and remit to the appropriate Governmental Authority all H.S.T. which is payable under the ETA in connection with the transfer of the Property pursuant to this Agreement, all in accordance with the ETA.
- (c) Subject to paragraph (f) of this Section, the Vendor shall not collect H.S.T. on Closing but shall allow the Purchaser to self-assess and remit H.S.T. to the Receiver General in accordance with the ETA.
- (d) The Purchaser shall indemnify and save harmless the Vendor from and against any and all H.S.T., fines, penalties, costs and/or interest which may become payable by or assessed against the Vendor as a result of the Purchaser's failure to remit any H.S.T. or as a result of any inaccuracy, misstatement or misrepresentation made by the Purchaser in connection with any matter raised in this Section.
- (e) The Purchaser shall deliver to the Vendor on Closing a certificate and indemnity in accordance with the foregoing, including verification of its H.S.T. registration number issued under the ETA. In the event that the Purchaser directs that title to the Property is to be engrossed in favour of another party or in the event that this Agreement is assigned to another party (if permitted hereunder), the party taking title to the Property (as well as the Purchaser) shall deliver to the Vendor on Closing a certificate and indemnity in accordance with the foregoing, including verification of its H.S.T. registration number.
- (f) Notwithstanding the foregoing, in the event that the Purchaser (and, if applicable, the other party taking title to the Property) shall fail to deliver such certificate and indemnity to the Vendor, then the Purchaser or such other party, as the case may be, shall pay to the Vendor, in addition to the Purchase Price herein, in pursuance of a purchaser's obligation to pay and the Vendor's obligation to collect H.S.T. under the ETA, an amount equal to thirteen percent (13%) of the Purchase Price or such other amount as is required pursuant to the ETA on the Closing Date.

Handwritten signature and initials. The signature appears to be 'DH' with a large, stylized 'D' and 'H'.

#### 4.4 ADJUSTMENTS

Adjustments to the Purchase Price shall be made for (i) realty taxes, and (ii) other adjustments established by the usual practice in the Province of Ontario for the purchase and sale of a similar property, which shall be apportioned and allowed to the Closing Date, the Closing Date itself to be apportioned to the Purchaser.

#### ARTICLE 5 CONDITIONS

##### 5.1 CONDITIONS FOR PURCHASER'S BENEFIT

This Agreement shall be conditional upon the Purchaser satisfying itself, in its sole and absolute discretion, and at its sole cost and expense, of each of the following conditions on or before the applicable date:

- (a) Due Diligence Conditions: on or before 5:00 p.m. (Ottawa time) on the Due Diligence Conditions Date, the Purchaser is satisfied, in its absolute discretion with each of the following:
  - (i) title to the Property in accordance with Section 7.2 which contemplates that title requisitions will be due on or before the Due Diligence Conditions Date;
  - (ii) zoning and use of the Property for the Purchaser's Proposed Development, including, without limiting the foregoing, the status of the development process (including developer performance obligations);
  - (iii) the Purchaser's environmental and other due diligence of the Property;
  - (iv) the Purchaser's review of the Vendor's deliverables contemplated under Section 3.1(a), including, without limitation, satisfying itself with the status of all materials prepared by Professional Consultants and where the Purchaser deems necessary, to negotiate new agreements with specific Professional Consultants; and
  - (v) receipt of term sheets/discussion papers from lenders selected by the Purchaser regarding the financing of the acquisition and development of the Property.

(collectively, the "Due Diligence Conditions")
- (b) Closing Conditions. The Purchaser is satisfied, in its absolute discretion, on the Closing Date, with each of the following:
  - (i) all of the terms, covenants and conditions of this Agreement to be complied with or performed by the Vendor shall have been complied with or performed in all material respects at the times contemplated herein; and
  - (ii) the representations or warranties of the Vendor set out in Section 6.1 hereof shall be true and accurate in all material respects and there shall have been no material changes as of Closing to any of such representations and warranties;

DA. DH



The conditions precedents set forth in this Section 5.1 are for the benefit of the Purchaser, and may be waived in whole or in part by the Purchaser by Notice to the Vendor on or before the applicable date referred to above.

## **5.2 CONDITIONS FOR VENDOR'S BENEFIT**

The obligations of the Vendor to complete the agreement of purchase and sale constituted on the execution and delivery of this Agreement shall be subject to the Vendor being satisfied, in its absolute discretion, on the Closing Date, with each of the following:

- (a) all of the terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser shall have been complied with or performed in all material respects at the times contemplated herein; and
- (b) the representations or warranties of the Purchaser set out in Section 6.2 hereof shall be true and accurate in all material respects and there shall have been no material changes as of Closing to any of such representations and warranties.

The conditions precedents set forth in this Section 5.2 are for the benefit of the Vendor, and may be waived in whole or in part by the Vendor by Notice to the Purchaser on or before the applicable date referred to above.

## **5.3 NON-SATISFACTION OF CONDITIONS PRECEDENT**

In the event each of the conditions precedent set forth in Section 5.1 and Section 5.2 hereof is not satisfied or waived as therein provided on or before the applicable date referred to in 5.1 and Section 5.2, this Agreement shall be terminated, null and void and of no further force or effect whatsoever. If by 5:00 p.m. Ottawa time on the applicable date referred to in 5.1 and Section 5.2, the parties have not given notice to the other that a condition precedent has been satisfied, such condition precedent shall be deemed not to have been satisfied or waived. The completion of the transaction contemplated by this Agreement shall be deemed a waiver of any unsatisfied condition.

# **ARTICLE 6 REPRESENTATIONS, WARRANTIES AND COVENANTS**

## **6.1 VENDOR'S REPRESENTATIONS AND WARRANTIES**

The Vendor represents and warrants to the Purchaser that:

- (a) this Agreement has been duly authorized by all corporate action required to be taken by the Vendor and constitutes a legal, valid and binding obligation of the Vendor, enforceable in accordance with its terms, on or before Closing;
- (b) the Vendor is the sole legal and beneficial owner of the Property;
- (c) the Vendor has not received any notice of expropriation relating to the Property nor is he aware of any expropriation proceedings that have taken place or may take place in connection with the Property;
- (d) there is no litigation threatened against the Vendor with respect to the Property;

DA. DH

- (e) there are no leases, licenses, agreements to lease or other occupancy agreements with respect to the Property which are currently in effect and there will be no leases, licenses, agreements to lease or other occupancy agreements with respect to the Property which are or will be in effect at Closing;
- (f) the Vendor will deliver vacant possession of the Property on the Closing Date;
- (g) no other person has any option to purchase or right of first refusal to purchase the Property or any portion thereof;
- (h) the Vendor is not now and shall not on the Closing Date be a non-resident of Canada within the meaning ascribed thereto in the *Income Tax Act* (Canada); and
- (i) the materials delivered by the Vendor to the Purchaser or to which the Purchaser has been given access pursuant to Section 3.1 hereof are true copies of all of the materials of the nature described therein as are in the possession or control of the Vendor.

## **6.2 PURCHASER'S REPRESENTATIONS AND WARRANTIES**

The Purchaser represents and warrants to the Vendor that:

- (a) the Purchaser is a registrant under the ETA for the purpose of H.S.T.; and
- (b) where the Purchaser is a body corporate, the Purchaser is duly organized and in good standing and qualified to do business, it has the necessary corporate power, authority and capacity to enter into this Agreement, all necessary corporate actions have been taken respecting this Agreement and the transactions contemplated hereby such that this Agreement and such transactions are duly authorized and are valid, binding and enforceable obligations of the Purchaser in accordance with the terms of this Agreement.

## **6.3 BROKER'S COMMISSION**

The Vendor represents and warrants to the Purchaser that it has not engaged any broker and shall indemnify the Vendor to the extent any claim is made to the contrary by any broker purportedly retained by the Vendor.

The Purchaser represents and warrants to the Vendor that it has not engaged any broker and shall indemnify the Vendor to the extent any claim is made to the contrary by any broker purportedly retained by the Purchaser.

## **ARTICLE 7 TITLE MATTERS**

### **7.1 TITLE**

The Purchaser shall accept title to the Property subject to the Permitted Encumbrances.

DA. DH

## **7.2 INVESTIGATION OF TITLE**

The Purchaser shall be allowed until the Due Diligence Conditions Date to examine the title to the Property at its own expense and to satisfy itself that there are no outstanding work orders or deficiency notices affecting the Property. If within that time any valid objection to title or to any outstanding work order or deficiency notice is made in writing, which the Vendor is unable to remove, remedy or satisfy and which Purchaser will not expressly waive, this Agreement, notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end, the Deposits paid shall be returned to the Purchaser without deduction, and neither party shall have any further liabilities or obligations to the other hereunder, save for any obligations expressly stated in this Agreement to survive termination. Save as to any valid objections so made by such day and except for any objection going to the root of title, the Purchaser shall be conclusively deemed to have accepted the Vendor's title to the Property, provided that the Purchaser shall retain the right to make valid objections to title or valid requisitions with respect to outstanding work orders or deficiency notices affecting the Property and shall not be deemed to have accepted the title to the Property to the extent that any encumbrance that is not a Permitted Encumbrance is registered against title to the Property or any work order, deficiency notice, open permit or other similar notice of non-compliance is otherwise issued, arises, or filed after the Due Diligence Conditions Date and before the Closing Date.

## **ARTICLE 8 CLOSING**

### **8.1 CLOSING DATE**

This Agreement shall be completed on or before November 30, 2021.

### **8.2 VACANT POSSESSION**

The Vendor shall deliver vacant possession of the Property to the Purchaser on Closing.

### **8.3 DOCUMENT PREPARATION**

The transfer shall, save for the land transfer tax statement, be prepared in registrable form at the expense of the Vendor.

### **8.4 VENDOR'S CLOSING DOCUMENTS**

On or before the Closing Date, the Vendor shall execute or cause to be executed and shall deliver or cause to be delivered to the Purchaser the following:

- (a) a transfer/deed of the fee simple interest in the Property in favour of the Purchaser, in registerable form;
- (b) an undertaking by the Vendor to re-adjust the adjustments in accordance with the terms of this Agreement;
- (c) a statutory declaration of an officer of the Vendor that the Vendor is not a non-resident of Canada within the meaning of section 116 of the *Income Tax Act* (Canada); and

DA. DH

- (d) a certificate of the Vendor, executed by an officer of the Vendor, that the representations and warranties of the Vendor contained in Section 6.1 hereof are true, accurate and complete as of the Closing Date.

All such documentation shall be in form and substance acceptable to the Purchaser and the Vendor, each acting reasonably and in good faith, provided that none of such closing documents shall contain covenants, representations and warranties which are in addition to or more onerous upon the Vendor than those expressly set out in this Agreement, unless agreed upon by the Vendor in the exercise of its sole discretion.

#### 8.5 PURCHASER'S CLOSING DOCUMENTS

On or before the Closing Date, the Purchaser shall execute or cause to be executed and shall deliver or cause to be delivered to the Vendor the following:

- (a) the balance of the Purchase Price, payable to the Vendor or as it directs;
- (b) an undertaking by the Purchaser to re-adjust the adjustments in accordance with the terms of this Agreement;
- (c) a certificate and indemnity with respect to H.S.T., in accordance with Section 4.3; and
- (d) a certificate of the Purchaser, executed by an officer of the Purchaser, that the representations and warranties of the Purchaser contained in Section 6.2 hereof are true, accurate and complete as of the Closing Date.

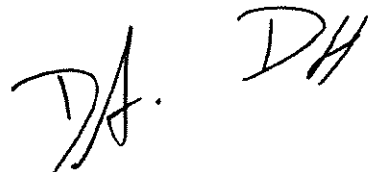
All such documentation shall be in form and substance acceptable to the Purchaser and the Vendor, each acting reasonably and in good faith, provided that none of such closing documents shall contain covenants, representations and warranties which are in addition to or more onerous upon the Purchaser than those expressly set out in this Agreement, unless agreed upon by the Purchaser in the exercise of its sole discretion.

#### 8.6 CLOSING ARRANGEMENTS

In the event that each of the Vendor and Purchaser retains a solicitor to complete the within transaction by electronic registration pursuant to Part III of the *Land Registration Reform Act* (Ontario) and the *Electronic Registration Act* (Ontario), the Vendor and Purchaser acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "**Requisite Deliveries**") and the release thereof to the Vendor and Purchaser will: (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the solicitor(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said solicitors. The Vendor and Purchaser irrevocably instruct the said solicitors to be bound by the document registration agreement in the form which is recommended from time to time by the Law Society of Ontario. Such exchange of the Requisite Deliveries will occur in the applicable Land Titles Office or such other location as agreed to by both solicitors.

#### 8.7 TENDER

Notwithstanding anything contained in this Agreement or in any document registration agreement ("**DRA**"), it is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have

Handwritten signatures of DA and DH.

been validly made by either party (in this Section called the "**Tendering Party**") upon the other party (in this Section called the "**Receiving Party**") when the solicitor for the Tendering Party has:

- (a) delivered all applicable closing documents to the Receiving Party's solicitor in escrow in accordance with the provisions of the DRA;
- (b) if applicable, delivered all funds to the Receiving Party's solicitor in escrow, by bank draft or certified cheque issued by a Schedule I Canadian chartered bank or by wire transfer using the Large Value Transfer System, in accordance with the provisions of the DRA;
- (c) advised the solicitor for the Receiving Party, in writing, that the Tendering Party is ready, willing and able to complete the transaction in accordance with the terms and provisions of this Agreement; and
- (d) completed all steps required by the electronic registration system to complete this transaction that can be performed or undertaken by the Tendering Party's solicitor without the cooperation or participation of the Receiving Party's solicitor, and specifically when the Tendering Party's solicitor has electronically "signed" the Transfer/Deed and any other documents required to be registered on Closing pursuant hereto for completeness and granted "access" to the Receiving Party's solicitor (but without the Tendering Party's solicitor releasing them for registration by the Receiving Party's solicitor),

without the necessity of personally attending upon the Receiving Party or the Receiving Party's solicitor with the documents and/or funds, and without any requirements to have an independent witness evidencing the foregoing.

## **ARTICLE 9** **GENERAL**

### **9.1 ASSIGNMENT**

The Vendor acknowledges that the Purchaser will be a limited partnership to be formed by Purchaser prior to the Closing Date. The Purchaser may not assign this Agreement without the prior written consent of the Vendor, which consent may be reasonably withheld or delayed, except that the Purchaser shall have the right to assign this Agreement to any corporation or corporations that is an "affiliate" or are "affiliates" of the Purchaser (as such term is defined in the *Business Corporations Act* (Ontario)). In the event the Purchaser assigns this Agreement to an affiliate, or if the Vendor consents to an assignment of this Agreement to a third party, the Purchaser shall not be released from its obligations hereunder upon such assignment, and the Deposits shall remain in trust to secure the obligations of the Purchaser or any assignee hereunder.

### **9.2 PLANNING ACT**

This Agreement shall be effective to create an interest in the Property only if the subdivision control provisions of the *Planning Act* (Ontario), as amended are complied with prior to Closing.

### **9.3 RESIDENCY**

The Purchaser shall be credited towards the Purchase Price with the amount, if any, necessary for the Purchaser to pay to the Minister of National Revenue to satisfy the Purchaser's liability in respect of tax payable by the Vendor under the non-residency provisions of the *Income Tax Act* (Canada) by reason of



this sale. The Purchaser shall not claim such credit if the Vendor delivers on Closing the prescribed certificate or a statutory declaration that the Vendor is not then a non-resident of Canada.

#### 9.4 TIME OF THE ESSENCE

Time shall in all respects be of the essence hereof, provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by the Vendor and the Purchaser or by their respective solicitors who may be specifically authorized in that regard.

#### 9.5 NOTICE

Any notice, statement, document or other communication required or permitted to be given to any party pursuant to the provisions of this Agreement (a "Notice") shall be in writing and given by personal delivery or by facsimile or other means of electronic transmission, addressed as follows:

To the Vendor:	973 Brock Road unit 12, Pickering, Ontario L1W 3A4 Email: <a href="mailto:danhughes@libertyhamlets.ca">danhughes@libertyhamlets.ca</a>
With a copy to:	<b>Vendor Counsel</b> Email: [ N/A ]
To the Purchaser:	OBG AXESS LIMITED PARTNERSHIP "In Trust" Email:
With a copy to:	<b>Purchaser Counsel</b> Email: [ N/A ]

Any such Notice shall, if delivered or sent by facsimile or other electronic transmission prior to 5:00 p.m. (local time at the place of receipt) on a Business Day, be deemed to have been received by the other party on the same day on which it was delivered or transmitted, and, if delivered or transmitted at any other time, shall be deemed to have been received by the other party on the next following Business Day. Any party may change its address under this Section by giving Notice to the other party.

#### 9.6 ENTIRE AGREEMENT

This Agreement, including any Schedules attached hereto, constitutes the entire agreement between the Purchaser and the Vendor. There is no representation, warranty, collateral agreement or condition which affects this Agreement other than as expressed herein.

#### 9.7 FURTHER ASSURANCES

Each party shall, at the request and expense of the other party, promptly do, execute, deliver or cause to be done, executed or delivered all further acts, documents and matters in connection with this Agreement that such other party may reasonably require from time to time for the purpose of carrying out the intent of this Agreement.

DA. DH

## **9.8 GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

## **9.9 SEVERABILITY**

If any covenant, obligation, agreement, provision or part thereof or the application thereof to any Person or circumstance shall be determined to be invalid or unenforceable to any extent, same shall be severed from this Agreement, and the remainder of this Agreement or the application of such covenant, obligation, agreement or provision or part thereof to any Person or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby but shall continue to be in full force and effect. Each covenant, obligation, agreement and provision in this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

## **9.10 AMENDMENT OF AGREEMENT**

No supplement, modification or waiver (other than a deemed waiver in accordance herewith) of this Agreement shall be binding unless in writing and executed by the parties hereto.

## **9.11 WAIVER**

No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision (whether or not similar), nor shall any waiver constitute a continuing waiver unless expressly so stated.

## **9.12 NO REGISTRATION OF AGREEMENT**

The Purchaser shall not register this Agreement or any notice of this Agreement on title to the Property. The Purchaser acknowledges that, in the event that any registration respecting this Agreement or notice thereof occurs, the Vendor, in addition to any other rights or remedies it may have, shall be entitled to injunctive relief, and the Vendor may rely upon this provision in support thereof.

## **9.13 CONFIDENTIALITY**

- (a) The parties agree to keep all aspects of their negotiations and the terms of this Agreement confidential, save only for disclosure of necessary information to their respective consultants and professional advisors from time to time and as may be required by law. This provision shall survive termination of this Agreement.
- (b) Until Closing (and in the event this Agreement is terminated for any reason other than its completion, then also after such termination), the Purchaser shall keep confidential all information, documentation and records obtained from the Vendor or his consultants, agents, advisors or solicitors with respect to the Property as well as any information arising out of the Purchaser's access to the Property and its due diligence with respect thereto (collectively, the "**Confidential Information**") and shall not use any Confidential Information for any purposes not related to this transaction or in any way detrimental to the Vendor. Nothing herein contained shall restrict or prohibit the Purchaser from disclosing the Confidential Information to its consultants, agents, advisors and solicitors as long as such parties are instructed by the Purchaser to keep such information confidential and they provide a written undertaking to the Vendor to do so.

DA. DH

- (c) The Confidential Information referred to in this Section shall not include:
  - (i) information which is public at the time of receipt by the Purchaser or by its consultants, agents, advisors or solicitors;
  - (ii) information which becomes public through no fault or act of the Purchaser or its consultants, agents, advisors or solicitors;
  - (iii) information in the possession of the Purchaser not provided by the Vendor or his consultants, agents, advisors or solicitors and not obtained through the Purchaser's due diligence pursuant hereto; or
  - (iv) information required to be disclosed by law.
- (d) If this Agreement is terminated for any reason, the Purchaser shall promptly return to the Vendor all Confidential Information (other than the Purchaser's notes and due diligence materials), including all copies made by or on behalf of the Purchaser, and shall destroy all of the Purchaser's notes and due diligence materials containing Confidential Information related to this transaction. Without limiting the foregoing, the Purchaser agrees to delete all Confidential Information from all retrieval systems and data bases of the Purchaser.
- (e) This Section shall survive termination of this Agreement.

#### **9.14 EXCLUSIVITY**

The parties reaffirm that in consideration of the time and effort that each of the parties has committed and continues to commit to completing the transactions contemplated hereunder, the Vendor agrees that it will not, without prior written consent of the Purchaser (which consent may be arbitrarily withheld), engage or attempt to directly or indirectly engage in, solicit, or initiate (including by provision of information) any offers, negotiations, proposals, interest, or otherwise enter into discussions of any kind involving the sale or disposition of all or part of the Property while this Agreement remains in force.

#### **9.15 SUCCESSORS AND ASSIGNS**

This Agreement shall enure to the benefit of and be binding upon the Purchaser and the Vendor and their respective successors and permitted assigns.

#### **9.16 COUNTERPARTS; ELECTRONIC TRANSMISSION**

This Agreement may be executed in separate counterparts, each of which when executed shall be deemed to be an original, and such counterparts taken together shall constitute one and the same agreement. The signature of any party to any counterpart shall be deemed to be a signature to and may be appended to any other counterpart. This Agreement may be executed and delivered by telecopier or other electronic transmission, and, if so executed and transmitted, this Agreement shall be for all purposes as effective as if the parties had delivered an executed original Agreement.

**[REMAINDER OF PAGE INTENTIONALLY BLANK]**

DA. DH



IN WITNESS WHEREOF the parties have executed this Agreement.

Date of execution:

October 8th, 2021

**LIBERTY HAMLETS INCORPORATED**  
(Vendor)

By: Dan Hughes

Name: Daniel Hughes

Title: President

I have authority to bind the above.

Date of execution:

October 8th, 2021

**AXESS PICKERING LTD.**  
(Vendor)

By: Dan Hughes

Name: Daniel Hughes

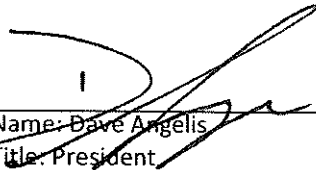
Title: President

I have authority to bind the above.

Date of execution:

OCTOBER 08, 2021

**OBG AXESS LIMITED PARTNERSHIP., in trust for a  
limited partnership to be formed and without  
personal liability**  
(Purchaser)

By: 

Name: Dave Angelis

Title: President

I have authority to bind the above.

**SCHEDULE A**

**LEGAL DESCRIPTION OF THE PROPERTY**

PIN	Legal Description
PIN 26330-0016 (LT):	PT LT 20 CON 1 Pickering AS IN D42810 EXCEPT PT 1, 40R7449 & 40R12400: SIT D1276232,D133802,D50967 PICKERING

DA DH

## SCHEDULE B

### PERMITTED ENCUMBRANCES

1. The reservations, limitations, exceptions, provisions and conditions, if any, contained in any original grants from the Crown of any land or interests therein.
2. The exceptions, limitations and qualifications in Subsection 44(1) of the *Land Titles Act*, and any amendments thereto, provincial succession duties, escheats or forfeiture to the Crown. The rights of any person who would, but for the *Land Titles Act*, be entitled to the Property or any part of it through length of adverse possession, prescription, misdescription or boundaries settled by convention. Any lease to which the Subsection 70(2) of the *Registry Act* applies.
3. Registered or unregistered easements, rights-of-way, restrictive covenants and servitudes and other similar rights in land granted to, reserved or taken by any government authority or public utility, or any registered subdivision, development, servicing, site plan or other similar agreement with any government authority or public utility, each as registered on title to the Property as at the Due Diligence Conditions Date.
4. Any registered municipal agreements and registered agreements with publicly regulated utilities.
5. All applicable laws, including municipal, provincial or federal statutes, by laws, regulations or ordinances including any charge, trust, priority or preference given to or in favour of the Crown, Crown agents or municipalities pursuant thereto.
6. Liens for taxes or charges for electricity, power, gas, water and other services or utilities not yet due and payable or, if due and payable, adjusted for pursuant to this Agreement.
7. All encroachments which would appear on an up-to-date survey of the Property.
8. Minor title defects or irregularities which do not in the aggregate materially adversely impair the operation, value or marketability of the Property.
9. All work orders, notices of violation and other matters of non-compliance with the zoning and other requirements of Governmental Authorities, and other work orders or building permits relating to the Property.

This is Exhibit "D" referred to in the Affidavit of JANET NAIRNE sworn, before me at the City of Toronto, in the Province of Ontario, on October 12, 2021.

A handwritten signature in black ink, consisting of a stylized 'D' followed by a horizontal line.

---

*Commissioner for Taking Affidavits (or as may be)*

**DAVID P. PREGER**

## David P. Preger

---

**From:** Gary Gruneir <ggruneir@rescomcapital.com>  
**Sent:** Tuesday, October 12, 2021 11:05 AM  
**To:** David P. Preger  
**Subject:** EXTERNAL: FW: A Purchase and Sale Agreement FYI.  
**Attachments:** APS - Maxion p\_o Vacant Lands, Pickering, Ontario - 10 Oct 2021[1][4].pdf



**Gary Gruneir | Principal Broker**  
C&K Mortgage Services Inc. operating as Rescom Capital  
Brokerage Licence: 10822  
Broker Licence: M08006592  
Administrator Licence: 11253

O: 416.485.2636 C: 416.575.6986  
1670 Bayview Avenue, Suite 400  
Toronto, Ontario M4G 3C2  
www.rescomcapital.com

**From:** Paul (Maxion) <pmichelin@maxion.ca>  
**Sent:** October 12, 2021 11:00 AM  
**To:** Gary Gruneir <ggruneir@rescomcapital.com>  
**Cc:** Richard Henry <richard@rnvinvestments.com>  
**Subject:** FW: A Purchase and Sale Agreement FYI.

Please see our offer of Saturday for your reference

We may close in 90 days the value should take in to consideration of all liabilities including interest for the duration to closing

### Summary:

Rescom 8.2 Million plus 2 mths end of October ( 100k per mths ) 200K plus 3 mths penalty 300k= **8.7 M plus receivership fees**

Sage wise 1.5 Million plus 2 mths end of October (52,500 per mths) 105k plus 3 mths penalty 157,500k = **1.762 M**

Gina Batista and RNV Investments, LLC \$883,860 end of October (17,677.20 per mths) 88,386K plus 3 mths penalty 53,031.60 = **\$957,370.04**

Shareholders unsecured 4.5 million + interest 6,368,000= **\$6.4 M ?**

Plus real estate fees 5% of 20-21 million. **1M**

**TRADES= 822K**

**TOTAL DEBT APPROXIMATELY \$19,641,370 NOT INCLUDING ANY MONEY TO DAN HUGHES**

**Our offer 20 million covers all.**

**Paul Michelin**  
**Founder & CEO**  
[pmichelin@maxion.ca](mailto:pmichelin@maxion.ca)



Telephone (416) 238-7818 Ext. 1010  
Mobile (705) 718-4870  
[www.maxion.ca](http://www.maxion.ca)

*Inspired to Develop Active Communities Promoting Healthy Lifestyles and Lasting Memories. Together We Can Achieve the Extraordinary*

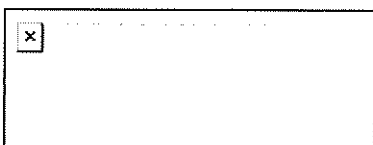
**From:** Paul Michelin <[pmichelin@maxion.ca](mailto:pmichelin@maxion.ca)>  
**Date:** Saturday, October 9, 2021 at 8:36 AM  
**To:** Dan Hughes <[danhughes@libertyhamlets.ca](mailto:danhughes@libertyhamlets.ca)>  
**Cc:** Philip Rimer <[philip.rimer@dentons.com](mailto:philip.rimer@dentons.com)>, Richard Henry <[richard@rnvinvestments.com](mailto:richard@rnvinvestments.com)>, Blair Gagnon <[blairrgagnon@libertyhamlets.ca](mailto:blairrgagnon@libertyhamlets.ca)>, Gordon Berger <[gberger555@gmail.com](mailto:gberger555@gmail.com)>  
**Subject:** Re: A Purchase and Sale Agreement

Good morning Dan,

With regard to the offer of "AGREEMENT OF PURCHASE AND SALE" to Liberty Hamlets Incorporated and Axess Pickering LTD dated September 30th we believe that sufficient time has passed for you to review and discuss the offer. Under these circumstances if the offer isn't accepted and returned within 24 hours of this email we will regrettably revoke the offer.

Respectfully.

**Paul Michelin**  
**Founder & CEO**  
[pmichelin@maxion.ca](mailto:pmichelin@maxion.ca)



Cell (705) 718 4870  
Telephone (416) 238-7818 Ext. 1010  
[www.maxion.ca](http://www.maxion.ca)

*Teaming Together To Develop Active Communities Promoting Healthy Lifestyles and Lasting Memories*

On Sep 30, 2021, at 6:33 PM, Paul (Maxion) <[pmichelin@maxion.ca](mailto:pmichelin@maxion.ca)> wrote:

Good evening, Dan,

We at The Maxion Group are extremely excited to place an offer for the acquisition of the project in the attached APS. This offer took additional time as we had to re-evaluate our approach given the current situation. We look forward to working with you and your team to successfully conclude this transaction.

**Paul Michelin**  
**Founder & CEO**  
[pmichelin@maxion.ca](mailto:pmichelin@maxion.ca)

<image001.png>

Telephone (416) 238-7818 Ext. 1010  
[www.maxion.ca](http://www.maxion.ca)

***Inspired to Develop Active Communities Promoting Healthy Lifestyles and Lasting Memories. Together We Can Achieve the Extraordinary***

<APS -Maxion Vacant Lands, Pickering, Ontario - 27 Sept 2021[1].pdf>

October 10, 2021

**AGREEMENT OF PURCHASE AND SALE**

**THIS AGREEMENT** dated as of the \_\_\_\_ day of \_\_\_\_\_, 2021,

**BETWEEN:**

**LIBERTY HAMLETS INCORPORATED and AXESS PICKERING LTD.**

(collectively, the "**Vendor**")

OF THE FIRST PART

- and -

**MAXION GROUP INC., in trust for a limited partnership to be formed and  
without personal liability**

(the "**Purchaser**")

OF THE SECOND PART

**IN CONSIDERATION OF** the mutual covenants and agreements herein set out, the sum of Two Dollars (\$2.00) now paid by each of the parties hereto to the other and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each party hereto), the parties hereto hereby agree as follows:

**ARTICLE 1**  
**INTERPRETATION**

**1.1 DEFINITIONS**

In this Agreement the following terms shall have the respective meanings ascribed thereto as follows:

- (a) "**Acceptance Date**" means the date of execution and delivery of this Agreement by both the Purchaser and the Vendor.
- (b) "**Agreement**" means this agreement of purchase and sale and the schedules attached hereto, as same may be amended, supplemented and restated from time to time.
- (c) "**Business Day**" means any day other than a Saturday, a Sunday or a statutory or municipal holiday in the municipality in which the Property is situate.
- (d) "**Claims**" means, collectively, all actions, causes of action, claims, losses, demands, damages, liabilities, penalties, costs and expenses of every nature and kind suffered or incurred by a party.
- (e) "**Closing**" means the completion of the within transaction of purchase and sale of the Property.



- (f) **"Closing Date"** means the date for completion of the transaction of purchase and sale herein contemplated, as set out in Section 8.1, or such other date for completion as may be agreed upon by the Vendor and the Purchaser.
- (g) **"Deposits"** has the meaning ascribed thereto in Section 4.2(a).
- (h) **"Due Diligence Conditions"** has the meaning ascribed thereto in Section 5.1(a).
- (i) **"Due Diligence Conditions Date"** means the date which is sixty (60) days following the date of the Acceptance Date.
- (j) **"ETA"** means Part IX of the *Excise Tax Act* (Canada), as amended from time to time.
- (k) **"First Deposit"** has the meaning ascribed thereto in Section 4.2(a).
- (l) **"Governmental Authority"** means any municipal, regional, provincial or federal government and any regulatory authority, agency, commission, board, branch or department thereof having or claiming jurisdiction over the Property.
- (m) **"H.S.T."** means all goods and services tax, harmonized sales tax or other sales or value added tax imposed under the ETA and under any provincial legislation similar to the ETA.
- (n) **"Notice"** has the meaning ascribed thereto in Section 9.5.
- (o) **"Permitted Encumbrances"** means the encumbrances set out in Schedule B appended hereto.
- (p) **"Person"** means any individual, sole proprietorship, partnership, limited partnership, limited liability company, corporation, firm, unincorporated association or organization, trust or Governmental Authority.
- (q) **"Project Consultants"** means any and all professionally-designated consultants engaged in respect of the Property, including, without limitation, accredited appraisers, quantity surveyors, surveyors, planners, architects, engineers and other accredited consultants and professionals.
- (r) **"Property"** means the vacant lands owned by the Vendor municipally known as 1525 Pickering Parkway, Pickering Ontario, registered in the land registry office for the Land Titles Division of Durham No. 40, legally described in PIN 26330-0016 (LT) and more particularly described in Schedule A appended hereto.
- (s) **"Purchaser's Proposed Development"** means the Purchaser's proposed development and use of the Property, as a two-tower residential purpose project, including approximately 320 residential units, ground-level retail space of approximately 15,000 sq. ft., and a below-grade two-story parking facility to accommodate, together with surface parking, a minimum of 350 parking spots.
- (t) **"Purchase Price"** has the meaning ascribed thereto in Article 4.
- (u) **"Second Deposit"** has the meaning ascribed thereto in Section 4.2(b).

## **1.2 CERTAIN RULES OF INTERPRETATION**

In this Agreement:

- (a) the division into Articles and Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement;
- (b) the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement and not to any particular portion of this Agreement; and
- (c) unless specified otherwise or the context otherwise requires:
  - (i) references to any Article, Section or Schedule are references to the Article or Section of, or Schedule to, this Agreement; and
  - (ii) words in the singular include the plural and vice-versa and words in one gender include all genders.

## **1.3 PERFORMANCE ON BUSINESS DAYS**

If any action is required to be taken pursuant to this Agreement on or by a specified date that is not a Business Day, the action is valid if taken on or by the next succeeding Business Day.

## **1.4 CURRENCY**

All references to currency in this Agreement, unless specified otherwise, shall be deemed to be references to amounts in Canadian dollars.

## **1.5 SCHEDULES**

The following Schedules are attached to and form part of this Agreement:

- Schedule A - Legal Description of the Property
- Schedule B - Permitted Encumbrances

## **ARTICLE 2 PURCHASE AND SALE**

### **2.1 PURCHASE AND SALE OF THE PROPERTY**

The Vendor agrees to sell the Property to the Purchaser and the Purchaser agrees to buy the Property from the Vendor, on and subject to the terms and conditions herein contained.

### **2.2 "AS IS, WHERE IS" CONDITION**

The Purchaser acknowledges and agrees that the Property is being purchased on an "as is, where is" basis, subject to Permitted Encumbrances. The Purchaser acknowledges that it has not relied upon any representation or warranty or upon any offering material or other information furnished to the Purchaser by the Vendor or the Vendor's agent or any other person or entity including, without limitation, any reports,

studies or assessments provided to the Purchaser by or on behalf of the Vendor. The provisions of this Section shall survive the closing of the within transaction.

**ARTICLE 3**  
**DELIVERIES AND ACCESS**

**3.1 DELIVERIES BY VENDOR**

- (a) Within two (2) Business Days after the Acceptance Date, the Vendor shall deliver to the Purchaser, or shall provide the Purchaser with access to its secure website containing any such materials to the Purchaser, all information or documentation within the Vendor's possession or control pertaining to the Property, including, without limitation, the following:
  - (i) all contracts and other material agreements relating to the Property, including, without limitation, any development agreements and other similar agreements with the municipality in respect of the Property;
  - (ii) all surveys, drawings, plans and specifications related to the Property in the possession or control of the Vendor including a current Real Property Report for the Property;
  - (iii) copies of the realty tax bills for the Property for the current year and the previous two years and any and all files in the Vendor's possession or control in respect of any business or realty tax contestations for such taxation years;
  - (iv) copies of all notices, accounts, assessments, valuations and any other documents related to property taxes and local improvements for the Property;
  - (v) copies of all financial statements, tax information and corporate records;
  - (vi) all plans, reports, drawings and other materials all other reports (including any soil and environmental reports, geotechnical reports,), statements or documents which relate to or materially affect the potential development of the Property
  - (vii) any and all reports, plans and correspondence relating to any storm water management, current and future access and egress to the Property, municipal services to the Property and any other correspondence relating to any charges that would be triggered by a development permit or sub-division application for the Property or the sale of the Property; and
  - (viii) all material information relating to the proposed design, development, construction and use or operation of the Property, including without limitation, other reports, studies designs, plans and other materials or information prepared by Project Consultants.

If additional information, reports, plans or surveys are subsequently obtained by the Vendor, same shall be provided forthwith to the Purchaser or copies shall be posted forthwith to the Vendor's secure website to which Purchaser has access, as the case may be.

- (b) Within two (2) Business Days of receipt of a request from the Purchaser, the Vendor shall execute and deliver to the Purchaser authorizations permitting Governmental Authorities to release information respecting the Property to the Purchaser.

### **3.2 ACCESS TO THE PROPERTY**

The Vendor shall permit the Purchaser and its employees, agents, representatives, consultants and contractors to have access to the Property, from time to time, at the sole expense and risk of the Purchaser, on at least two (2) Business Days' prior written notice to the Vendor, for the purpose of conducting such tests, inspections and investigations as the Purchaser may deem necessary or desirable, including without limitation soil tests, environmental audits, inspections and studies. The Vendor acknowledges that the tests and studies may involve the drilling of holes or similar investigations. The Purchaser agrees to restore the Property to its condition as at the date of any such inspection or test immediately thereafter. The Purchaser agrees to indemnify the Vendor from and against all Claims arising as a result of or in connection with any entry, tests, inspections and investigations or other activity on the Property by the Purchaser or by its employees, agents, representatives, consultants or contractors. This indemnity shall not merge on completion and shall survive termination of this Agreement, as the case may be, notwithstanding anything herein contained to the contrary.

## **ARTICLE 4** **PURCHASE PRICE**

### **4.1 PURCHASE PRICE**

The purchase price for the Property shall be the sum of Twenty Million Dollars (\$20,000,000.00), exclusive of HST and subject to adjustments as set out herein (the "**Purchase Price**").

### **4.2 PAYMENT OF PURCHASE PRICE**

The Purchase Price shall be payable in lawful money of Canada as follows:

- (a) Within Five (5) Business Days following the Acceptance Date, the Purchaser shall submit a deposit of Two-Hundred and Fifty Thousand Dollars (\$250,000.00) (the "**First Deposit**") by wire transfer payable to the Vendor's solicitors, in trust, to be invested by the Vendor's solicitors in an interest-bearing trust account. The First Deposit shall be credited against the Purchase Price on Closing.
- (b) Within Five (5) Business Days following the waiver of the Due Diligence Conditions as set out in Section 5.1(a) below, the Purchaser shall submit a further deposit of One Million, Two-Hundred and Fifty Thousand Dollars (\$1,250,000.00) (the "**Second Deposit**" and together with the First Deposit, the "**Deposits**") by wire transfer payable to the Vendor's solicitors in trust, to be invested by the Vendor's solicitors in an interest-bearing trust account. The Second Deposit shall be credited against the Purchase Price on Closing.
- (c) The balance of the Purchase Price, subject to adjustments as herein set out, shall be payable by wire transfer to the Vendor or as it directs, on Closing.

In the event that the conditions set out in Article 5 are not satisfied or waived or in the event that this Agreement is terminated by reason of a default of the Vendor, the Deposits shall be returned to the Purchaser, without deduction, abatement or set-off. In the event that this Agreement is terminated for any other reason, the Deposits shall be paid to the Vendor as liquidated damages and not as a penalty. If the transaction contemplated by this Agreement is completed, the Deposits shall be credited against the Purchase Price due on Closing and the Vendor shall cause the interest accrued thereon to be paid by the Vendor's solicitors directly to the Purchaser forthwith after the Closing Date.

#### **4.3 HARMONIZED SALES TAX**

H.S.T. payable in connection with the purchase of the Property shall be the sole responsibility of the Purchaser. In this regard:

- (a) The Purchaser represents that it is registered under the ETA for the collection and remittance of H.S.T.
- (b) The Purchaser covenants and agrees to be liable for, self-assess and remit to the appropriate Governmental Authority all H.S.T. which is payable under the ETA in connection with the transfer of the Property pursuant to this Agreement, all in accordance with the ETA.
- (c) Subject to paragraph (f) of this Section, the Vendor shall not collect H.S.T. on Closing but shall allow the Purchaser to self-assess and remit H.S.T. to the Receiver General in accordance with the ETA.
- (d) The Purchaser shall indemnify and save harmless the Vendor from and against any and all H.S.T., fines, penalties, costs and/or interest which may become payable by or assessed against the Vendor as a result of the Purchaser's failure to remit any H.S.T. or as a result of any inaccuracy, misstatement or misrepresentation made by the Purchaser in connection with any matter raised in this Section.
- (e) The Purchaser shall deliver to the Vendor on Closing a certificate and indemnity in accordance with the foregoing, including verification of its H.S.T. registration number issued under the ETA. In the event that the Purchaser directs that title to the Property is to be engrossed in favour of another party or in the event that this Agreement is assigned to another party (if permitted hereunder), the party taking title to the Property (as well as the Purchaser) shall deliver to the Vendor on Closing a certificate and indemnity in accordance with the foregoing, including verification of its H.S.T. registration number.
- (f) Notwithstanding the foregoing, in the event that the Purchaser (and, if applicable, the other party taking title to the Property) shall fail to deliver such certificate and indemnity to the Vendor, then the Purchaser or such other party, as the case may be, shall pay to the Vendor, in addition to the Purchase Price herein, in pursuance of a purchaser's obligation to pay and the Vendor's obligation to collect H.S.T. under the ETA, an amount equal to thirteen percent (13%) of the Purchase Price or such other amount as is required pursuant to the ETA on the Closing Date.

#### 4.4 ADJUSTMENTS

Adjustments to the Purchase Price shall be made for (i) realty taxes, and (ii) other adjustments established by the usual practice in the Province of Ontario for the purchase and sale of a similar property, which shall be apportioned and allowed to the Closing Date, the Closing Date itself to be apportioned to the Purchaser.

### ARTICLE 5 CONDITIONS

#### 5.1 CONDITIONS FOR PURCHASER'S BENEFIT

This Agreement shall be conditional upon the Purchaser satisfying itself, in its sole and absolute discretion, and at its sole cost and expense, of each of the following conditions on or before the applicable date:

- (a) Due Diligence Conditions: on or before 5:00 p.m. (Ottawa time) on the Due Diligence Conditions Date, the Purchaser is satisfied, in its absolute discretion with each of the following:
  - (i) title to the Property in accordance with Section 7.2 which contemplates that title requisitions will be due on or before the Due Diligence Conditions Date;
  - (ii) zoning and use of the Property for the Purchaser's Proposed Development, including, without limiting the foregoing, the status of the development process (including developer performance obligations);
  - (iii) the Purchaser's environmental and other due diligence of the Property;
  - (iv) the Purchaser's review of the Vendor's deliverables contemplated under Section 3.1(a), including, without limitation, satisfying itself with the status of all materials prepared by Professional Consultants and where the Purchaser deems necessary, to negotiate new agreements with specific Professional Consultants; and
  - (v) receipt of term sheets/discussion papers from lenders selected by the Purchaser regarding the financing of the acquisition and development of the Property.

(collectively, the "**Due Diligence Conditions**")
- (b) Closing Conditions. The Purchaser is satisfied, in its absolute discretion, on the Closing Date, with each of the following:
  - (i) all of the terms, covenants and conditions of this Agreement to be complied with or performed by the Vendor shall have been complied with or performed in all material respects at the times contemplated herein; and
  - (ii) the representations or warranties of the Vendor set out in Section 6.1 hereof shall be true and accurate in all material respects and there shall have been no material changes as of Closing to any of such representations and warranties;

The conditions precedents set forth in this Section 5.1 are for the benefit of the Purchaser, and may be waived in whole or in part by the Purchaser by Notice to the Vendor on or before the applicable date referred to above.

## **5.2 CONDITIONS FOR VENDOR'S BENEFIT**

The obligations of the Vendor to complete the agreement of purchase and sale constituted on the execution and delivery of this Agreement shall be subject to the Vendor being satisfied, in its absolute discretion, on the Closing Date, with each of the following:

- (a) all of the terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser shall have been complied with or performed in all material respects at the times contemplated herein; and
- (b) the representations or warranties of the Purchaser set out in Section 6.2 hereof shall be true and accurate in all material respects and there shall have been no material changes as of Closing to any of such representations and warranties.

The conditions precedents set forth in this Section 5.2 are for the benefit of the Vendor, and may be waived in whole or in part by the Vendor by Notice to the Purchaser on or before the applicable date referred to above.

## **5.3 NON-SATISFACTION OF CONDITIONS PRECEDENT**

In the event each of the conditions precedent set forth in Section 5.1 and Section 5.2 hereof is not satisfied or waived as therein provided on or before the applicable date referred to in 5.1 and Section 5.2, this Agreement shall be terminated, null and void and of no further force or effect whatsoever. If by 5:00 p.m. Ottawa time on the applicable date referred to in 5.1 and Section 5.2, the parties have not given notice to the other that a condition precedent has been satisfied, such condition precedent shall be deemed not to have been satisfied or waived. The completion of the transaction contemplated by this Agreement shall be deemed a waiver of any unsatisfied condition.

## **ARTICLE 6 REPRESENTATIONS, WARRANTIES AND COVENANTS**

### **6.1 VENDOR'S REPRESENTATIONS AND WARRANTIES**

The Vendor represents and warrants to the Purchaser that:

- (a) this Agreement has been duly authorized by all corporate action required to be taken by the Vendor and constitutes a legal, valid and binding obligation of the Vendor, enforceable in accordance with its terms;
- (b) the Vendor is the sole legal and beneficial owner of the Property;
- (c) the Vendor has not received any notice of expropriation relating to the Property nor is he aware of any expropriation proceedings that have taken place or may take place in connection with the Property;
- (d) there is no litigation threatened against the Vendor with respect to the Property;

- (e) there are no leases, licenses, agreements to lease or other occupancy agreements with respect to the Property which are currently in effect and there will be no leases, licenses, agreements to lease or other occupancy agreements with respect to the Property which are or will be in effect at Closing;
- (f) the Vendor will deliver vacant possession of the Property on the Closing Date;
- (g) no other person has any option to purchase or right of first refusal to purchase the Property or any portion thereof;
- (h) the Vendor is not now and shall not on the Closing Date be a non-resident of Canada within the meaning ascribed thereto in the *Income Tax Act* (Canada); and
- (i) the materials delivered by the Vendor to the Purchaser or to which the Purchaser has been given access pursuant to Section 3.1 hereof are true copies of all of the materials of the nature described therein as are in the possession or control of the Vendor.

## **6.2 PURCHASER'S REPRESENTATIONS AND WARRANTIES**

The Purchaser represents and warrants to the Vendor that:

- (a) the Purchaser is a registrant under the ETA for the purpose of H.S.T.; and
- (b) where the Purchaser is a body corporate, the Purchaser is duly organized and in good standing and qualified to do business, it has the necessary corporate power, authority and capacity to enter into this Agreement, all necessary corporate actions have been taken respecting this Agreement and the transactions contemplated hereby such that this Agreement and such transactions are duly authorized and are valid, binding and enforceable obligations of the Purchaser in accordance with the terms of this Agreement.

## **6.3 BROKER'S COMMISSION**

The Vendor represents and warrants to the Purchaser that it has retained a broker. The Vendor covenants to be responsible for all commissions payable hereunder to brokers or real estate agents and shall indemnify the Purchaser in respect thereof.

The Purchaser represents and warrants to the Vendor that it has not engaged any broker and shall indemnify the Vendor to the extent any claim is made to the contrary by any broker purportedly retained by the Purchaser.

## **ARTICLE 7 TITLE MATTERS**

### **7.1 TITLE**

The Purchaser shall accept title to the Property subject to the Permitted Encumbrances.



## **7.2 INVESTIGATION OF TITLE**

The Purchaser shall be allowed until the Due Diligence Conditions Date to examine the title to the Property at its own expense and to satisfy itself that there are no outstanding work orders or deficiency notices affecting the Property. If within that time any valid objection to title or to any outstanding work order or deficiency notice is made in writing, which the Vendor is unable to remove, remedy or satisfy and which Purchaser will not expressly waive, this Agreement, notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end, the Deposits paid shall be returned to the Purchaser without deduction, and neither party shall have any further liabilities or obligations to the other hereunder, save for any obligations expressly stated in this Agreement to survive termination. Save as to any valid objections so made by such day and except for any objection going to the root of title, the Purchaser shall be conclusively deemed to have accepted the Vendor's title to the Property, provided that the Purchaser shall retain the right to make valid objections to title or valid requisitions with respect to outstanding work orders or deficiency notices affecting the Property and shall not be deemed to have accepted the title to the Property to the extent that any encumbrance that is not a Permitted Encumbrance is registered against title to the Property or any work order, deficiency notice, open permit or other similar notice of non-compliance is otherwise issued, arises, or filed after the Due Diligence Conditions Date and before the Closing Date.

## **ARTICLE 8** **CLOSING**

### **8.1 CLOSING DATE**

This Agreement shall be completed on that date which is thirty (30) days following the Due Diligence Conditions Date.

### **8.2 VACANT POSSESSION**

The Vendor shall deliver vacant possession of the Property to the Purchaser on Closing.

### **8.3 DOCUMENT PREPARATION**

The transfer shall, save for the land transfer tax statement, be prepared in registrable form at the expense of the Vendor.

### **8.4 VENDOR'S CLOSING DOCUMENTS**

On or before the Closing Date, the Vendor shall execute or cause to be executed and shall deliver or cause to be delivered to the Purchaser the following:

- (a) a transfer/deed of the fee simple interest in the Property in favour of the Purchaser, in registerable form;
- (b) an undertaking by the Vendor to re-adjust the adjustments in accordance with the terms of this Agreement;
- (c) a statutory declaration of an officer of the Vendor that the Vendor is not a non-resident of Canada within the meaning of section 116 of the *Income Tax Act* (Canada); and

- (d) a certificate of the Vendor, executed by an officer of the Vendor, that the representations and warranties of the Vendor contained in Section 6.1 hereof are true, accurate and complete as of the Closing Date.

All such documentation shall be in form and substance acceptable to the Purchaser and the Vendor, each acting reasonably and in good faith, provided that none of such closing documents shall contain covenants, representations and warranties which are in addition to or more onerous upon the Vendor than those expressly set out in this Agreement, unless agreed upon by the Vendor in the exercise of its sole discretion.

#### **8.5 PURCHASER'S CLOSING DOCUMENTS**

On or before the Closing Date, the Purchaser shall execute or cause to be executed and shall deliver or cause to be delivered to the Vendor the following:

- (a) the balance of the Purchase Price, payable to the Vendor or as it directs;
- (b) an undertaking by the Purchaser to re-adjust the adjustments in accordance with the terms of this Agreement;
- (c) a certificate and indemnity with respect to H.S.T., in accordance with Section 4.3; and
- (d) a certificate of the Purchaser, executed by an officer of the Purchaser, that the representations and warranties of the Purchaser contained in Section 6.2 hereof are true, accurate and complete as of the Closing Date.

All such documentation shall be in form and substance acceptable to the Purchaser and the Vendor, each acting reasonably and in good faith, provided that none of such closing documents shall contain covenants, representations and warranties which are in addition to or more onerous upon the Purchaser than those expressly set out in this Agreement, unless agreed upon by the Purchaser in the exercise of its sole discretion.

#### **8.6 CLOSING ARRANGEMENTS**

In the event that each of the Vendor and Purchaser retains a solicitor to complete the within transaction by electronic registration pursuant to Part III of the *Land Registration Reform Act* (Ontario) and the *Electronic Registration Act* (Ontario), the Vendor and Purchaser acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "**Requisite Deliveries**") and the release thereof to the Vendor and Purchaser will: (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the solicitor(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said solicitors. The Vendor and Purchaser irrevocably instruct the said solicitors to be bound by the document registration agreement in the form which is recommended from time to time by the Law Society of Ontario. Such exchange of the Requisite Deliveries will occur in the applicable Land Titles Office or such other location as agreed to by both solicitors.

#### **8.7 TENDER**

Notwithstanding anything contained in this Agreement or in any document registration agreement ("**DRA**"), it is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have

been validly made by either party (in this Section called the "**Tendering Party**") upon the other party (in this Section called the "**Receiving Party**") when the solicitor for the Tendering Party has:

- (a) delivered all applicable closing documents to the Receiving Party's solicitor in escrow in accordance with the provisions of the DRA;
- (b) if applicable, delivered all funds to the Receiving Party's solicitor in escrow, by bank draft or certified cheque issued by a Schedule I Canadian chartered bank or by wire transfer using the Large Value Transfer System, in accordance with the provisions of the DRA;
- (c) advised the solicitor for the Receiving Party, in writing, that the Tendering Party is ready, willing and able to complete the transaction in accordance with the terms and provisions of this Agreement; and
- (d) completed all steps required by the electronic registration system to complete this transaction that can be performed or undertaken by the Tendering Party's solicitor without the cooperation or participation of the Receiving Party's solicitor, and specifically when the Tendering Party's solicitor has electronically "signed" the Transfer/Deed and any other documents required to be registered on Closing pursuant hereto for completeness and granted "access" to the Receiving Party's solicitor (but without the Tendering Party's solicitor releasing them for registration by the Receiving Party's solicitor),

without the necessity of personally attending upon the Receiving Party or the Receiving Party's solicitor with the documents and/or funds, and without any requirements to have an independent witness evidencing the foregoing.

## **ARTICLE 9**

### **GENERAL**

#### **9.1 ASSIGNMENT**

The Vendor acknowledges that the Purchaser will be a limited partnership to be formed by Purchaser prior to the Closing Date. The Purchaser may not assign this Agreement without the prior written consent of the Vendor, which consent may be reasonably withheld or delayed, except that the Purchaser shall have the right to assign this Agreement to any corporation or corporations that is an "affiliate" or are "affiliates" of the Purchaser (as such term is defined in the *Business Corporations Act* (Ontario)). In the event the Purchaser assigns this Agreement to an affiliate, or if the Vendor consents to an assignment of this Agreement to a third party, the Purchaser shall not be released from its obligations hereunder upon such assignment, and the Deposits shall remain in trust to secure the obligations of the Purchaser or any assignee hereunder.

#### **9.2 PLANNING ACT**

This Agreement shall be effective to create an interest in the Property only if the subdivision control provisions of the *Planning Act* (Ontario), as amended are complied with prior to Closing.

#### **9.3 RESIDENCY**

The Purchaser shall be credited towards the Purchase Price with the amount, if any, necessary for the Purchaser to pay to the Minister of National Revenue to satisfy the Purchaser's liability in respect of tax payable by the Vendor under the non-residency provisions of the *Income Tax Act* (Canada) by reason of

this sale. The Purchaser shall not claim such credit if the Vendor delivers on Closing the prescribed certificate or a statutory declaration that the Vendor is not then a non-resident of Canada.

#### **9.4 TIME OF THE ESSENCE**

Time shall in all respects be of the essence hereof, provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by the Vendor and the Purchaser or by their respective solicitors who may be specifically authorized in that regard.

#### **9.5 NOTICE**

Any notice, statement, document or other communication required or permitted to be given to any party pursuant to the provisions of this Agreement (a "**Notice**") shall be in writing and given by personal delivery or by facsimile or other means of electronic transmission, addressed as follows:

To the Vendor:	973 Brock Road unit 12, Pickering, Ontario L1W 3A4 Email: <a href="mailto:danhughes@libertyhamlets.ca">danhughes@libertyhamlets.ca</a>
With a copy to:	<b>Vendor Counsel</b> Email: [ N/A]
To the Purchaser:	<b>The Maxion Group "In Trust"</b> Email: <a href="mailto:pmichelin@maxion.ca">pmichelin@maxion.ca</a>
With a copy to:	Dentons Canada LLP 99 Bank Street, Suite 1420 Ottawa, Ontario K1P 1H4 Attention: Philip Rimer Email: <a href="mailto:philip.rimer@dentons.com">philip.rimer@dentons.com</a>

Any such Notice shall, if delivered or sent by facsimile or other electronic transmission prior to 5:00 p.m. (local time at the place of receipt) on a Business Day, be deemed to have been received by the other party on the same day on which it was delivered or transmitted, and, if delivered or transmitted at any other time, shall be deemed to have been received by the other party on the next following Business Day. Any party may change its address under this Section by giving Notice to the other party.

#### **9.6 ENTIRE AGREEMENT**

This Agreement, including any Schedules attached hereto, constitutes the entire agreement between the Purchaser and the Vendor. There is no representation, warranty, collateral agreement or condition which affects this Agreement other than as expressed herein.

#### **9.7 FURTHER ASSURANCES**

Each party shall, at the request and expense of the other party, promptly do, execute, deliver or cause to be done, executed or delivered all further acts, documents and matters in connection with this Agreement that such other party may reasonably require from time to time for the purpose of carrying out the intent of this Agreement.

## **9.8 GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

## **9.9 SEVERABILITY**

If any covenant, obligation, agreement, provision or part thereof or the application thereof to any Person or circumstance shall be determined to be invalid or unenforceable to any extent, same shall be severed from this Agreement, and the remainder of this Agreement or the application of such covenant, obligation, agreement or provision or part thereof to any Person or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby but shall continue to be in full force and effect. Each covenant, obligation, agreement and provision in this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

## **9.10 AMENDMENT OF AGREEMENT**

No supplement, modification or waiver (other than a deemed waiver in accordance herewith) of this Agreement shall be binding unless in writing and executed by the parties hereto.

## **9.11 WAIVER**

No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision (whether or not similar), nor shall any waiver constitute a continuing waiver unless expressly so stated.

## **9.12 NO REGISTRATION OF AGREEMENT**

The Purchaser shall not register this Agreement or any notice of this Agreement on title to the Property. The Purchaser acknowledges that, in the event that any registration respecting this Agreement or notice thereof occurs, the Vendor, in addition to any other rights or remedies it may have, shall be entitled to injunctive relief, and the Vendor may rely upon this provision in support thereof.

## **9.13 CONFIDENTIALITY**

- (a) The parties agree to keep all aspects of their negotiations and the terms of this Agreement confidential, save only for disclosure of necessary information to their respective consultants and professional advisors from time to time and as may be required by law. This provision shall survive termination of this Agreement.
- (b) Until Closing (and in the event this Agreement is terminated for any reason other than its completion, then also after such termination), the Purchaser shall keep confidential all information, documentation and records obtained from the Vendor or his consultants, agents, advisors or solicitors with respect to the Property as well as any information arising out of the Purchaser's access to the Property and its due diligence with respect thereto (collectively, the "**Confidential Information**") and shall not use any Confidential Information for any purposes not related to this transaction or in any way detrimental to the Vendor. Nothing herein contained shall restrict or prohibit the Purchaser from disclosing the Confidential Information to its consultants, agents, advisors and solicitors as long as such parties are instructed by the Purchaser to keep such information confidential and they provide a written undertaking to the Vendor to do so.

- (c) The Confidential Information referred to in this Section shall not include:
  - (i) information which is public at the time of receipt by the Purchaser or by its consultants, agents, advisors or solicitors;
  - (ii) information which becomes public through no fault or act of the Purchaser or its consultants, agents, advisors or solicitors;
  - (iii) information in the possession of the Purchaser not provided by the Vendor or his consultants, agents, advisors or solicitors and not obtained through the Purchaser's due diligence pursuant hereto; or
  - (iv) information required to be disclosed by law.
- (d) If this Agreement is terminated for any reason, the Purchaser shall promptly return to the Vendor all Confidential Information (other than the Purchaser's notes and due diligence materials), including all copies made by or on behalf of the Purchaser, and shall destroy all of the Purchaser's notes and due diligence materials containing Confidential Information related to this transaction. Without limiting the foregoing, the Purchaser agrees to delete all Confidential Information from all retrieval systems and data bases of the Purchaser.
- (e) This Section shall survive termination of this Agreement.

#### **9.14 EXCLUSIVITY**

The parties reaffirm that in consideration of the time and effort that each of the parties has committed and continues to commit to completing the transactions contemplated hereunder, the Vendor agrees that it will not, without prior written consent of the Purchaser (which consent may be arbitrarily withheld), engage or attempt to directly or indirectly engage in, solicit, or initiate (including by provision of information) any offers, negotiations, proposals, interest, or otherwise enter into discussions of any kind involving the sale or disposition of all or part of the Property while this Agreement remains in force.

#### **9.15 SUCCESSORS AND ASSIGNS**

This Agreement shall enure to the benefit of and be binding upon the Purchaser and the Vendor and their respective successors and permitted assigns.

#### **9.16 COUNTERPARTS; ELECTRONIC TRANSMISSION**

This Agreement may be executed in separate counterparts, each of which when executed shall be deemed to be an original, and such counterparts taken together shall constitute one and the same agreement. The signature of any party to any counterpart shall be deemed to be a signature to and may be appended to any other counterpart. This Agreement may be executed and delivered by telecopier or other electronic transmission, and, if so executed and transmitted, this Agreement shall be for all purposes as effective as if the parties had delivered an executed original Agreement.

This "APS" is open for acceptance by the Vendor until 12:00 p.m. (Ottawa Time) on the 11 th day of October, 2021.

**IN WITNESS WHEREOF** the parties have executed this Agreement.

Date of execution:

**LIBERTY HAMLETS INCORPORATED**  
(Vendor)

\_\_\_\_\_

By: \_\_\_\_\_

Name: Daniel Hughes

Title: President

I have authority to bind the above.

Date of execution:

**AXESS PICKERING LTD.**  
(Vendor)

\_\_\_\_\_

By: \_\_\_\_\_

Name: Daniel Hughes

Title: President

I have authority to bind the above.

Date of execution:

**MAXION GROUP INC., in trust for a limited  
partnership to be formed and without personal  
liability**  
(Purchaser)

\_\_\_\_\_

By: \_\_\_\_\_

Name: Paul Michelin

Title: CEO

I have authority to bind the above.

**SCHEDULE A**

**LEGAL DESCRIPTION OF THE PROPERTY**

<b>PIN</b>	<b>Legal Description</b>
PIN 26330-0016 (LT):	PT LT 20 CON 1 Pickering AS IN D42810 ECEPT PT 1, 40R7449 & 40R12400: SIT D1276232,D133802,D50967 PICKERING



## **SCHEDULE B**

### **PERMITTED ENCUMBRANCES**

1. The reservations, limitations, exceptions, provisions and conditions, if any, contained in any original grants from the Crown of any land or interests therein.
2. The exceptions, limitations and qualifications in Subsection 44(1) of the *Land Titles Act*, and any amendments thereto, provincial succession duties, escheats or forfeiture to the Crown. The rights of any person who would, but for the *Land Titles Act*, be entitled to the Property or any part of it through length of adverse possession, prescription, misdescription or boundaries settled by convention. Any lease to which the Subsection 70(2) of the *Registry Act* applies.
3. Registered or unregistered easements, rights-of-way, restrictive covenants and servitudes and other similar rights in land granted to, reserved or taken by any government authority or public utility, or any registered subdivision, development, servicing, site plan or other similar agreement with any government authority or public utility, each as registered on title to the Property as at the Due Diligence Conditions Date.
4. Any registered municipal agreements and registered agreements with publicly regulated utilities.
5. All applicable laws, including municipal, provincial or federal statutes, by laws, regulations or ordinances including any charge, trust, priority or preference given to or in favour of the Crown, Crown agents or municipalities pursuant thereto.
6. Liens for taxes or charges for electricity, power, gas, water and other services or utilities not yet due and payable or, if due and payable, adjusted for pursuant to this Agreement.
7. All encroachments which would appear on an up-to-date survey of the Property.
8. Minor title defects or irregularities which do not in the aggregate materially adversely impair the operation, value or marketability of the Property.
9. All work orders, notices of violation and other matters of non-compliance with the zoning and other requirements of Governmental Authorities, and other work orders or building permits relating to the Property.

**C & K MORTGAGE SERVICES INC et al.**  
Applicants

-and-

**AXESS PICKERING LTD.**  
Respondent

Court File No. CV-21-669408-00CL

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
  
**PROCEEDING COMMENCED AT**  
**TORONTO**

**AFFIDAVIT OF JANET NAIRNE**

**DICKINSON WRIGHT LLP**  
Barristers & Solicitors  
199 Bay Street  
Suite 2200, P.O. Box 447  
Commerce Court Postal Station  
Toronto, Ontario, M5L 1G4

**DAVID P. PREGER (36870L)**  
Email: [dpreger@dickinsonwright.com](mailto:dpreger@dickinsonwright.com)  
Tel: (416) 646-4606

**DAVID SEIFER (77474F)**  
Email: [dseifer@dickinsonwright.com](mailto:dseifer@dickinsonwright.com)  
Tel: (416) 646-6867

Fax: (844) 670-6009

Lawyers for the Applicants