

Court File No. CV-21-00669408-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

B E T W E E N:

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

Applicants

and

AXESS PICKERING LTD.

Respondent

**MOTION RECORD
(Returnable November 8, 2021)**

November 3, 2021

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Lawyers for the Court-Appointed Receiver

TO: **SERVICE LIST**

Court File No. CV-21-00669408-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C., C. B-3, AS AMENDED, AND SECTION 101
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Respondent

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Court File No. CV-21-00669408-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND
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B E T W E E N:

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Applicants

and

AXESS PICKERING LTD.

Respondent

**NOTICE OF MOTION
(Returnable November 8, 2021)**

The Receiver will make a Motion to a Judge presiding over the Commercial List on
Monday, November 8, 2021 at 12:00 p.m., or as soon after that time as the Motion can be heard.

PROPOSED METHOD OF HEARING: The Motion is to be heard

☐ In writing under subrule 37.12.1(1) because it is
[insert on consent, unopposed or made without notice];

☐ In writing as an opposed motion under subrule 37.12.1(4);

☐ In person;

☐ By telephone conference;

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[X] By video conference.

at the following location: [Zoom details to be provided by the Court]

THE MOTION IS FOR:

1. An Order substantially in the form appended hereto as Schedule “A”:
 - (a) If necessary, abridging the time for and validating service of this notice of motion and motion record, including the First Report of the Receiver to the Court (the “**First Report**”), and directing that any further service of this notice of motion is properly returnable on November 8, 2021;
 - (b) Approving the marketing and sales process for the assets of the Debtors as described in Section 7 of the First Report, subject to such amendments to the sale process as deemed necessary or appropriate by the Receiver (the “**Sales Process**”);
 - (c) Approving the First Report and the conduct and activities of the Receiver reported therein; and
 - (d) Such further and other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. Pursuant to an order (the “**Appointment Order**”) of the Ontario Superior Court of Justice made on October 12, 2021, upon application by C&K Mortgage Service Inc. and 975393

Ontario Inc., Alvarez & Marsal Canada Inc. was appointed Receiver of Axess Pickering Ltd (“Axess”).

Approval of the Sale Process

2. The Appointment Order authorizes the Receiver to market the property of the Debtors, including advertising and soliciting offers in respect of the Property or any part of parts thereof, and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate. It further authorizes the Receiver to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis to assist with the exercise of the Receiver’s powers and duties.

3. After requesting and reviewing listing proposal from four leading commercial real estate brokerages, the Receiver selected Cushman & Wakefield (“C&W”) to assist in development and implementation of the Sale Process.

4. The Receiver and C&W will finalize a Confidentiality Agreement and information memorandum in respect of the Property. After formal marketing of the property commences, the Receiver and C&W will establish an electronic data room to provide access to confidential information pertaining to the Property to parties who have executed a Confidentiality Agreement.

5. A template form of agreement of purchase and sale will be provided to prospective purchasers to facilitate a proper comparison of offers that may be received, in order to determine the highest and best overall offer.

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6. Upon selection of a successful bidder, the Receiver will bring a motion to the Court to obtain approval of the successful bid.

7. The Sale Process provides for a robust process to expose the property to the appropriate market and solicit offers from prospective purchasers over a period of approximately five weeks. The Sale Process will facilitate a proper comparison of offers to determine the highest and best overall offer within a reasonable period of time.

Approval of the First Report and the Receiver's Conduct and Activities

8. The Receiver has carried out its duties and responsibilities in accordance with the terms of the Appointment Order.

Other

9. The Appointment Order;

10. Rules 1.04, 1.05, 2.03, 3.02(1), 16 and 37 of the *Rules of Civil Procedure*; and

11. Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

(a) The First Report;

(b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

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November 2, 2021

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Lawyers for Alvarez & Marsal Canada Inc. in its
capacity as Court-Appointed Receiver

TO: **SERVICE LIST**

Schedule "A"

Court File No. CV-21-00669408-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

THE HONOURABLE)	MONDAY, THE 8TH
)	
JUSTICE T. McEWEN)	DAY OF NOVEMBER, 2021

B E T W E E N:

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

Applicants

and

AXESS PICKERING LTD.

Respondent

ORDER
(Re Sale Process)

THIS MOTION, made by Alvarez & Marsal Canada Inc. in its capacity as Court-appointed Receiver (the “**Receiver**”) of the assets, undertakings and properties of Axess Pickering Ltd. (the “**Debtor**”), for an order,

- (a) If necessary, abridging the time for and validating service of this notice of motion and motion record, including the First Report of the Receiver to the Court (the

-2-

“**First Report**”), and directing that any further service of this notice of motion is properly returnable on November 8, 2021;

- (b) Approving the marketing and sales process for the assets of the Debtor as described in Section 7 of the First Report, subject to such amendments to the sale process as deemed necessary or appropriate by the Receiver (the “**Sales Process**”);
- (c) Approving the First Report and the conduct and activities of the Receiver reported therein; and
- (d) Such further and other relief as counsel may advise and this Honourable Court may deem just.

was heard this day by judicial videoconference due to the COVID-19 pandemic.

ON READING the First Report and on hearing the submissions of counsel for the Receiver, and such other persons on the Service List as may be present:

1. THIS COURT ORDERS that the time for and method of service of the notice of motion and the motion record, including the First Report, are hereby abridged and validated, as necessary, such that this motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that the Sale Process for marketing and selling the assets of the Debtor as described in Section 7 of the First Report, subject to such amendments to the sale process as deemed necessary or appropriate by the Receiver (the “**Sales Process**”) is hereby approved and that the terms and conditions for the submission of bids pursuant to the Sale Process as described in the First Report are hereby approved and the Receiver is hereby authorized to take such steps

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as it considers necessary to carry out the Sale Process, subject to prior approval of this Court being obtained before completion of any transactions resulting from the Sale Process.

3. THIS COURT ORDERS that the First Report and the activities described therein be and are hereby approved.

4. THIS COURT ORDERS that the Receiver shall have no personal or corporate liability in connection with conducting the Sales Process, excepting any liability resulting from gross negligence or wilful misconduct.

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

6. THIS COURT ORDERS that this Order is effective from today's date and is not required to be entered.

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

C&K MORTGAGE SERVICES INC. et al.

-and-

AXESS PICKERING LTD.

Applicants

Respondent

Court File No. CV-21-00669408-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

ORDER

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C&K MORTGAGE SERVICES INC. et al.

-and-

AXESS PICKERING LTD.

Applicants

Respondent

Court File No. CV-21-00669408-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

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ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

C & K MORTGAGE SERVICE INC.
and 975393 ONTARIO INC.

APPLICANTS

- and -

AXESS PICKERING LTD.

RESPONDENT

FIRST REPORT TO COURT
OF ALVAREZ & MARSAL CANADA INC.
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER
OF AXESS PICKERING LTD.

NOVEMBER 3, 2021

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1.0 INTRODUCTION

- 1.1 This report (the “**First Report**”) is filed by Alvarez & Marsal Canada Inc. (“**A&M**”) in its capacity as Court-appointed receiver and manager (in such capacity, the “**Receiver**”) without security, of all of the assets, undertakings and properties of Axess Pickering Ltd. (“**Axess**” or the “**Company**”), including the lands and premises located at 1525 Pickering Parkway, Pickering, Ontario (the “**Property**”).
- 1.2 Pursuant to an order (the “**Appointment Order**”) of the Ontario Superior Court of Justice (the “**Court**”) made on October 12, 2021 (the “**Receivership Date**”) upon application (the “**Receivership Application**”) by C & K Mortgage Services Inc. and 975393 Ontario Inc. (the “**Applicants**”), A&M was appointed Receiver of Axess. A copy of the Appointment Order is attached hereto as **Appendix “A”**.

2.0 PURPOSE OF THIS REPORT

- 2.1 The purpose of this First Report is to:
- (a) provide background information regarding Axess and the Property;
 - (b) describe the Receiver’s activities since the Receivership Date and the Receiver’s intended course of action in respect of these receivership proceedings (the “**Receivership Proceedings**”);
 - (c) support the Receiver’s motion for an order (the “**Sale Process Order**”), among other things:

- (i) authorizing and directing the Receiver to conduct the Sale Process (as described hereafter) for the Property, including engagement of Cushman & Wakefield ULC. (“C&W”); and
- (ii) approving this First Report and the activities of the Receiver described herein.

3.0 TERMS OF REFERENCE AND DISCLAIMER

- 3.1 In preparing this First Report, the Receiver has relied upon unaudited financial information, books and records and other documents provided by, and discussions with, certain former management of Axess and current management of Liberty Hamlets Inc. (collectively, the “**Information**”).
- 3.2 The Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CASs**”) pursuant to the Chartered Professional Accountants Canada Handbook, and accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CASs in respect of the Information.
- 3.3 This First Report has been prepared for the use of this Court and Axess’ stakeholders as general information relating to the Receivership Proceedings and to assist the Court in making a determination of whether to approve the relief sought herein. Accordingly, the reader is cautioned that this First Report may not be appropriate for any other purpose. The Receiver will not assume responsibility or liability for losses incurred by the reader as a

result of the circulation, publication, reproduction or use of this First Report different than the provisions of this paragraph.

- 3.4 The information contained in this First Report is not intended to be relied upon by any investor or purchaser in any transaction with the Receiver.
- 3.5 Unless otherwise stated, all monetary amounts contained in this First Report are expressed in Canadian dollars.
- 3.6 Further information about Axess, its background and copies of materials filed in the Receivership Proceedings are available on the Receiver's website at: www.alvarezandmarsal.com/axess (the "**Case Website**").

4.0 BACKGROUND

- 4.1 Further background with respect to Axess, as well as a description of the circumstances leading to the appointment of the Receiver, are contained in the application record (the "**Application Record**") filed by the Applicants which has been posted to the Case Website.
- 4.2 Axess was incorporated on February 22, 2019 and is a wholly owned subsidiary of Liberty Hamlets Inc. ("**Liberty**"). On March 1, 2021, Axess acquired the Property from Pine Ridge Management Inc. ("**Pine Ridge**") in exchange for \$10 million (the "**Cash Consideration**") plus, an agreement dated February 26, 2021 whereby Axess agrees sell 10 condo units for \$2 per unit and 16 parking spaces and lockers at no cost, to Tom Oldman, the President of Pine Ridge (the "**Condominium Sale Agreement**"). The Condominium Sale Agreement was registered on title to the Property.

- 4.3 The Cash Consideration was funded by way of: i) a first ranking mortgage of \$8.2 million, registered by the Applicants on March 1, 2021 (the “**First Mortgage**”), (ii) a second ranking mortgage of \$1.5 million, registered by Sagewise Capital Corporation (“**Sagewise**”) on March 1, 2021 (the “**Second Mortgage**”), and (iii) funding from Liberty of \$300,000.
- 4.4 Closing costs in respect of the transfer of the Property, including prepaid interest, lender and referral fees, and tax and insurance amounts totaled \$2,580,130, and were funded by Liberty in the amount of \$1,696,500, and by a third ranking charge on the property in the amount of \$883,630, registered by RNV Investments and Gina Batista on June 15, 2021 (the “**Third Mortgage**”).
- 4.5 Axxess is a single purpose entity whose only asset is the Property. It has no and has never had any employees or operations since incorporation. Based on the books and records of the Company, to date, Axxess’ only transaction was the acquisition of the Property and payment of related closing costs. All development activities and related costs in respect of the Property (as described hereafter) have been orchestrated by Liberty.

Proposed Development of the Property

- 4.6 Liberty and Pine Ridge began informally discussing a joint venture or sale of the Property in August 2017. Between 2017 and 2019, Liberty funded all necessary technical and feasibility reports in respect of a development plan related to the Property. On March 3,

2019, Liberty entered into an Agreement of Purchase and Sale (the “**Liberty APS**”)¹ with Pine Ridge to purchase the property for \$10 million. The Liberty APS was originally intended to close on April 4, 2019, but due to a series of extensions which required Liberty to provide additional deposits and consideration, including the Condominium Sale Agreement, the sale of the Property closed on March 1, 2021. In November 2019, Liberty constructed a showroom and began marketing ‘Axess Condominiums’, a proposed mixed-use development including a three storey podium and two point towers. The Axess Condominiums development envisions 22 storeys, including 320 residential units and 4 retail/commercial units, for total commercial gross floor area (“**GFA**”) of 16,490 square feet and residential GFA of 355,554 square feet.

- 4.7 Liberty was forced to pause marketing efforts in March 2020 due to Covid-19 restrictions. No condominium sale agreements were entered into by Liberty or Axess, and the Axess Condominiums showroom was closed on August 13, 2021.
- 4.8 The Property is currently vacant and unimproved. The Property is a development site measuring 1.27 acres; zoned as City Centre 1 (CC1); designated as a Mixed-Use Area under the City of Pickering Official Plan; and located within 1 kilometer of Pickering Town Centre and Pickering GO Train Station. Based on the site area and current FSI limits, the Property is limited to net floor area (“**NFA**”) of 319,396 square feet. The proposed site plan

¹ On September 12, 2019, the Liberty APS was assigned to Axess by way of an Assignment of Agreement of Purchase and Sale.

application for 355,554 square feet GFA (316,379 square feet NFA) is currently under review by the City of Pickering.

- 4.9 As further described in the Application Record, as a result of to the Company's failure to repay the First Mortgage upon maturity on September 1, 2021, and the Company's failure to meet the financial terms of a forbearance agreement, on September 3, 2021, the Applicants issued notices under Section 244(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3 (the "BIA") to the Company as well as to Liberty and Mr. Dan Hughes as guarantors.

5.0 ACTIVITIES OF THE RECEIVER TO DATE

- 5.1 Following the issuance of the Appointment Order, the Receiver:

- (a) attended at and photographed the Property, and secured the fence providing access to the Property;
- (b) opened a trust bank account;
- (c) obtained information regarding the Property, including books and records relating to Axess;
- (d) held discussions with the management of Liberty and obtained information from Liberty in respect of the proposed development of the Property;
- (e) confirmed insurance coverage, after consulting with the Receiver's insurance advisors and the existing insurance provider;
- (f) reviewed the OBG Offer (as defined below) and discussed it with management;

- (g) engaged independent counsel, Lax O'Sullivan Lisus Gottlieb LLP;
- (h) solicited proposals for an independent appraisal of the Property and engaged Avison Young in respect of same;
- (i) solicited proposals from prospective sales agents in respect of the Sale Process (as further described below);
- (j) arranged for interim funding from the Applicants (through a Receiver's Certificate) in the amount of \$50,000 to fund appraisal, legal and other costs in respect of the Receivership Proceedings;
- (k) registered a copy of the Appointment Order against title to the Property;
- (l) established the Case Website for the Receivership Proceedings and updated accordingly;
- (m) requested and obtained information from secured creditors and other stakeholders in respect of Property;
- (n) issued the notice required pursuant to Sections 245 and 246 of the BIA to known creditors of the Property, a copy of which is attached as **Appendix B**; and
- (o) prepared the Sale Process, this First Report, and brought this motion.

6.0 OBG AXESS OFFER

- 6.1 On October 12, 2021, at the hearing of the Receivership Application, Mr. Dan Hughes, the president of both Liberty and Axess, opposed the Receivership Application on the basis of an executed agreement of purchase and sale (the "**OBG Axess APS**") between Axess,

Liberty and OBG Axess Limited Partnership (“**OBG Axess**”). In connection with the issuance of the Appointment Order, the endorsement of Justice Koehnen, attached as **Appendix C**, identified concerns in respect of the OBG Axess APS.

- 6.2 On October 19, 2021, the Receiver wrote to Mr. Hughes (the “**October 19th Letter**”), to detail the Receiver’s concerns in respect of the OBG Axess APS. A copy of the October 19th Letter is attached as **Appendix D**. As of the date of this Report, the concerns identified by the Receiver in the October 19th Letter have not been addressed by management or OBG Axess.

7.0 SALE OF THE PROPERTY

- 7.1 Paragraph 3(j) of the Appointment Order authorizes the Receiver to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate.
- 7.2 To assist in marketing the Property, the Receiver requested and received listing proposals from four leading commercial real estate brokerages, including CBRE Limited, Institutional Property Advisors, Lee & Associates and C&W.
- 7.3 After review of the listing proposals and consultation with the Applicants, the Receiver selected C&W to assist in development and implementation of a Property sale process.

7.4 The Receiver seeks the approval of the Court in respect of a process for the submission of bids and ultimate sale of the Property (the “**Sale Process**”). A summary of the proposed Sale Process is as follows:

- the Receiver and C&W will finalize a Confidentiality Agreement (“**CA**”) and confidential information memorandum in respect of the Property;
- formal marketing of the Property will commence on November 9, 2021. C&W will target prospective purchasers through a combination of email solicitations, advertisements, MLS Listing, and signage;
- the Receiver and C&W will establish an electronic data room (the “**Data Room**”) to provide access to confidential information pertaining to the Property (including the Liberty Information as defined below) to parties who execute the CA;
- interested parties who have executed the CA will be provided access to the Data Room and the Receiver and C&W will coordinate due diligence;
- a template form of agreement of purchase and sale will be provided to prospective purchasers to facilitate a proper comparison of offers that may be received and to minimize the time required to negotiate separate forms of offers with multiple parties, in order to determine the highest and best overall offer;
- bids in the form of a marked up APS will be required to be submitted to the C&W and the Receiver no later than 5:00 p.m. (Eastern Time) on Tuesday, December 14, 2021, or such other date or time as may be agreed by the Receiver and C&W (the “**Bid Deadline**”);

- the Receiver and C&W will evaluate any and all bids on various grounds, including, but not limited to, purchase price and certainty of closing; and
- upon selection of a successful bidder, the Receiver will bring a motion to the Court to obtain approval of the successful bid, including approval of the APS and vesting order in respect of same.

7.5 The Receiver, in consultation with C&W, will have the right to modify and/or adopt such other rules for the Sale Process as it considers appropriate. Should material modification or a termination of the Sale Process be warranted, the Receiver will seek further approval of the Court.

7.6 A copy of the C&W listing agreement (the “**Listing Agreement**”) is attached hereto as **Appendix E**. The Listing Agreement provides that upon the successful completion of sale of the Property, a commission equivalent to 1.75% will be payable to C&W. In the event a cooperating brokerage represents the purchaser (a “**Cooperating Brokerage**”), the commission shall be increased to 2.75% and C&W will pay the Cooperating Brokerage a fee of 1.00%.

7.7 In addition to terms and conditions customary in similar receivership proceedings, the Listing Agreement also contains a specific provision in respect of OBG Axess, whereby if, within 21 days of Court approval of the Sale Process, OBG Axess submits an offer to purchase the Property in a form acceptable to the Receiver then C&W shall not be entitled to a commission but shall only be entitled to a reimbursement of its expenses to a maximum amount of \$10,000.

7.8 The Appointment Order provides that the Receiver is authorized and empowered to access, and make, retain and take away copies of the Records of the Debtor and Records of Liberty in respect of the Property. As of the date of this Report, management of Liberty has provided the Receiver with substantial information in respect of the Property's history and proposed development, including but not limited to environmental, wind, traffic, and geotechnical studies, architectural drawings, site plan application details and other information (the "**Liberty Information**"). It is the intent of the Receiver to include the Liberty Information in the Data Room for prospective purchasers (subject to prospective purchasers executing the CA).

8.0 CONCLUSIONS AND RECOMMENDATIONS

Based on the foregoing, the Receiver respectfully requests that the Court make an order granting the relief sought in the Receiver's Notice of Motion and described in paragraph 2.1(c) of this First Report.

All of which is respectfully submitted this 3 day of November 2021.

**Alvarez & Marsal Canada Inc., in its capacity as Receiver of
Axess Pickering Ltd., and not in its personal capacity**



Per: Stephen Ferguson
Senior Vice-President

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

**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**

THE HONOURABLE)	TUESDAY, THE 12TH
)	
JUSTICE KOEHNEN)	DAY OF OCTOBER, 2021

B E T W E E N:

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

Applicants

- and -

AXESS PICKERING LTD.

Respondent

**ORDER
(Appointing Receiver)**

THIS APPLICATION made by the Applicants for an Order appointing Alvarez & Marsal Canada Inc. Inc. as receiver and manager (in such capacities, the “Receiver”), without security, of all of the assets, undertakings and properties of the Respondent Axess Pickering Ltd. (the “Debtor”), was heard this day by Zoom judicial videoconference.

ON READING the affidavit of Gary Gruneir sworn September 30, 2021 and the Exhibits thereto, the affidavit of Janet Nairne sworn October 12, 2021 and the Exhibits thereto, and on hearing the submissions of counsel for the Applicants, counsel for Gina Batista and RNV Investments LLC, and Blair Gagnon and Daniel Hughes, both appearing for the Debtor and Liberty Hamlets Inc. (“Liberty”), no one else appearing although duly served as appears from the affidavit of service of Janet Nairne sworn October 7, 2021, and on reading the consent of Alvarez & Marsal Canada Inc. Inc. to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and Application Record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “BIA”), and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, Alvarez & Marsal Canada Inc. Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor, including the lands and premises legally described in Schedule “A” hereto, and all proceeds thereof (the “Property”).

RECEIVER’S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the

relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed

shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) with the approval of this Court, to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, and in each such case, notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;
- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the Receiver's administration, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and

- (q) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtor, (ii) Liberty, (iii) all of the Debtor's and Liberty's current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iv) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor and Liberty, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to access make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure. For greater certainty, and without limiting the generality of the foregoing, the Receiver is authorized and empowered to access and make, retain and take away copies of the Records of the Debtor and Records of Liberty in respect of the Property located at

the offices of Liberty and Liberty shall cooperate and shall provide reasonable assistance to the Receiver with respect to such Records and information contained in such Records.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. THIS COURT ORDERS that all rights and remedies against the Debtor, Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in

respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

10. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this

Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the “Post Appointment Accounts”) and the monies standing to the credit of such Post Appointment Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

13. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

LIMITATION ON ENVIRONMENTAL LIABILITIES

14. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “Possession”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “Environmental Legislation”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

15. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

16. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

17. THIS COURT ORDERS that the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

18. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

19. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed

\$500,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “Receiver’s Borrowings Charge”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

20. THIS COURT ORDERS that neither the Receiver’s Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

21. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “B” hereto (the “Receiver’s Certificates”) for any amount borrowed by it pursuant to this Order.

22. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver’s Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver’s Certificates.

SERVICE AND NOTICE

23. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further

orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.alvarezandmarsal.com/axess.

24. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

25. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

26. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

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

28. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

29. THIS COURT ORDERS that the Applicants shall have their costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicants' security or, if not so provided by the Applicants' security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

30. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

31. THIS COURT ORDERS that this Order is effective from today's date and is not required to be entered.

[Handwritten signature]

SCHEDULE “A”
LANDS AND PREMISES

PIN: 26330 - 0016 LT

PT LT 20 CON 1 PICKERING AS IN D42810 EXCEPT PT 1, 40R7449 & 40R12400; S/T
D127632, D133802, D50967 PICKERING

Municipal Address: 1525 PICKERING PARKWAY, PICKERING

SCHEDULE “B”**RECEIVER CERTIFICATE**

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Alvarez & Marsal Canada Inc., the Receiver (the “Receiver”) of all of the assets, undertakings and properties of Axess Pickering Ltd. (the “Debtor”), including the lands and premises municipally known as 1525 Pickering Parkway, in Pickering, Ontario (the “Property”) appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the “Court”) dated the [DATE] (the “Order”) made in an application having Court file number CV-21-669408-00CL, has received as such Receiver from the holder of this certificate (the “Lender”) the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly not in advance on the _____ day of each month after the date hereof at a notional rate per annum equal to the rate of _____ per cent.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 2021.

Alvarez & Marsal Canada Inc., solely in its
capacity as Receiver of the Property, and not in
its personal capacity

Per: _____

Name:

Title:

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
(COMMERCIAL LIST)
PROCEEDING COMMENCED AT
TORONTO

ORDER
(Appointing Receiver)

DICKINSON WRIGHT LLP

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

David P. Preger (36870L)

Email: DPreger@dickinsonwright.com
Tel: (416) 646-4606

David Z. Seifer (77474F)

Email: DSeifer@dickinsonwright.com
Tel: 416-646-6867

Lawyers for the Applicants



**Notice and Statement of the Receiver
(Subsection 245(1) and 246(1) of the Bankruptcy and Insolvency Act)**

**IN THE MATTER OF THE RECEIVERSHIP OF
AXESS PICKERING LTD. ("AXESS")**

The receiver gives notice and declares that:

1. On October 12, 2021, the Ontario Superior Court of Justice (the "Court") granted an order (the "Receivership Order"), pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C 1985 c. B-3 and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43., appointing Alvarez & Marsal Canada Inc. as receiver and manager ("Receiver"), without security, of all of the assets, undertakings and properties (the "Assets") of Axess (the "Company").
2. The estimated book value of the Assets as at October 12, 2021 (based on the Axess books and records) were as follows:

(in CAD\$ 000s)	Estimated Book Value
Land	\$10,000

Please Note: Realizable values may materially differ from the above. The Receiver has not audited, reviewed, or otherwise attempted to verify the accuracy of the foregoing.

3. The undersigned took possession and control of the property described above on the 12th day of October, 2021.
4. The following information relates to the receivership:

Address of insolvent person: 1525 Pickering Parkway, Pickering, ON L1V 7E9

Principal line of business: Property Holding Company

Location of business: 1525 Pickering Parkway, Pickering, ON L1V 7E9

The amounts owed by the insolvent person to each creditor as at October 12, 2021 (based on the Axess books and records) are as follows:

(in CAD\$ 000s)	Estimated Value
Secured	10,940
Unsecured	1,993
Total	\$12,933

Attached as “**Appendix A**” is a list of all known creditors as at the date of the receivership. This information has not been audited or verified by the Receiver.

5. The Receiver’s intended plan of action during the receivership is to evaluate realization strategies and options for the Company’s primary asset and execute a realization process in respect of same.
6. Additional Information:

A copy of the receivership order is posted on the Receiver’s website at www.alvarezandmarsal.com/axess. Other public information, including court materials will be posted to this website as that information becomes available.

Contact person for Receiver:

Name:	Nate Fennema
Phone:	416-847-5183
Email:	axess@alvarezandmarsal.com

Dated at Toronto, this 19th day of October, 2021.

**ALVAREZ & MARSAL CANADA INC.
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF
AXESS PICKERING LTD.
AND NOT IN ITS PERSONAL CAPACITY**



Per: Stephen Ferguson
Senior Vice-President

Appendix A

Alvarez & Marsal Canada Inc. In the Matter of the Receivership of Axess Pickering Ltd.		
CAD \$		10/12/2021
Secured Creditors	Address	Balance Due
C&K Mortgage	199 Bay Street, Suite 2200, Box 447 Toronto, Ontario M5L 1G4	\$ 8,556,796.51
Sagewise Capital Corporation	4080 Confederation Parkway, Suite 402 Mississauga, Ontario L5B 0G1	1,500,000.00
Gina Batista	7890 Pine Valley Drive, Woodbridge, Ontario L4L 2J3	470,000.00
RNV Investments	4789 Yonge Street, Suite 1208 Toronto, Ontario M2N 0G3	413,630.00
Pine Ridge Investments	26 Way Street, Brooklin, Ontario L1M 1B7	TBD
Total Secured Creditors*		\$ 10,940,426.51
<i>*the validity of these creditors' security has yet to be confirmed</i>		
Unsecured Creditors		
City of Pickering	One the Esplanade, Pickering, Ontario L1V 6K7	\$ 15,176.14
Liberty Hamlets	973 Brock Road, Unit 12 Pickering, Ontario L1W 3A4	1,977,614.60
Total Unsecured Creditors		\$ 1,992,790.74
Supplementary		
Canada Revenue Agency	1050 Notre Dame Avenue, Sudbury, Ontario P3A 5C2	TBD
Total		\$ 12,933,217.25

Janet C. Nairne

From: Koehnen, Mr. Justice Markus (SCJ)
Sent: Tuesday, October 12, 2021 1:40 PM
To: Janet C. Nairne; David P. Preger; JUS-G-MAG-CSD-Toronto-SCJ Commercial List
Subject: EXTERNAL: Re: C & K Mortgage Services Inc. et al v. Axess Pickering Ltd. (New)
Attachments: Axess order 20211012.pdf

Email Endorsement**Counsel**

Mr. Preger and Mr. Seifer for the applicant

Mr. M. Harris for the Thrid Mortgagee

Mr. Winton for the proposed receiver

Mr. Daniel Hughes and Mr. Blair Gangon self-represented for the debtor

1. The applicants seek to appoint a receiver over the respondent. The applicants hold a first mortgage in the amount of \$8.2 million against the debtor's property . The mortgage matured on September 1, 2021 without repayment being made. The applicants made a written demand and issued a notice of intention to enforce security pursuant to section 244 of the BIA on September 3, 2021. The 10 day waiting period under the BIA has elapsed.
2. The debtor appeared today represented by two of its principals, Daniel Hughes and Blair Gagnon. They oppose the receivership on the basis of an agreement of purchase and sale that they delivered this morning. The agreement is on behalf of a limited partnership but is not signed by its general partner. Although the agreement calls for total consideration of approximately \$20million, it refers to a deposit of only \$50,000. In addition, Mr. Gagnon described a rather complex corporate structure that remains to be put together to complete the purchase which involves a number of parties related to the current development. As Mr. Gagon described it, he believed he had the ability to "put the deal together" within 45 days. The agreement remains conditional on financing and due diligence.
3. In addition, a third party has laid claim to the right to 10 condominium units in the proposed development plus 16 parking spaces and storage lockers. That would presumably complicate any proposed sale.
4. In my view, this is a situation that calls out for a receiver. The debtor does not resist the receivership on the basis of any issue concerning the fact that the debt owed is due. The debtor would simply like to pursue its favoured transaction rather than a receivership. That is not sufficient to win the

day. The debtor knew the debt was due on September 1, 2021, and could have made arrangements to pay it out. It did not do so. The mortgage agreement gives the mortgagee the right to appoint a receiver on default. It strikes me that the agreement of purchase and sale delivered today is more aspirational than actual. A receivership does not of course preclude the debtor from pursuing the proposed transaction with the help of the receiver if the receiver is of the view that it makes sense to do so.

5. I have signed and attached a receivership order in the form of the Commercial List model order.

Justice Markus Koehnen

Ontario Superior Court of Justice

361 University Ave.

Toronto, Ont.

M5G 1T3



Mr. Dan Hughes
108 Noake Crescent
Ajax, Ontario L1T 3L7

Via Email

Mr. Hughes,

As you are aware, on October 12, 2021, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an order (the “**Appointment Order**”) pursuant to the *Bankruptcy and Insolvency Act* (Canada) and the *Courts of Justice Act* (Ontario) appointing Alvarez & Marsal Canada Inc. as receiver and manager (the “**Receiver**”) over the assets, undertakings, and properties of Axxess Pickering Ltd. (“**Axxess**”), including the real property located at 1525 Pickering Parkway (the “**Property**”). The Appointment Order provides that any sale of the Property requires approval of the Court.

Reference is made to the agreement of purchase and sale between Axxess and OBG Axxess Limited Partnership dated October 8, 2021, which was provided to the Court by Mr. Hughes on October 12, 2021 (the “**OBG Axxess APS**”) and to the endorsement of Justice Koehnen dated October 12, 2021, which identified significant concerns in respect of the OBG Axxess APS.

Any sale transaction in respect of the Property that the Receiver brings before the Court for approval must be satisfactory to the Receiver and the OBG Axxess APS, in its current form, is not acceptable. Specific deficiencies noted include, but are not limited to:

- Details around the corporate structure of the Purchaser, including shareholders, joint venture structure and experience in similar type developments;
- Lack of opportunity for the Receiver to have specific, direct discussions with appropriate representatives of the Purchaser;
- Further clarity on purchase price and flow of funds (e.g. \$16 million or \$20 million, who is funding the purchase price, and to which entity or entities would the aggregate purchase price flow to);
- Evidence of funding sufficient to close a transaction;
- Treatment of secured claims, including registered interest of Pine Ridge Management Inc.;
- Treatment of potential unsecured claims of Axxess;
- Amount and timing of deposit;
- Outstanding diligence requirements and specific timelines in respect of clearing same; and,
- Clarity as to why Liberty Hamlets Inc. is a signatory to the OBG Axxess APS.

It is the intention of the Receiver to schedule a motion during the week of November 8th, or as soon as possible thereafter (the “**November Hearing**”), at which the Receiver will seek the approval of the Court for the Receiver’s intended course of action with respect to the Property.

Such course of action could include i) a revised agreement of purchase and sale between OBG Axxess, which addresses the above noted points in a manner satisfactory to the Receiver; ii) a broad court-supervised sale process in respect of the Property, which may include engagement of a sales agent, or iii) any other course of action deemed necessary by the Receiver for the benefit of all stakeholders.

The Receiver requires sufficient time to decide on its intended course of action and prepare its motion materials. Therefore, unless the Receiver’s concerns are resolved to its satisfaction on or before October 29, 2021, it is unlikely that the Receiver will be able to recommend a sale pursuant to a revised OBG Axxess



APS at the November Hearing. For clarity, the Receiver is not providing assurance that a resolution of its concerns by that date will automatically lead to a recommendation of a revised OBG Axess APS; we are merely informing you of the need to address these concerns promptly if you still wish to pursue a such a transaction.

Sincerely,

Stephen Ferguson
Senior Vice President

ALVAREZ & MARSAL CANADA INC.
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF
AXESS PICKERING LTD.
AND NOT IN ITS PERSONAL CAPACITY

CC: Blair Gagnon, Liberty Hamlets Inc;
Dave Angelis, OBG Axess Limited Partnership

Listing Agreement – Commercial

Seller Representation Agreement

Authority to Offer for Sale

This is a Multiple Listing Service® Agreement



OR

This Listing is Exclusive

EXCLUSIVE



BETWEEN:

BROKERAGE:

Cushman & Wakefield ULC

(the "Listing Brokerage") Tel. No. 416-862-0611

SELLER:

See Schedule A

(the "Seller")

In consideration of the Listing Brokerage listing the real property for sale known as 1525 Pickering Parkway

Pickering, Ontario

(the "Property")

the Seller hereby gives the Listing Brokerage the **exclusive and irrevocable** right to act as the Seller's agent,

commencing at 12:01 a.m. on the 3rd day of November, 2021

until 11:59 p.m. on the 3rd day of May, 2022 (the "Listing Period"),

Seller acknowledges that the length of the Listing Period is negotiable between the Seller and the Listing Brokerage and, if an MLS® listing, may be subject to minimum requirements of the real estate board, however, in accordance with the Real Estate and Business Brokers Act, 2002, (REBBA), if the Listing Period exceeds six months, the Listing Brokerage must obtain the Seller's initials.



to offer the Property for sale at a price of:

One

Dollars (\$CDN) 1.00

and upon the terms particularly set out herein, or at such other price and/or terms acceptable to the Seller. It is understood that the price and/or terms set out herein are at the Seller's personal request, after full discussion with the Listing Brokerage's representative regarding potential market value of the Property.

The Seller hereby represents and warrants that the Seller is not a party to any other listing agreement for the Property or agreement to pay commission to any other real estate brokerage for the sale of the property.



1. DEFINITIONS AND INTERPRETATIONS: For the purposes of this Agreement ("Authority" or "Agreement"):

"Seller" includes vendor and a "buyer" includes a purchaser or a prospective purchaser. A purchase shall be deemed to include the entering into of any agreement to exchange, or the obtaining of an option to purchase which is subsequently exercised, or the causing of a First Right of Refusal to be exercised, or an agreement to sell or transfer shares or assets. "Real property" includes real estate as defined in the Real Estate and Business Brokers Act (2002). The "Property" shall be deemed to include any part thereof or interest therein. A "real estate board" includes a real estate association. Commission shall be deemed to include other remuneration. This Agreement shall be read with all changes of gender or number required by the context. For purposes of this Agreement, anyone introduced to or shown the Property shall be deemed to include any spouse, heirs, executors, administrators, successors, assigns, related corporations and affiliated corporations. Related corporations or affiliated corporations shall include any corporation where one half or a majority of the shareholders, directors or officers of the related or affiliated corporation are the same person(s) as the shareholders, directors, or officers of the corporation introduced to or shown the Property.

2. COMMISSION: In consideration of the Listing Brokerage listing the Property for sale, the Seller agrees to pay the Listing Brokerage a commission

of 1.75% % of the sale price of the Property or 2.75% if a non-listing team salesperson or broker

represents the Buyer

for any valid offer to purchase the Property from any source whatsoever obtained during the Listing Period and on the terms and conditions set out in this Agreement OR such other terms and conditions as the Seller may accept.

INITIALS OF LISTING BROKERAGE:



INITIALS OF SELLER(S):



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The Seller authorizes the Listing Brokerage to co-operate with any other registered real estate brokerage (co-operating brokerage), and to offer to pay the co-operating brokerage a commission of 1.00 % of the sale price of the Property or

..... out of the commission the Seller pays the Listing Brokerage. The Seller further agrees to pay such commission as calculated above if an agreement to purchase is agreed to or accepted by the Seller or anyone on the Seller's behalf within 120 days after the expiration of the Listing Period (**Holdover Period**), so long as such agreement is with anyone who was introduced to the Property ~~by the Listing Brokerage, specifically excluding OBG Axxess Limited Partnership or Axxess Pickering Ltd.~~ during the Listing Period and whom the Property during the Listing Period. If, however, the offer for the purchase of the Property is pursuant to a new agreement in writing to pay commission to another registered real estate brokerage, the Seller's liability for commission shall be reduced by the amount paid by the Seller under the new agreement.

~~The Seller further agrees to pay such commission as calculated above even if the transaction contemplated by an agreement to purchase agreed to or accepted by the Seller or anyone on the Seller's behalf is not completed, if such non-completion is owing or attributable to the Seller's default or neglect, said commission to be payable on the date set for completion of the purchase of the Property.~~

Any deposit in respect of any agreement where the transaction has been completed shall first be applied to reduce the commission payable. Should such amounts paid to the Listing Brokerage from the deposit or by the Seller's solicitor not be sufficient, the Seller shall be liable to pay to the Listing Brokerage on demand, any deficiency in commission and taxes owing on such commission.

~~In the event the buyer fails to complete the purchase and the deposit or any part thereof becomes forfeited, unended, directed or released to the Seller, the Seller then authorizes the Listing Brokerage to retain as commission for services rendered, fifty (50%) per cent of the amount of the said deposit forfeited, unended, directed or released to the Seller (but not to exceed the commission payable had a sale been consummated), and to pay the balance of the deposit to the Seller.~~

All amounts set out as commission are to be paid plus applicable taxes on such commission.

- 3. REPRESENTATION:** The Seller acknowledges that the Listing Brokerage has provided the Seller with written information explaining agency relationships, including information on Seller Representation, Sub-agency, Buyer Representation, Multiple Representation and Customer Service. The Seller understands that unless the Seller is otherwise informed, the co-operating brokerage is representing the interests of the buyer in the transaction. The Seller further acknowledges that the Listing Brokerage may be listing other properties that may be similar to the Seller's Property and the Seller hereby consents to the Listing Brokerage acting as an agent for more than one seller without any claim by the Seller of conflict of interest. Unless otherwise agreed in writing between Seller and Listing Brokerage, any commission payable to any other brokerage shall be paid out of the commission the Seller pays the Listing Brokerage.

~~The Seller hereby appoints the Listing Brokerage as the Seller's agent for the purpose of giving and receiving notices pursuant to any offer or agreement to purchase the Property.~~

MULTIPLE REPRESENTATION: The Seller hereby acknowledges that the Listing Brokerage may be entering into buyer representation agreements with buyers who may be interested in purchasing the Seller's Property. In the event that the Listing Brokerage has entered into or enters into a buyer representation agreement with a prospective buyer for the Seller's Property, the Listing Brokerage will obtain the Seller's written consent to represent both the Seller and the buyer for the transaction at the earliest practical opportunity and in all cases prior to any offer to purchase being submitted or presented.

The Seller understand and acknowledges that the Listing Brokerage must be impartial when representing both the Seller and the buyer and equally protect the interests of the Seller and buyer. The Seller understands and acknowledges that when representing both the Seller and the buyer, the Listing Brokerage shall have a duty of full disclosure to both the Seller and the buyer, including a requirement to disclose all factual information about the Property known to the Listing Brokerage.

However, the Seller further understands and acknowledges that the Listing Brokerage shall not disclose:

- that the Seller may or will accept less than the listed price, unless otherwise instructed in writing by the Seller;
- that the buyer may or will pay more than the offered price, unless otherwise instructed in writing by the buyer;
- the motivation of or personal information about the Seller or buyer, unless otherwise instructed in writing by the party to which the information applies or unless failure to disclose would constitute fraudulent, unlawful or unethical practice;
- the price the buyer should offer or the price the Seller should accept; and
- the Listing Brokerage shall not disclose to the buyer the terms of any other offer.

However, it is understood that factual market information about comparable properties and information known to the Listing Brokerage concerning potential uses for the Property will be disclosed to both Seller and buyer to assist them to come to their own conclusions.

Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be entitled or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices.

MULTIPLE REPRESENTATION AND CUSTOMER SERVICE: The Seller understands and agrees that the Listing Brokerage also provides representation and customer service to other sellers and buyers. If the Listing Brokerage represents or provides customer service to more than one seller or buyer for the same trade, the Listing Brokerage shall, in writing, at the earliest practicable opportunity and before any offer is made, inform all sellers and buyers of the nature of the Listing Brokerage's relationship to each seller and buyer.

INITIALS OF LISTING BROKERAGE:

INITIALS OF SELLER(S):



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- 4. REFERRAL OF ENQUIRIES:** The Seller agrees that during the Listing Period, the Seller shall advise the Listing Brokerage immediately of all enquiries from any source whatsoever, and all offers to purchase submitted to the Seller shall be immediately submitted to the Listing Brokerage by the Seller before the Seller accepts or rejects the same. If any enquiry during the Listing Period results in the Seller's accepting a valid offer to purchase during the Listing Period or within the Holdover Period after the expiration of the Listing Period described above, the Seller agrees to pay the Listing Brokerage the amount of commission set out above, payable within five (5) days following the Listing Brokerage's written demand therefor.
- 5. MARKETING:** The Seller agrees to allow the Listing Brokerage to show and permit prospective buyers to fully inspect the Property during reasonable hours and the Seller gives the Listing Brokerage the sole and exclusive right to place "For Sale" and "Sold" sign(s) upon the Property. The Seller consents to the Listing Brokerage including information in advertising that may identify the Property. The Seller further agrees that the Listing Brokerage shall have sole and exclusive authority to make all advertising decisions relating to the marketing of the Property during the Listing Period. The Seller agrees that the Listing Brokerage will not be held liable in any manner whatsoever for any acts or omissions with respect to advertising by the Listing Brokerage or any other party, other than by the Listing Brokerage's gross negligence or wilful act.
- 6. WARRANTY:** The Seller represents and warrants that the Seller has the exclusive authority and power to execute this Authority to offer the Property for sale and that the Seller has informed the Listing Brokerage of any third party interests or claims on the Property such as rights of first refusal, options, easements, mortgages, encumbrances or otherwise concerning the Property, which may affect the sale of the Property.
- 7. INDEMNIFICATION AND INSURANCE:** The Seller will not hold the Listing Brokerage and representatives of the Brokerage responsible for any loss or damage to the Property or contents occurring during the term of this Agreement caused by the Listing Brokerage or anyone else by any means, including theft, fire or vandalism, other than by the Listing Brokerage's gross negligence or wilful act. ~~The Seller agrees to indemnify and save harmless the Listing Brokerage and representatives of the Brokerage and any co-operating brokerage from any liability, claim, loss, cost, damage or injury, including but not limited to loss of the commission payable under this Agreement, caused or contributed to by the breach of any warranty or representation made by the Seller in this Agreement and, if attached, the accompanying data form. The Seller warrants that the Property is insured, including personal liability insurance against any claims or damages resulting from bodily injury or property damage to others, caused in any way, on or at the Property, and the Seller indemnifies the Brokerage and all of its employees, representatives, salespersons and brokers (listing Brokerage) and any co-operating brokerage and all of its employees, representatives, salespersons and brokers (co-operating brokerage) from and against any claims against the listing Brokerage or co-operating brokerage made by anyone who attends or visits the Property.~~
- 8. ENVIRONMENTAL INDEMNIFICATION:** ~~The Seller agrees to indemnify, and save harmless the Listing Brokerage and representatives of the Brokerage and any co-operating brokerage from any liability, claim, loss, cost, damage or injury, including but not limited to the cost of the Property, being affected by any contaminants or environmental problems.~~
- 9. FAMILY LAW ACT:** ~~The Seller hereby warrants that spousal consent is not necessary under the provisions of the Family Law Act, R.S.O. 1990, unless the spouse of the Seller has executed the consent hereinafter provided.~~
- 10. FINDERS FEES:** The Seller acknowledges that the Brokerage may be receiving a finder's fee, reward and/or referral incentive, and the Seller consents to any such benefit being received and retained by the Brokerage in addition to the commission as described above.
- 11. VERIFICATION OF INFORMATION:** The Seller authorizes the Listing Brokerage to obtain any information from any regulatory authorities, governments, mortgagees or others affecting the Property and the Seller agrees to execute and deliver such further authorizations in this regard as may be reasonably required. The Seller hereby appoints the Listing Brokerage or the Listing Brokerage's authorized representative as the Seller's attorney to execute such documentation as may be necessary to effect obtaining any information as aforesaid. The Seller hereby authorizes, instructs and directs the above noted regulatory authorities, governments, mortgagees or others to release any and all information to the Listing Brokerage. [Signature]
- 12. USE AND DISTRIBUTION OF INFORMATION:** ~~Subject to the provisions of Schedule A to the Listing Agreement, the Seller consents to the collection, use and disclosure of personal information by the Brokerage for the purpose of listing and marketing the Property including, but not limited to: listing and advertising the Property using any medium including the Internet; disclosing Property information to prospective buyers, brokerages, salespersons and others who may assist in the sale of the Property; such other use of the Seller's personal information as is consistent with listing and marketing of the Property. The Seller consents, if this is an MLS® Listing, to placement of the listing information and sales information by the Brokerage into the database(s) of the MLS® System of the appropriate Board, and to the posting of any documents and other information (including, without limitation, photographs, images, graphics, audio and video recordings, virtual tours, drawings, floor plans, architectural designs, artistic renderings, surveys and listing descriptions) provided by or on behalf of the Seller into the database(s) of the MLS® System of the appropriate Board. The Seller hereby indemnifies and saves harmless the Brokerage and/or any of its employees, servants, brokers or sales representatives from any and all claims, liabilities, suits, actions, losses, costs and legal fees caused by, or arising out of or resulting from the posting of any documents or other information (including, without limitation, photographs, images, graphics, audio and video recordings, virtual tours, drawings, floor plans, architectural designs, artistic renderings, surveys and listing descriptions) as aforesaid. The Seller acknowledges that the database, within the board's MLS® System is the property of the real estate board(s) and can be licensed, resold, or otherwise dealt with by the board(s). The Seller further acknowledges that the real estate board(s) may, during the term of the listing and thereafter, distribute the information in the database, within the board's MLS® System to any persons authorized to use such service which may include other brokerages, government departments, appraisers, municipal organizations and others; market the Property, at its option, in any medium, including electronic media; during the term of the listing and thereafter, compile, retain and publish any statistics including historical data within the board's MLS® System and retain, reproduce and display photographs, images, graphics, audio and video recordings, virtual tours, drawings, floor plans, architectural designs, artistic renderings, surveys and listing descriptions which may be used by board members to conduct comparative analyses; and make such other use of the information as the Brokerage and/or real estate board(s) deem appropriate, in connection with the listing, marketing and~~

INITIALS OF LISTING BROKERAGE: [Signature]

INITIALS OF SELLER(S): [Signature]



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selling of real estate during the term of the listing and thereafter. The Seller acknowledges that the information, personal or otherwise ("information"), provided to the real estate board or association may be stored on databases located outside of Canada, in which case the information would be subject to the laws of the jurisdiction in which the information is located.

In the event that this Agreement expires or is cancelled or otherwise terminated and the Property is not sold, the Seller, by initialling:

consent to allow other real estate board members to contact the Seller after expiration or other termination of this Agreement to discuss listing or otherwise marketing the Property.



- 13. SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms of this Agreement.
- 14. CONFLICT OR DISCREPANCY:** If there is any conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement, including any Schedule attached hereto, shall constitute the entire Authority from the Seller to the Brokerage. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein.
- 15. ELECTRONIC COMMUNICATION:** This Agreement and any agreements, notices or other communications contemplated thereby may be transmitted by means of electronic systems, in which case signatures shall be deemed to be original. The transmission of this Agreement by the Seller by electronic means shall be deemed to confirm the Seller has retained a true copy of the Agreement.
- 16. ELECTRONIC SIGNATURES:** If this Agreement has been signed with an electronic signature the parties hereto consent and agree to the use of such electronic signature with respect to this Agreement pursuant to the *Electronic Commerce Act, 2000, S.O. 2000, c17* as amended from time to time.
- 17. SCHEDULE(S)** A and data form attached hereto form(s) part of this Agreement.

THE LISTING BROKERAGE AGREES TO MARKET THE PROPERTY ON BEHALF OF THE SELLER AND REPRESENT THE SELLER IN AN ENDEAVOUR TO OBTAIN A VALID OFFER TO PURCHASE THE PROPERTY ON THE TERMS SET OUT IN THIS AGREEMENT OR ON SUCH OTHER TERMS SATISFACTORY TO THE SELLER.

[Signature]
(Authorized to bind the Listing Brokerage)

Nov. 3/21
(Date)

Brad Dykeman

(Name of Person Signing)

THIS AGREEMENT HAS BEEN READ AND FULLY UNDERSTOOD BY ME, I ACCEPT THE TERMS OF THIS AGREEMENT AND I ACKNOWLEDGE ON THIS DATE I HAVE SIGNED UNDER SEAL. Any representations contained herein or as shown on the accompanying data form respecting the Property are true to the best of my knowledge, information and belief.

SIGNED, SEALED AND DELIVERED I have hereunto set my hand and seal:

Alvarez & Marsal Canada Inc.

(Name of Seller)

[Signature]
(Signature of Seller/Authorized Signing Officer)

(Seal)

(Date)

(Tel. No.)

[Signature]
(Signature of Seller/Authorized Signing Officer)

(Seal)

(Date)

(Tel. No.)

SPOUSAL CONSENT: The undersigned spouse of the Seller hereby consents to the listing of the Property herein pursuant to the provisions of the Family Law Act, R.S.O. 1990 and hereby agrees to execute all necessary or incidental documents to further any transaction provided for herein.

(Spouse)

(Seal)

(Date)

(Tel. No.)

DECLARATION OF INSURANCE

The Salesperson/Broker/Broker of Record

Daniel Rogers

(Name of Salesperson/Broker/Broker of Record)

hereby declares that he/she is insured as required by REBBA.

Dan Rogers

(Signature(s) of Salesperson/Broker/Broker of Record)

ACKNOWLEDGEMENT

The Seller(s) hereby acknowledge that the Seller(s) fully understand the terms of this Agreement and have received a copy of this Agreement on the day of, 20

(Signature of Seller)

(Date)

(Signature of Seller)

(Date)

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Schedule A to the Listing Agreement

THIS AGREEMENT made as of the 3rd day of November 2021.

BETWEEN:

**ALVAREZ AND MARSAL CANADA INC. SOLELY IN ITS CAPACITY AS COURT-
APPOINTED RECEIVER OF AXESS PICKERING LTD.
AND NOT ITS PERSONAL OR CORPORATE CAPACITY
(the "Seller" or "Vendor")**

OF THE FIRST PART

- and -

**CUSHMAN & WAKEFIELD ULC, BROKERAGE
("C&W" or the "Advisor")**

OF THE SECOND PART

WHEREAS:

- (a) The Vendor acts in its capacity as court-appointed receiver and manager of Axess Pickering Ltd. The Vendor was appointed by Order of the Honourable Justice Koehnen of the Ontario Superior Court of Justice (the "**Court**") dated October 12, 2021 (the "**Appointment Order**");
- (b) Subject to approval of the Court as to any sale, the Vendor has the power and authority to offer for sale the property municipally known as 1525 Pickering Parkway in the city of Pickering, Ontario (hereinafter the "**Property**");
- (c) The Vendor is seeking approval of the Court in respect of a process for the submission of bids and ultimate sale of the Property (the "**Sale Process**");
- (d) The Vendor seeks to offer the Property for sale on the open market to prospective purchasers (the "**Prospects**"); and
- (e) The Vendor has agreed to appoint C&W as its exclusive agent and advisor while C&W has agreed to accept such appointment on the terms and conditions provided herein.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of C&W's services in accordance with the covenants and agreements contained herein (the receipt and sufficiency of which are hereby acknowledged by each of the parties), the parties hereto covenant, agree and represent as follows:

1. Responsibilities of C&W

C&W shall act as the advisor to the Vendor in the identification, solicitation of and negotiations with Prospects for the Property and shall use its best commercial efforts to obtain commitments from such Prospects. C&W shall promote and protect the best interests of the Vendor and shall bring its professional expertise to perform its obligations under this Agreement.

Without limiting the generality of the foregoing, C&W shall:

- a) upon receipt of the Vendor's instructions as outlined below, offer the Property for sale on an un-priced basis save and except for on the Multiple Listings Service ("**MLS**") for which the price shall be \$1.00 (as a price is required);
- b) facilitate an open and fair market process for the sale for the Property, provide recommendations to the Vendor on appropriate strategy, and provide professional advisory services related to the sale of the Property including, vetting of Prospects, financial and non-financial analysis of received offers and negotiating the fair market price for the offering;
- c) prepare the promotional material for the Property;
- d) assemble and package due diligence materials in a virtual data room;
- e) diligently advertise the availability of the Property, provided that no advertisement, notice, flyer, brochure or other document (the "**Advertisement**") relating to the Property shall be disclosed to the public by C&W unless and until such Advertisement has been previously reviewed and approved by the Vendor. C&W agrees and acknowledges that the Vendor has the sole discretion to approve or reject any Advertisement presented by C&W, in its sole discretion;
- f) actively promote the offering in its day-to-day activities and contacts with Prospects and within the real estate community;
- g) send the relevant marketing materials to the Prospects who inquire as well as disseminate the offering to the public market on MLS as agreed to in the preceding OREA Listing Agreement;
- h) place advertisement in the Globe & Mail – Real Estate section upon request by the Vendor;
- i) cooperate with other brokerages/agents (the "**Cooperating Brokerage**"), introducing to Prospects to whom C&W is not already dealing or has not solicited. C&W shall provide marketing information to Cooperating Agents;
- j) ensure that all offers made by Prospects are in writing and that such offers shall be submitted promptly to the Vendor, including offers received from Cooperating

Agents. C&W acknowledges that it has no authority to promise, commit or bind itself or the Vendor to any offers and/or counteroffers made by Prospects or accept any such offers and/or counter offers on behalf of the Vendor;

- k) report verbally and in writing to the Vendor and provide ongoing information reflecting the status of the offering;
- l) not disclose to any person or entity during the Term (as hereinafter defined) and after the expiry or earlier termination of the Agreement any information concerning the Vendor, the Property and any Prospects unless the information is not considered to be confidential by the Vendor unless the Vendor has first agreed to such disclosure; and
- m) Provide such other advice or services as may be required by the Vendor.

2. **Authority of the Advisor**

C&W shall have authority to:

- a) Promote the sale of the Property as described above;
- b) Identify C&W as the listing brokerage to Prospects and cooperating agents;
- c) Distribute to Prospects all marketing material regarding the offering, as appropriate; and
- d) Contact, communicate, negotiate, and solicit Prospects (all negotiations by C&W shall be subject to the prior approval of the Vendor).

3. **Advertisement Expenses & Third Party Consultants**

All advertising and sales promotion shall be subject to the approval of the Vendor and all such advertisement and promotional material shall be prepared, published and distributed by and at the expense of C&W. All third party reports and legal fees shall be subject to the approval of the Vendor and payable at the expense of the Vendor.

4. **Commission Payable to C&W**

4.1 The Vendor shall pay to C&W upon the successful completion of sale of the Property, a commission equivalent to 1.75% percent of the selling price of the Property (the "**Listing Fee**"). In the event that there is a Cooperating Brokerage representing the Buyer, the Listing Fee shall be increased to 2.75% and C&W hereby agrees to pay said Cooperating Brokerage a fee of one (1.00%) percent (the "**Co-operating Fee**").

The Vendor acknowledges that payment of HST applies on all commissions payable. As it relates to the commission payable, a sale constitutes a sale of the individual Property, share transaction, redemption, exercise of first right to purchase, option or other form of sale or transfer of the rights of the subject Property.

The Vendor agrees to notify the Advisor of the successful completion or closing forthwith following same. The commission due to C&W pursuant to this Agreement in respect of any transaction hereunder, shall be payable to C&W immediately upon the successful completion of a sale of the Property (which is subject to the approval of the Court).

4.2 The Vendor agrees with C&W that should a Prospect introduced to the Vendor by C&W or by a cooperating agent during the Term and proceed with successful completion of the sale of the Property within a period of one hundred and twenty (120) days after the termination or expiration of this Agreement (the "**Holdover Period**"), a commission shall be paid to C&W in the amount set out in paragraph 4.1. In this Section 4.2, the expression "introduced to the Vendor" means any Prospect where C&W can produce some reasonable form of verification that C&W has engaged the Prospect in a dialogue confirming some level of interest by the Prospect in considering the suitability of the Property for its use and such Prospect was identified on a list (such Prospects will have, at a minimum, signed confidentiality agreements with C&W and been introduced to the Property by C&W or a co-operating agent).

4.3 Notwithstanding paragraph 4.1 above, the Advisor acknowledges that OBG Axess Limited Partnership ("**OBG Axess**"), or such party, or any of its affiliates, the "**Excluded Party**") has submitted an Agreement of Purchase and Sale (the "**OBG Axess APS**") prior to the Listing Agreement being executed. The parties hereby agree that if, within 21 days of Court approval of the Sale Process, the Excluded Party submits an offer to purchase the Property in a form acceptable to the Vendor then C&W shall not be entitled to a commission but shall only be entitled to a reimbursement of its expenses to a maximum amount of \$10,000.

4.4 The Vendor agrees that during the Term of this Agreement (as hereinafter defined), the Vendor shall advise C&W of all enquiries related to a potential purchase of the Property from any source whatsoever and all offers to purchase submitted to the Vendor shall immediately be submitted to C&W before the Vendor accepts or rejects same.

4.5 It is further understood that C&W acts as the listing brokerage for the Vendor, owes a fiduciary duty to the Vendor and will be compensated by the Vendor pursuant to this Agreement. The Vendor agrees to the possibility of dual agency where C&W may be acting for the Prospect as well as the Vendor.

The Vendor represents that, to the knowledge of the Vendor, there is currently no listing mandate with any Realtor for the sale of the Property and upon execution hereof, C&W shall be our sole and exclusive agent/brokerage for the sale of the Property during the term of this Agreement.

5. Term

5.1 The term of this Agreement shall begin upon acceptance of this Agreement (the "**Commencement Date**") and shall expire one minute before midnight, six (6) months following the Commencement Date (the "**Term**"). Notwithstanding any provision in this Schedule A or the Listing Agreement that proceeds this, C&W shall not advertise the Property on MLS until the Vendor provides expressed written authority to do so and all marketing materials have been approved by the Vendor. C&W shall have five (5) business days following said approval to post the offering on MLS.

5.2 The Vendor shall have the right to terminate the Listing Agreement in the following circumstances: (i) the Sale Process is not approved by the Court; (ii) if the Vendor obtains any information or knowledge of any gross negligence or malfeasance on the part of the Advisor in the performance of any of the Advisor's obligations and agreements hereunder, in which event, the Vendor shall have the option to terminate the Listing Agreement without notice and without prejudice to the Vendor right to recover from the Advisor damages for the breach by the Advisor of such obligations and agreements and without the right of the Advisor to collect any fees hereunder; or (iii) by giving the Advisor 30 days' written notice of such termination.

5.3 Notwithstanding any other provision of the Listing Agreement, in the event of termination pursuant to Section 5.2 of this Schedule A, no commission shall be payable pursuant to Section 2 of the OREA Form or Section 4 of this Schedule A.

5.4 C&W acknowledges and agrees that, notwithstanding any other term contained herein, in the event that the Vendor is discharged as Receiver of the Property for any reason, this Agreement shall be deemed to be automatically terminated and C&W shall not be entitled to any commission contemplated in this Agreement nor to any reimbursement of expenses incurred by C&W in connection with this Agreement.

7. Facsimile & Counterparts

This Agreement and any other agreement delivered in connection therewith, and any amendments thereto, may be executed by facsimile transmittal facilities, or electronic copy in a portable document format or such similar format and if so executed and transmitted, will be for all purposes as effective as if the parties had delivered an executed original of this Agreement, or such other agreement or amendment, as the case may be, and shall be deemed to be made when the receiving party confirms this Agreement, or such agreement or amendment, as the case may be, to the requesting party by facsimile or by electronic copy in a portable document format or such similar format.

This Agreement may be executed in several counterparts, and each of which so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument and, notwithstanding their date of execution, shall be deemed to bear date as of the date first written above.

8. Jurisdiction

This Agreement shall be governed and construed in accordance with the laws of the Province of Ontario. If any provision hereof is invalid or unenforceable in any jurisdiction where this Agreement is to be performed, such provision shall be deemed to be deleted and the remaining portions of this Agreement shall remain valid and binding on the parties hereto.

9. Binding Agreement & Discrepancy

This Agreement shall be binding upon and ensure to the benefit of the parties hereto, their respective successors and assigns. The parties hereto acknowledge that if there is a conflict between this document and the OREA Listing Agreement, this Schedule A shall prevail.

10. Additional Provisions

It is further understood and agreed that the Advisor shall offer the Property for sale on an "as is, where is" basis and that the Advisor shall make no representations, warranties, promises or agreements with respect to or in any way connected with the Property, including, without limitation, the title, description, fitness, state, condition, environmental status nor the existence of any work orders or deficiency notices affecting the Property.

In the event of any conflict between the provisions of this Schedule A and the provisions of the pre-printed portions of the Listing Agreement, the provisions of this Schedule A shall override and shall govern and prevail for all purposes.

[Remainder of the page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this 3rd day of November, 2021.

SIGNED

CUSHMAN & WAKEFIELD ULC, BROKERAGE

Per: 

Name: **Brad Dykeman**

I have authority to bind the corporation

**ALVAREZ AND MARSAL CANADA INC. SOLELY IN
ITS CAPACITY AS COURT-APPOINTED RECEIVER
OF AXESS PICKERING LTD. AND NOT IN ITS
PERSONAL OR CORPORATE CAPACITY**

Per: 

Stephen Ferguson

I have authority to enter into this Agreement

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

C&K MORTGAGE SERVICES INC. et al.	-and-	AXESS PICKERING LTD.
Applicants		Respondent

Court File No. CV-21-00669408-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD

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