

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

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

Applicants

and

AXESS PICKERING LTD.

Respondent

**MOTION RECORD  
(Sale Approval, Vesting and Interim Distribution Motion  
returnable January 20, 2022)**

January 14, 2022

**LAX O'SULLIVAN LISUS GOTTLIEB LLP**  
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Lawyers for Alvarez & Marsal Canada Inc. in its  
capacity as Court-Appointed Receiver

TO: **THE SERVICE LIST**

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

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

B E T W E E N:

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

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

Applicants

and

AXESS PICKERING LTD.

Respondent

**NOTICE OF MOTION  
(Sale Approval, Vesting and Interim Distribution Motion  
returnable January 20, 2022)**

The Receiver will make a Motion to a Judge presiding over the Commercial List on  
Thursday, January 20, 2022 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 (*choose appropriate option*)

☐ 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;

☒ By video conference.

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

### THE MOTION IS FOR

- (a) If necessary, abridging the time for service and filing of this notice of motion and the motion record, including the Second Report of the Receiver (the “**Second Report**”) or, in the alternative, dispensing with same, and further directing that any further service of this notice of motion is properly returnable on January 20, 2022;
- (b) Approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale between the Receiver and 1000059279 Ontario Inc. or an assignee thereof (the “**Purchaser**”) dated December 22, 2021, together with any further minor amendments thereto which may be deemed necessary by the Receiver in its sole opinion (the “**Sale Agreement**”);
- (c) Vesting title to the Property (as defined in the Sale Agreement) in the Purchaser free and clear of claims and encumbrances, other than claims and encumbrances specifically provided for in the Sale Agreement, upon closing of the Transaction and the delivery of a Receiver’s certificate to the Purchaser;

- (d) Sealing Confidential Appendices “E-G” to the Second Report until the closing of the sale of the Property (in the case of Confidential Appendix “F”) or further order of the Court (in the case of the other Confidential Appendices);
- (e) Authorizing the Receiver to make the interim distributions proposed in the Second Report to repay the Receiver’s Borrowings (as defined in the Second Report) plus interest and other chargeable amounts, and the amounts owing to the Applicants;
- (f) Approving the Second Report and the activities of the Receiver described therein; and
- (g) Such further and other relief as counsel may advise and this Court may permit.

#### **THE GROUNDS FOR THE MOTION ARE**

- (a) Pursuant to an Order of this Court made on October 12, 2021 (the “**Appointment Order**”), upon application by C&K Mortgage Services Inc. and 975393 Ontario Inc., Alvarez & Marsal Canada Inc. was appointed Receiver of Axess Pickering Ltd. (“**Axess**”);

#### Approval of the Transaction

- (b) On November 8, 2021, this Court made an Order (the “**Sale Process Order**”) which, among other things, approved the marketing and sales process for the assets of the Company as described in Section 7 of the First Report of the Receiver dated November 3, 2021, subject to such amendments to the sale process

as deemed necessary or appropriate by the Receiver (the “**Sale Process**”), including engagement of Cushman & Wakefield Inc. (“**C&W**”) to assist in development and implementation of the Sale Process;

- (c) In accordance with the Sale Process Order, the marketing of the Property commenced on November 8, 2021. Interested parties were informed that the deadline for submission of offers for the Property was 5:00 p.m. on Tuesday, December 14, 2021 (the “**Bid Deadline**”);
- (d) Steps taken by the Receiver in connection with the administration of the Sale Process and marketing of the Property included the following:
  - (i) providing email notification of the acquisition opportunity to approximately 9,300 investors / developers on November 9, 2021, November 16, 2021, November 23, 2021, November 29, 2021 and December 7, 2021 and to approximately 2,000 real estate agents on November 23, 2021;
  - (ii) placing an advertisement of the acquisition opportunity in the Globe and Mail newspaper on Thursday, November 18, 2021 and Tuesday, November 23, 2021;
  - (iii) posting the acquisition opportunity on the MLS system;
  - (iv) placing “For Sale” signs with frontage onto both Highway 401 and Pickering Parkway;

- (v) advertising the Property for sale in the Novae Res Urbis, Greater Toronto & Hamilton Area publication on November 17, 2021 and November 19, 2021, and in the Insolvency Insider on November 22, 2021, November 29, 2021, December 6, 2021, and December 13, 2021;
  - (vi) preparing a Confidential Information Memorandum to provide to interested parties who entered into a Confidentiality Agreement (“CA”) with the Receiver;
  - (vii) with the assistance of the Receiver’s real estate counsel, Dickinson Wright LLP, preparing both “conditional” and “unconditional” template agreements of purchase and sale (the “**Template APS**”) to provide to parties who intended to make an offer to purchase the Property;
  - (viii) engaging Pottinger Gaherty Environmental Consultants Ltd. to prepare an updated Phase I Environmental Site Assessment for the Property; and
  - (ix) establishing an online data room (the “**Data Room**”) to provide substantial diligence information to parties that signed a CA.
- (e) Eight offers were submitted (the “**First Round Offers**”) by the Bid Deadline;
  - (f) After consultation with the Receiver and the Applicant, C&W provided all parties who submitted First Round Offers with the opportunity to resubmit improved offers by 5:00 p.m. on Monday, December 20, 2021 (the “**Second Round Bid Submission Deadline**”);



- (g) By the Second Round Bid Submission Deadline, eight offers were submitted (the “**Second Round Offers**”) in the form of further marked-up Template APSs;
- (h) All of the First Round Offers and Second Round Offers required a notice registered on title to the Property by Pine Ridge Management Inc. (“Pine Ridge”) to be removed from title as a condition of sale;
- (i) In reviewing the Second Round Offers, the Receiver and C&W engaged in further discussions with one of the offering parties and was able to obtain a preferred offer;
- (j) The Receiver selected the preferred offer as the successful bid (the “**Successful Bid**”) and the Sale Agreement was executed by the Receiver on December 22, 2021;
- (k) An unredacted copy of the Sale Agreement is attached to the Second Report as Confidential Appendix “F”. Key aspects of the Sale Agreement are summarized in the Second Report;
- (l) A condition of the Sale Agreement is that this Court provide a sale approval and vesting order in favour of the Purchaser within 30 days of the Sale Agreement;
- (m) The Receiver recommends that the Court approve the Sale Agreement for the following reasons:
  - (i) The Property was marketed by the Receiver and C&W in accordance with the Sale Process Order;

- (ii) The Sale Process was robust and appropriately exposed the Property to the market on a broad basis to obtain the best transaction capable of being completed;
- (iii) The Purchaser is an affiliate of a multi-generational development company with a solid reputation for excellence and a long-standing history in residential development, and currently manages over 6,000 units in the GTA in various stages of development including planning, under construction and market sales. The Purchaser has provided a substantial deposit and has demonstrated its financial ability to close transactions of similar size and nature;
- (iv) The Purchaser completed substantial due diligence on the Property and demonstrated a keen understanding of the issues related to future development through significant conversations with both C&W and the City of Pickering;
- (v) No further diligence is required by the Purchaser to complete the Transaction and the only substantial remaining condition to closing is receipt of the Vesting Order;
- (vi) The Purchase Price is in excess of the value ascribed to the Property in both an appraisal completed by C&W in February 2021 on behalf of the Axess's sole shareholder Liberty Hamlets Inc. ("**Liberty**") and an

appraisal commissioned by the Receiver and completed by Avison Young in November 2021;

(vii) The proceeds realizable through the Transaction are meaningful and materially consistent with the highest bid received during the Sale Process; and

(viii) The Sale Agreement is supported by the Applicants.

(n) The Sale Agreement, which the Receiver has accepted (subject to approval by this Court), contemplates that the Receiver will complete the Transaction and that the Property described in the Sale Agreement will be vested in the Purchaser;

#### Interim Distributions

(o) The Receiver anticipates that the projected proceeds will be sufficient to repay the amounts outstanding to the Applicant C&K Mortgage Services Inc. and fund the remainder of the receivership proceedings;

(p) No stakeholder opposes an interim distribution to the Applicants, who are undisputed to rank in priority directly behind the Receiver's charge and ahead of all other stakeholders;

(q) Based on the relative priorities described in the Second Report, the Receiver seeks the Court's approval to make an interim distribution or distributions upon closing of the Transaction to repay the Receiver's Borrowings plus interest and other

chargeable amounts, and the amounts owing to the C&K Mortgage Services Inc., including interest, fees and other associated chargeable amounts;

- (r) The Receiver will retain any surplus funds pending further order of this Court;

#### Sealing Order

- (s) The information subject to the sealing request contains commercially sensitive information, which if disclosed would prejudice all stakeholders in the event that the Transaction does not close for any reason. If the Transaction does not close, it is likely that another sale process may be required and, in the absence of a sealing order, future bidders would have access to the amount of the purchase price in the Transaction, which would adversely affect any such future realization;

#### Approval of the Second Report and the Receiver's Conduct and Activities

- (t) The Receiver has carried out its duties and responsibilities in accordance with the terms of the Appointment Order;
- (u) The grounds set out in the Second Report;
- (v) Section 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (w) Rules 1.04, 2.03, 3.02, and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (x) 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 Second Report;
- (b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

January 14, 2022

**LAX O'SULLIVAN LISUS GOTTLIEB LLP**

Counsel

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Toronto ON M5H 1J8

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

TO: **THE 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  
OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 C. C.43, AS AMENDED**

THE HONOURABLE	)	THURSDAY, THE 20th
	)	
JUSTICE	)	DAY OF JANUARY, 2022

B E T W E E N:

*(Court Seal)*

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

Applicants

and

AXESS PICKERING LTD.

Respondent

**APPROVAL AND VESTING ORDER**

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 in the form attached to the Notice of Motion dated January 14, 2022 as Schedule “A” was heard this day by judicial videoconference due to the COVID-19 pandemic.

ON READING the Second Report of the Receiver dated January 14, 2022 (the “**Second Report**”) and on reading and 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 Second Report, and all supplementary motion materials, if any, 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 Transaction (as that term is defined in the Notice of Motion) is hereby approved, and the execution of the Sale Agreement (as defined in the Notice of Motion) by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as it considers necessary for the completion of the Transaction and for the conveyance of the Property (as defined in the Sale Agreement) to the Purchaser (as defined in the Sale Agreement).

3. THIS COURT ORDERS that upon closing of the Transaction and the delivery to the Purchaser of a Receiver’s certificate substantially in the form attached as **Schedule “A”** hereto (the “**Receiver’s Certificate**”), all of the Debtor’s right, title and interest in and to the Property described in the Sale Agreement and listed on **Schedule “B”** hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges or other financial or monetary claims,

whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”), including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Koehnen dated October 12, 2021; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule “C” hereto (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include those specifically provided for in the Sale Agreement), and for greater certainty, this Court orders that all of the Claims affecting or relating to the Property are hereby expunged and discharged as against the Property.

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

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



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

7. THIS COURT ORDERS that, notwithstanding:

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

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

8. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

9. THIS COURT ORDERS that the interim distributions proposed in the Second Report are hereby approved and that the Receiver is hereby authorized to make the interim distributions proposed in the Second Report in the following amounts and in the following priority:

- (a) First, to repay the indebtedness with respect to the Receiver's Borrowing Charge;  
and
- (b) Second, to the Applicants up to the amount of the indebtedness owed to the Applicants.

10. THIS COURT ORDERS that **Confidential Appendices "E-G"** to the Second Report shall be sealed and not form part of the public record and any persons served with a copy of it shall keep it and its contents confidential and shall not disclose its contents to any person except their legal counsel until the closing of the sale of the Property (in the case of **Confidential Appendix "F"**) or further order of the Court (in the case of the other Confidential Appendices).

11. THIS COURT ORDERS that the Second Report and the activities described therein be and are hereby approved.

12. THIS COURT ORDERS that the Receiver shall have no personal or corporate liability in connection with completing the Transaction or distributing the proceeds, excepting any liability resulting from gross negligence or wilful misconduct.

13. 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.

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

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## Schedule A – Form of Receiver’s Certificate

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:

*(Court Seal)*

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

Applicants

and

AXESS PICKERING LTD.

Respondent

**RECEIVER’S CERTIFICATE****RECITALS**

A. Pursuant to an Order of the Honourable Justice Koehnen of the Ontario Superior Court of Justice (the "**Court**") dated October 12, 2021, Alvarez & Marsal Canada Inc. was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of Axess Pickering Ltd. (the "**Debtor**").

B. Pursuant to an Order of the Court dated [DATE], the Court approved the agreement of purchase and sale made as of December 22, 2021 (the "**Sale Agreement**") between the Receiver and 1000059279 Ontario Inc. or assignee thereof (the "**Purchaser**") and provided for the vesting

in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section ● of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Property payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section ● of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

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

Per: \_\_\_\_\_

Name:

Title:

**Schedule B – Purchased Property****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 C

## REGISTRATIONS TO BE DELETED FROM PIN 26330 - 0016 LT

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO
DR1978274	2021/03/01	Charge	\$8,200,000	Axess Pickering Ltd.	C & K Mortgage Services Inc. 975393 Ontario Inc.
DR1978275	2021/03/01	No Assgn Rent Gen		Axess Pickering Ltd.	C & K Mortgage Services Inc. 975393 Ontario Inc.
DR1978279	2021/03/01	Charge	\$1,500,000	Axess Pickering Ltd.	Sagewise Capital Corporation
DR1988782	2021/04/01	Notice		Pine Ridge Management Inc.	Pine Ridge Management Inc.
DR2015350	2021/06/15	Charge	\$883,630	Axess Pickering Ltd.	Batista, Gina RNV Investments, LLC

C&K MORTGAGE SERVICES INC. et al.  
Applicants

-and- AXESS PICKERING LTD.  
Respondent

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**ORDER**

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Court-Appointed Receiver



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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**NOTICE OF MOTION**

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

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

**BETWEEN:**

**C&K MORTGAGE SERVICE INC.**

**and 975393 ONTARIO INC.**

**APPLICANTS**

**- and -**

**AXESS PICKERING LTD.**

**RESPONDENT**

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

**JANUARY 14, 2022**

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## 1.0 INTRODUCTION

- 1.1 This report (the “**Second 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 Service 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”**. A copy of the First Report to Court of the Receiver dated November 3, 2021 (the “**First Report**”), without appendices, is attached hereto as **Appendix “B”**.
- 1.3 Background information with respect to Axess and the circumstances leading to the appointment of the Receiver are provided in the First Report.
- 1.4 On November 8, 2021, this Court made an Order (the “**Sale Process Order**”), which, among other things, approved the marketing and sale process for the assets of the Company 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 “**Sale Process**”), including the engagement of Cushman & Wakefield Inc. (“**C&W**”) to assist in development and

implementation of the Sale Process. Copies of the Sale Process Order and Endorsement of Justice McEwen are attached hereto as **Appendix “C”**.

## **2.0 TERMS OF REFERENCE AND DISCLAIMER**

- 2.1 In preparing this Second 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 the Company’s sole shareholder Liberty Hamlets Inc (“**Liberty**”) (collectively, the “**Information**”).
- 2.2 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.
- 2.3 This Second 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 Second 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 Second Report different than the provisions of this paragraph.

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

### 3.0 PURPOSE OF THIS REPORT

- 3.1 The purpose of this Second Report is to:

- (a) support the Receiver's motion for orders, among other things:
  - (i) approving the transaction (the "**Transaction**") contemplated by an agreement of purchase and sale between the Receiver and 1000059279 Ontario Inc. or assignee thereof<sup>1</sup> (the "**Purchaser**") dated December 22, 2021, together with any further minor amendments thereto which may be deemed necessary by the Receiver in its sole opinion (the "**Sale Agreement**");
  - (ii) vesting title to the Property in the Purchaser, free and clear of claims and encumbrances, other than claims and encumbrances specifically provided for

<sup>1</sup> The Receiver understands that 1000059279 Ontario Inc. intends to assign the agreement to Pickering Valley Developments Limited.

in the Sale Agreement, upon closing of the Transaction and the delivery of a Receiver's certificate to the Purchaser (the "**Vesting Order**");

- (iii) sealing Confidential Appendices "E-G" to the Second Report until the closing of the sale of the Property (in the case of Confidential Appendix "F") or further order of the Court (in the case of Confidential Appendices "E" and "G");
  - (iv) authorizing the Receiver to make the Interim Distribution (as defined herein) to the Applicants; and
  - (v) approving this Second Report and the activities of the Receiver described herein;
- (b) report to the Court on the results of the Sale Process;
  - (c) provide a general update on key aspects of the receivership proceedings (the "**Receivership Proceedings**"), including the Receiver's review of the respective claims of interests registered on title to the Property; and
  - (d) report to the Court on the Receiver's activities since the date of the First Report.

#### **4.0 SALE PROCESS SUMMARY**

- 4.1 In accordance with the Sale Process Order, marketing of the Property commenced on November 8, 2021. Interested parties were informed that the deadline for submission of offers for the Property was 5:00 p.m. on Tuesday, December 14, 2021 (the "**Bid Deadline**").



4.2 Steps taken by the Receiver and C&W in connection with the administration of the Sale Process and marketing of the Property included the following:

- (a) providing email notification of the acquisition opportunity to approximately 9,300 investors / developers on November 9, 2021, November 16, 2021, November 23, 2021, November 29, 2021 and December 7, 2021 and to approximately 2,000 real estate agents on November 23, 2021;
- (b) placing an advertisement of the acquisition opportunity in the Globe and Mail newspaper on Thursday, November 18, 2021 and Tuesday, November 23, 2021 (the **“Globe Advertisement”**);
- (c) posting the acquisition opportunity on the MLS system (the **“MLS Listing”**);
- (d) placing “For Sale” signs with frontage onto both Highway 401 and Pickering Parkway;
- (e) advertising the Property for sale in the Novae Res Urbis, Greater Toronto & Hamilton Area publication on November 17, 2021 and November 19, 2021 (the **“Novae Res Urbis Advertisement”**), and in the Insolvency Insider on November 22, 2021, November 29, 2021, December 6, 2021, and December 13, 2021 (the **“Insolvency Insider Advertisement”**);
- (f) preparing a Confidential Information Memorandum (**“CIM”**) to provide to interested parties who entered into a Confidentiality Agreement (**“CA”**) with the Receiver;
- (g) with the assistance of the Receiver’s real estate counsel, Dickinson Wright LLP, (**“DW”**) preparing both “conditional” and “unconditional” template agreements of

purchase and sale (the “**Template APSs**”) to provide to parties who intended to make an offer to purchase the Property;

- (h) engaging Pottinger Gaherty Environmental Consultants Ltd. to prepare an updated Phase I Environmental Site Assessment (the “**Updated Phase I ESA**”) for the Property; and
- (i) establishing an online data room (the “**Data Room**”) to provide substantial diligence information to parties that signed a CA.

Copies of the Globe Advertisement, the Novae Res Urbis Advertisement, the Insolvency Insider Advertisement, the “For Sale” signage, and the MLS Listing are attached collectively to this as **Appendix “D”**.

- 4.3 Throughout the Sale Process, 52 groups executed CAs and were provided access to the Data Room.
- 4.4 Eight offers were submitted (the “**First Round Offers**”) by the Bid Deadline. The Receiver reviewed the First Round Offers, including a summary prepared by C&W and the form of marked-up Template APSs. All of the First Round Offers required the Property to be conveyed free and clear of the notice on title to the Property of Pine Ridge Management Inc. (the “**Pine Ridge Interest**”) in respect of ten (10) condominium units to be available for purchase by Tom Oldman, the principal of Pine Ridge, for \$2.00 each, as well as 16 additional parking spaces and lockers at no additional charge (the “**Condominium Sales Agreement**”), as further described below.

- 4.5 After consultation with the Receiver and the Applicants, C&W provided all parties who submitted First Round Offers with the opportunity to resubmit improved offers by 5:00 p.m. on Monday, December 20, 2021 (the “**Second Round Bid Submission Deadline**”).
- 4.6 By the Second Round Bid Submission Deadline, eight offers were submitted (the “**Second Round Offers**”) in the form of further marked-up Template APSs. As with the First Round Offers, all of the Second Round Offers required the Property to be conveyed free and clear of the Pine Ridge Interest. Included in the Second Round Offers were offers from two parties, including 258 (as defined below), who did not submit offers by the Bid Deadline, while the remaining six bids were resubmissions of First Round Offers with alternative bid terms.
- 4.7 In reviewing the Second Round Offers, the Receiver noted two superior offers: one bid which offered the highest total value for the Property but included open diligence conditions to close (“**Offer 1**”), and one bid which offered a marginally lower value but contained no conditions to close, other than receipt of a Vesting Order (“**Offer 2**”). After consultation with the Receiver, C&W held further discussions in respect of Offer 2 in an effort to increase the value of the unconditional offer. Based on subsequent negotiations, a revised Offer 2 (“**Revised Offer 2**”) was submitted with an increased value.
- 4.8 As the Revised Offer 2 (i) included a purchase price that was similar in value to Offer 1; (ii) was provided by an affiliate of a well-respected developer with a history of closing similar size transactions; (iii) had no further diligence conditions, and (iv) contained a substantial deposit, the Receiver selected the Revised Offer 2 as the successful bid (the

“**Successful Bid**”) and the Sale Agreement was executed by the Receiver on December 22, 2021.

4.9 A detailed report of the steps taken by C&W and specific results of the Sale Process, including a summary of First Round Offers and Second Round Offers is attached hereto as **Confidential Appendix “E”**.

4.10 An unredacted copy of the Sale Agreement is attached hereto as **Confidential Appendix “F”**. Key Aspects of the Sale Agreement are summarized in the following table (capitalized terms have the meanings ascribed to them in the Sale Agreement):

<b>Purchase Price</b>	The purchase price for the Property shall be payable in lawful money of Canada (the “ <b>Purchase Price</b> ”), subject to the adjustments as outlined below.
<b>Deposits</b>	<p>(a) a deposit equivalent to Five Percent (5%) of the Purchase Price (the “<b>First Deposit</b>”), shall be delivered within two (2) Business Days following mutual execution the Offer by irrevocable wire transfer drawn on an account at a Canadian chartered bank or trust company payable to the Vendor’s solicitor;</p> <p>(b) a further deposit equivalent to Five Percent (5%) of the Purchase Price (the “<b>Second Deposit</b>”), shall be delivered within ten (10) Business Days following delivery of the First Deposit by irrevocable wire transfer, payable to the Vendor’s solicitor;</p> <p>(c) the balance of the Purchase Price for the Property shall be paid, subject to the adjustments hereinafter referred to, to the Vendor’s solicitor on the Closing Date by irrevocable wire transfer to the Vendor’s solicitor (or as the Vendor may further direct).</p>
<b>Purchase Price Adjustments</b>	The Purchase Price for the Property shall be adjusted as of the Closing Date in respect of realty taxes, flat/fixed water and sewer rates and charges, utility deposits, if any, and all other items usually adjusted with respect to properties similar to the Property that apply. Such adjustments shall be pro-rated where appropriate for the relevant period on the basis of the actual number of days elapsed during such period prior to the Closing Date itself to be apportioned to the Purchaser.
<b>Closing Date</b>	Closing shall take place on the date which is fifteen (15) Business Days following the later of the granting of Approval of the

	Agreement by the Court and issuance of the Vesting Order, or such other date as the parties or their respective solicitors may mutually agree upon in writing (the “ <b>Closing Date</b> ” or “ <b>Closing</b> ”).
<b>Closing Conditions</b>	The Vendor shall bring a motion to the Court for Approval of the Agreement and an order vesting title to the Property in the Purchaser within thirty days of the Vendor’s acceptance of the Offer (the “ <b>Approval Date</b> ”). The Vesting Order shall be granted, and the Vendor shall deliver title to the Property free and clear of all encumbrances other than permitted encumbrances, but specifically free and clear of the Condominium Sale Agreement.

- 4.11 An initial deposit of 5% of the Purchase Price was delivered by the Purchaser to DW on December 23, 2021. A further 5% deposit was delivered by the Purchaser to DW on January 12, 2022.
- 4.12 As noted above, it is a requirement of the Sale Agreement that the Property is conveyed to the Purchaser free and clear of existing mortgages, charges and notices registered against title to the Property, including the Pine Ridge Interest.
- 4.13 In addition, the Sale Agreement requires that a Vesting Order be granted and contemplates the usual mechanism requiring the Receiver to deliver to the Purchaser a Certificate of the Receiver (in the form attached to the proposed Approval and Vesting Order sought in this motion), which will certify that all of the conditions in the Sale Agreement have been satisfied or waived, and that the balance of the Purchase Price (as defined in the Sale Agreement), has been paid in full by the Purchaser.

*The Sale Process was reasonable and the Sale Agreement should be approved*

4.14 The Receiver recommends the Court approve the Sale Agreement for the following reasons:

- (a) the Property was marketed by the Receiver and C&W in accordance with the Sale Process Order;
- (b) the Sale Process was robust and appropriately exposed the Property to the market on a broad basis to obtain the best transaction capable of being completed;
- (c) the Purchaser is an affiliate of a multi-generational development company with a strong reputation in the industry and a long-standing history in residential development, who currently manages over 6,000 units in the GTA in various stages of development including planning, under construction and market sales. The Purchaser has provided a substantial deposit and has demonstrated its financial ability to close transactions of similar size and nature;
- (d) the Purchaser completed substantial due diligence on the Property and demonstrated a keen understanding of the issues related to future development through significant conversations with both C&W and the City of Pickering;
- (e) no further diligence is required by the Purchaser to complete the Transaction and the only substantial remaining condition to closing is receipt of the Vesting Order;
- (f) the Purchase Price is in excess of the value ascribed to the Property in both an appraisal completed by Cushman & Wakefield in February 2021 on behalf of Liberty

and an appraisal commissioned by the Receiver and completed by Avison Young in November 2021;

- (g) the proceeds realizable through the Transaction are meaningful, will be sufficient to discharge the amounts owing to the Secured Creditors (as defined below), and are materially consistent with the highest bid received during the Sale Process; and
- (h) the Sale Agreement is supported by the Applicants.

*Unsolicited email received after execution of the Sale Agreement*

- 4.15 As noted above, as part of the Second Round Offers, C&W received an unconditional offer (the “**Initial 258 Offer**”) from a party (“**258**”) representing a purchase price substantially less than the Successful Bid. Given the low purchase price and the fact that the Initial 258 Offer was received after the Bid Deadline established in the Sale Process, limited consideration was given to the Initial 258 Offer in evaluation of Second Round Offers.
- 4.16 On January 4, 2022, after execution of the Sale Agreement, the real estate agent representing 258 provided an unsolicited email to C&W, attached as **Confidential Appendix “G”**, seemingly increasing 258’s offer to a purchase price in excess of the Purchase Price pursuant to the Sale Agreement (the “**Revised 258 Offer**”).
- 4.17 In consultation with C&W, the Receiver noted that 258 had (i) limited access to the Data Room (access granted immediately prior to the Bid Deadline) and (ii) minimal discussion with C&W, and therefore appeared to not have conducted substantial diligence on the Property. In addition, C&W’s only contact with 258 was through 258’s agent and therefore C&W was unable to comment on 258’s potential ability to close a transaction. Moreover,

the Revised 258 Offer was received almost two weeks after the Receiver had accepted the Successful Bid, entered into the Sale Agreement with the Purchaser, and scheduled this sale approval motion. Pursuant to the Sale Agreement, the Receiver is required to bring the Sale Agreement to the Court for approval, and as such has not engaged with 258 in respect of the Revised 258 Offer.

## 5.0 RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

5.1 A summary of the Receiver's Interim Statement of Receipts and Disbursements for the period October 12, 2021 to January 7, 2022 (the "**Reporting Period**") is provided below:

<b>Receipts &amp; Disbursements</b>	
<i>For the period 10/12/2021 through 01/07/2022</i>	
<i>Figures in CAD</i>	
<b>Receipts</b>	
Receiver's Certificate Advances	\$ 150,000
<b>Total Receipts</b>	<b>\$ 150,000</b>
<b>Disbursements</b>	
Professional Fees and Disbursements	\$ 107,452
HST Paid	12,831
Property Consultants Fees	11,250
Receiver's Certificate Interest	3,306
Property Insurance Costs	2,419
Other	73
<b>Total Disbursements</b>	<b>\$ 137,331</b>
<b>Net Cash Flow</b>	<b>\$ 12,669</b>
<b>Opening Cash Balance</b>	-
Net Cash Flow	12,669
<b>Ending Cash Balance</b>	<b>\$ 12,669</b>



5.2 Pursuant to the Appointment Order, the Receiver was authorized to borrow up to \$500,000 by way of Receiver's Certificates. As of the date of this Report, the Receiver has issued three Receiver's Certificates, totaling \$150,000. The Receiver's Certificates bear interest at 12% per annum and are subject to a 1% commitment fee (the "**Receiver's Borrowings**"). Pursuant to the Appointment Order, the Receiver's Borrowings are secured by the Receiver's Borrowings Charge which ranks in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, but subordinate in priority to the Receiver's Charge and certain other charges as set out in the BIA.

5.3 Disbursements for the period totaled \$137,331 and comprised primarily of:

- (a) Professional Fees of \$107,452 (including fees paid to the Receiver and the Receiver's independent counsel, Lax O'Sullivan Lisus Gottlieb LLP ("**LOLG**"));
- (b) HST paid on fees and costs of \$12,831;
- (c) Property consultant's fees of \$11,250; and
- (d) Receiver's Certificate interest, and property insurance and other costs of \$5,798.

## 6.0 PRELIMINARY SECURITY REVIEW SUMMARY

6.1 As further described in the First Report, the Property is subject to a first ranking mortgage, registered by the Applicants on March 1, 2021 (the "**First Mortgage**"), (ii) a second ranking mortgage, registered by Sagewise Capital Corporation ("**Sagewise**") on March 1, 2021 (the "**Second Mortgage**") and a third ranking charge on the Property registered by RNV Investments and Gina Batista on June 15, 2021 (the "**Third Mortgage**") (the First

Mortgage, the Second Mortgage and the Third Mortgage collectively the “**Secured Creditors**”). In addition to the Secured Creditors, Pine Ridge Management Inc. (“**Pine Ridge**”) registered a notice on title to the Property. Subject to usual and customary qualifications and assumptions, LOLG has confirmed to the Receiver that the security held by the Secured Creditors is valid and enforceable in respect of the collateral covered by their respective security.

Pine Ridge

- 6.2 As further described in the First Report, Liberty Hamlets purchased the Property from Pine Ridge by way of an agreement of purchase and sale dated January 31, 2019, as amended several times, including on February 26, 2021, whereby the parties agreed to final additional consideration payable to Pine Ridge and its principal Tom Oldman in the form of the Condominium Sales Agreement.
- 6.3 Pine Ridge’s and/or Mr. Oldman’s rights under the Condominium Sales Agreement were expressly subordinated to the Applicants’ security on March 1, 2021, and were registered as a notice on title to the Property on April 1, 2021.
- 6.4 LOLG’s security review concluded that the Condominium Sales Agreement did not grant a security interest to Pine Ridge or Mr. Oldman. However, on January 12, 2022, Pine Ridge’s outside counsel wrote to the Receiver and stated that, while Pine Ridge does not take issue with approval of the Sale Agreement or distribution to the Applicants in respect of the First Mortgage, it is the position of Pine Ridge that the Pine Ridge Interest ranks in

priority to both the Second Mortgage and the Third Mortgage. A copy of this email is attached as **Appendix “H”**.

## **7.0 PROPOSED INTERIM DISTRIBUTIONS**

- 7.1 The Receiver anticipates that the projected Transaction Proceeds will be sufficient to repay the amounts outstanding to the Secured Creditors and fund the remainder of the Receivership Proceedings. However, as of the date of this Second Report, the value and priority of any claim by Pine Ridge or Mr. Oldman in connection with the Condominium Sales Agreement has not been confirmed or determined.
- 7.2 In light of the communication from Pine Ridge’s counsel, the Receiver believes it would be appropriate for the parties to review and consider their respective positions concerning priorities. Therefore, at this time, if the Sale Agreement is approved and the sale of the Property to the Purchaser closes, the Receiver only seeks the Court’s approval to make an interim distribution or distributions upon closing of the Transaction to repay the Receiver’s Borrowings plus interest and other chargeable amounts, and the amounts owing to the Applicants under the First Mortgage including interest, fees and other associated chargeable amounts, as none of the parties oppose a distribution to the Applicants (the **“Interim Distribution”**).
- 7.3 The below table summarizes amounts owing in respect of the First Mortgage estimated as of January 20, 2022. A draft payout statement, provided by the Applicants is attached as **Appendix “I”**. Per-diem interest after January 20, 2022 and the Applicants’ legal fees in connection with these Receivership Proceedings will be in addition to the below summary.

<b>C&amp;K Mortgage Services Payout Statement Summary</b>	
<b>Estimated balance at 01/20/2022</b>	
<i>Figures in CAD \$</i>	
Principal	\$ 8,200,000.00
Interest	379,221.91
Late Interest	8,782.41
Fees	41,166.90
Estimated Legal Fees	5,000.00
<b>Balance Due</b>	<b>\$ 8,634,171.22</b>

7.4 After or pending the closing of the Transaction and the Interim Distribution, the Receiver intends to engage with the parties regarding the disputed relative priorities with the Company's remaining stakeholders. The Receiver will retain surplus funds pending further Order of this Court.

## **8.0 SEALING ORDER**

8.1 The Receiver requests that certain confidential and commercially sensitive information related to the Sale Process and the Transaction for which approval is sought, including information regarding the bids received through the Sale Process, should be sealed pending closing of the Transaction or further order of the Court. Such confidential information is contained in **Confidential Appendices "E-G"** to this Second Report.

8.2 In the view of the Receiver, information about the value of bids received and the amount of the consideration to be paid by the Purchaser for the Transaction could, if disclosed, be harmful and materially prejudicial to the Receivership estate and Axxess' stakeholders. With respect to the estate, significant and specific prejudice could arise in the event of any further marketing of the Property if the Transaction does not close as anticipated.

## 9.0 ACTIVITIES OF THE RECEIVER TO DATE

9.1 In addition to the activities described in detail in this Second Report, the Receiver has conducted the following activities since the date of the First Report:

- (a) arranged for a property appraisal and the Updated Phase 1 ESA;
- (b) maintained the Case Website;
- (c) managed the Receiver's trust account;
- (d) corresponded with C&W concerning the Sale Process;
- (e) reviewed information provided by the Company and the Applicants regarding the Property;
- (f) corresponded extensively with key stakeholders in these proceedings, including the Applicants;
- (g) carried out the Sale Process in accordance with the Sale Process Order including;
  - (i) reviewed and commented on the Template APSs prepared by DW;
  - (ii) reviewed and commented on the investment summary and CIM prepared by C&W;
  - (iii) assisted in compilation of and reviewed the contents the Data Room prepared by C&W;
  - (iv) reviewed and commented on the Globe Advertisement;

- (v) reviewed all offers submitted in the Sale Process and consulted with C&W regarding same;
- (vi) negotiated and executed the APS;
- (h) attended at Court in connection with obtaining the Sale Process Order;
- (i) arranged for appropriate insurance coverage for the Property;
- (j) filed the necessary outstanding GST returns for Axess; and
- (k) prepared this Second Report, and brought this motion.

## 10.0 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 3.1(a) of this Second Report.

All of which is respectfully submitted this 14th day of January 2022.

**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.alvarezmarsal.com/axess](http://www.alvarezmarsal.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.

\_\_\_\_\_  
DJ

**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

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

Lawyers for the Applicants





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

***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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<b>Appendix A</b>	<b>Appointment Order dated October 12, 2021</b>
<b>Appendix B</b>	<b>Receiver's Notice</b>
<b>Appendix C</b>	<b>Endorsement of Justice Koehnen dated October 12, 2021</b>
<b>Appendix D</b>	<b>Receiver's letter to D. Hughes re: OBG Axess LP Agreement of Purchase and Sale</b>
<b>Appendix E</b>	<b>Listing Agreement</b>

## 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](http://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 Axess 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, Axess’ 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**”)<sup>1</sup> 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

<sup>1</sup> 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 19<sup>th</sup> Letter**”), to detail the Receiver’s concerns in respect of the OBG Axess APS. A copy of the October 19<sup>th</sup> Letter is attached as **Appendix D**. As of the date of this Report, the concerns identified by the Receiver in the October 19<sup>th</sup> 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



TM  
Schedule "A" TM

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



“**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

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

8 Nov 21

Order to go as per the draft filed and signed. No one opposes.  
Counsel for Sagewise Capital sought an adjournment so it "could crunch the numbers." I declined to grant the adjournment given that Sagewise had been properly served and the order was merely to approve a sales process which I find to be fair and reasonable to the stakeholders. There are really no "numbers to crunch" until the sales approval stage.

*McE T.*

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

**LAX O'SULLIVAN LISUS GOTTLIEB LLP**

Counsel

Suite 2750, 145 King Street West  
Toronto ON M5H 1J8

**Andrew Winton** LSO#: 54473I

awinton@lolg.ca

Tel: 416 644 5342

**Connia Chen** LSO#: 73147U

cchen@lolg.ca

Tel: 416 956 1146

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



## Sample Marketing Material

### Novae Res Urbis



**FOR SALE**  
**HIGH-RISE RESIDENTIAL  
 DEVELOPMENT OPPORTUNITY**  
**1525 PICKERING PARKWAY,  
 PICKERING**

- Site area of 1.27 acres
- In-place zoning supports an FSI of 5.75X and height of 77m
- 600m from the Pickering GO Station pedestrian bridge
- Within walking distance of a variety of retail and commercial amenities

FOR MORE INFORMATION PLEASE CONTACT:

**DAN ROGERS\*\***  
 SENIOR VICE PRESIDENT  
 dan.rogers@cushwake.com

**TREVOR HENKE\***  
 VICE PRESIDENT  
 trevor.henke@cushwake.com

**JEFF LEVER\***  
 VICE PRESIDENT  
 jeff.lever@cushwake.com

**REILLY HAYHURST\***  
 ASSOCIATE  
 reilly.hayhurst@cushwake.com

CLICK FOR BROCHURE

### Globe & Mail



**FOR SALE**  
 High-Rise Residential  
 Development Opportunity  
**1525 PICKERING PARKWAY | PICKERING**

- Site area of 1.27 acres
- In-place zoning supports an FSI of 5.75X and height of 77m
- 600m from the Pickering GO Station pedestrian bridge
- Within walking distance of commercial and retail amenities

Please contact:

**Trevor Henke\***  
 trevor.henke@cushwake.com

**Jeff Lever\***  
 jeff.lever@cushwake.com

**Dan Rogers\*\***  
 dan.rogers@cushwake.com

**CUSHMAN & WAKEFIELD**  
**416 862 1800**

\*\*Broker \*Sales Representative Cushman & Wakefield ULC, Brokerage

### Insolvency Insider

Text: Alvarez & Marsal Canada Inc., in its capacity as court-appointed receiver of Axxess Pickering Ltd., has engaged Cushman & Wakefield ULC to solicit offers for a high-rise residential development property with as of right zoning supportive of an FSI of 5.75X coverage and a maximum building height of 77m. The Property is located in downtown Pickering and is within walking distance of the GO Train Station and the Pickering Town Centre. For more information, please contact Dan Rogers at dan.rogers@cushwake.com.

### Signage



**CUSHMAN & WAKEFIELD**

**FOR SALE**

Development Land - 1.27+/- acres  
 1525 Pickering Parkway

**DAN ROGERS\*\* | TREVOR HENKE\***  
**JEFF LEVER\* | REILLY HAYHURST\***

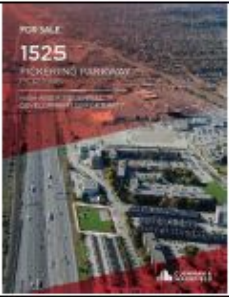
**416 862 1800**

Cushman & Wakefield ULC, Brokerage \*\*Broker \*Sales Representative

## MLS Listing

Prepared by: NANCY SEITH, Administrator  
 CUSHMAN & WAKEFIELD, BROKERAGE  
 1100-3100 Steeles Ave East, Markham, ON L3R8T3 416-494-9500

Printed on 11/16/2021 8:39:04 AM

	<p><b>1525 Pickering Pkwy</b>  <b>Pickering Ontario L1V7E9</b>          Pickering Town Centre Durham 266-8-S  <b>SPIS: N</b>  <b>Taxes: \$29,848.94 / 2021 / Annual</b>  <b>Legal: PT LT 20 CON 1 PICKERING AS IN D42810 EXCEPT PT 1, DOM: 1</b></p> <p><b>List: \$1.00</b>  <b>For Sale</b></p> <p><b>For Sale</b>  <b>Last Status: New</b></p> <p><b>Land</b>  <b>Designated</b>  <b>Residential</b></p> <p><b>Occup: Vacant</b>  <b>Freestanding: SPIS: N</b>  <b>Use Term Mnths: /</b>  <b>Holdover: 120</b>  <b>Franchise:</b></p> <p><b>Com Cndo Fee:</b>  <b>Dir/Cross St: Valley Farm Rd/Pickering Pkwy</b></p>
<p><b>MLS#: E5433226</b>  <b>Possession Remarks: Upon Closing</b>  <b>PIN#: 263300016</b></p>	<p><b>Sellers: Alvarez &amp; Marsal Canada Inc. in its capacity as Court-Appointed*</b>  <b>ARN#: 180102001630005</b>  <b>Contact After Exp: N</b></p>
<p><b>Total Area: 1.27 Acres</b>  <b>Ofc/Apt Area:</b>  <b>Indust Area:</b>  <b>Retail Area:</b>  <b>Apx Age:</b>  <b>Volts:</b>  <b>Amps:</b>  <b>Zoning: CC1 - City Centres 1</b>  <b>Truck Level:</b>  <b>Grade Level:</b>  <b>Drive-In:</b>  <b>Double Man:</b>  <b>Clear Height:</b>  <b>Sprinklers:</b>  <b>Heat:</b>  <b>Phys Hdcp-Eqp:</b></p>	<p><b>Survey:</b>  <b>Lot/Bldg/Unit/Dim: 257.77 x 224.93</b>  <b>Feet Lot</b>  <b>Lot Irreg:</b>  <b>Bay Size:</b>  <b>%Bldg:</b>  <b>Washrooms:</b>  <b>Water: Municipal</b>  <b>Water Supply:</b>  <b>Sewers: San+Storm Avail</b>  <b>A/C:</b>  <b>Utilities: A</b>  <b>Garage Type:</b>  <b>Park Spaces: #Trl Spc:</b>  <b>Energy Cert:</b>  <b>Cert Level:</b>  <b>GreenPIS:</b></p> <p><b>Soil Test:</b>  <b>Out Storage:</b>  <b>Rail: N</b>  <b>Crane:</b>  <b>Basement:</b>  <b>Elevator:</b>  <b>UFFI:</b>  <b>Assessment:</b>  <b>Chattels:</b>  <b>LLBO:</b>  <b>Days Open:</b>  <b>Hours Open:</b>  <b>Employees:</b>  <b>Seats:</b>  <b>Area Infl:</b></p>
<p><b>Bus/Bldg Name:</b>  <b>Actual/Estimated:</b>  <b>Taxes:</b>  <b>Insur:</b>  <b>Mgmt:</b>  <b>Maint:</b></p>	<p><b>For Year:</b>  <b>Heat:</b>  <b>Hydro:</b>  <b>Water:</b>  <b>Other:</b></p> <p><b>Gross Inc/Sales:</b>  <b>-Vacancy Allow:</b>  <b>-Operating Exp:</b>  <b>=NetIncB4Debt:</b></p> <p><b>Financial Stmt:</b>  <b>EstValueInv At Cost:</b>  <b>Com Area Upcharge:</b>  <b>% Rent:</b></p>
<p><b>Client Remks:</b> The Property represents a unique opportunity to acquire a 1.27 acre residential development site in close proximity to the Pickering GO Station and Pickering Town Centre. In-place planning policies support the development of the subject Site for a maximum height of 77 m and a 5.75x FSI. Additional property information is available upon receipt of an executed Confidentiality Agreement, on the Seller's form.</p> <p><b>Extras:</b>  <b>Brkage Remks:</b> (*Receiver of Access Pickering Ltd.) Complete CA to gain access to data room. 3rd LA is Jeff Lever (jeff.lever@cushwake.com). 4th LA is Reilly Hayhurst (reilly.hayhurst@cushwake.com). Commission fees will only be paid upon both completion of transaction &amp; collection from Vendor.</p>	
<p><b>CUSHMAN &amp; WAKEFIELD, BROKERAGE Ph: 416-862-0611 Fax: 416-359-2613</b>  <b>161 Bay St Suite 1500 Toronto M5J2S1</b>  <b>DANIEL ALEXANDER ROGERS, Broker 416-359-2352</b>  <b>WALTER TREVOR HENKE, Salesperson 416-756-5412</b>  <b>Contract Date: 11/15/2021</b>  <b>Expiry Date: 5/03/2022</b>  <b>Last Update: 11/16/2021</b></p> <p><b>Condition:</b>  <b>Cond Expiry:</b>  <b>CB Comm: 1.0%</b></p> <p><b>Ad: Y</b>  <b>Escape:</b>  <b>Original: \$1.00</b></p>	



**From:** [Phoenix, Graham](#)  
**To:** [Ferguson, Stephen](#)  
**Cc:** [tom.oldman@hotmail.com](mailto:tom.oldman@hotmail.com)  
**Subject:** Axess Pickering - PINERIDGE POSITION  
**Date:** Wednesday, January 12, 2022 12:32:59 PM  
**Attachments:** [image012.png](#)

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**[EXTERNAL EMAIL]**

Mr. Ferguson:

We are in the process of finalizing our retainer with Pineridge Investments in respect of the above-noted receivership. Mr. Oldman is copied hereto.

We understand there is a motion pending in which the Receiver is seeking approval of a proposed sale and, possibly, the distribution of proceeds.

We write to advise that our client does not take any issue with (a) the sale approval nor (b) a distribution of proceeds to the first mortgagee.

However, our client has a registered interest in the property and it is our client's current position that that interest ranks in priority to the second and third mortgagee. Accordingly, at this time no distribution should be made on account of the second and third mortgagee. Provided such relief is not sought at the next hearing, we will have no reason to oppose.

We are in the process of reviewing all materials and look forward to discussing the same with the Receiver and with the second and third mortgagee.

Finally, our client remains committed to amicably resolving all issues, in the most expedient and efficient manner (though it will protect its rights). We would hope that after the sale approval, we can coordinate with all interested parties to determine the next step in this proceedings in respect of the distribution of remaining funds.

We ask that you confirm that the Receiver will be limiting the relief sought as above and not seeking to distribute funds beyond the first mortgagee at this time.

We also ask that we be added to the service list.

Best regards,

**R. Graham Phoenix\***

Partner | Bankruptcy & Insolvency | Loopstra Nixon LLP

 416.748.4776 | C: 416.558.4492 | F: 416.746.8319



✉ [gphoenix@loonix.com](mailto:gphoenix@loonix.com) | [www.loopstranixon.com](http://www.loopstranixon.com)

135 Queens Plate Drive, Suite 600, Toronto, ON Canada M9W 6V7

\*Practising as RGP Professional Corporation



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**RESCOM Capital**  
1670 Bayview Avenue, Suite 400  
Toronto, Ontario M4G 3C2

T. 416.485.2636  
F. 416.482.4043  
[www.rescomcapital.com](http://www.rescomcapital.com)

Broker Licence: 10822 C & K Mortgage Services Inc. O/A Rescom Capital

January 12, 2022

**DRAFT**

**AXESS PICKERING LTD**  
**973 BROCK RD, UNIT 12**  
**PICKERING, ON L1W3A4**

## STATEMENT

**RE: First Mortgage on 1525 PICKERING PKWY, PICKERING, ON**

Dear AXESS PICKERING LTD

The amount owing on the above mortgage is calculated as follows:

Principal as at	September 1, 2021				\$ 8,200,000.00
Interest to	October 1, 2021				82,000.00
Late Interest to	November 1, 2021				820.00
Interest to	November 1, 2021				82,000.00
Late Interest to	December 1, 2021				1,648.20
Interest to	December 1, 2021				82,000.00
Late Interest to	January 1, 2022				2,484.68
Interest to	January 1, 2022				82,000.00
Late Interest to	January 20, 2022				3,329.53
Interest to	January 20, 2022	19 Days @	\$	2,695.89	51,221.91
Statement fee	2 @	\$	250.00	each	500.00
Wire fee					15.00
Extension fee	4 months @	\$	6,833	each	27,332.00
Late Payment	4 @	\$	200	each	800.00
HST on late fees (135771616RT0001)					104.00
Fees for enforcement proceedings	38.1 Hours @	\$	300		11,430.00
HST on Fees for enforcement proceedings late fees (135771616RT0001)					1,485.90
Legal fees (Forebarence agreement preparation)				Estimated	5,000.00
<b>TOTAL</b>	<b>Payable to C&amp;K Mortgage Services Inc. In Trust</b>				<b>\$ 8,634,171.22</b>

Per diem \$ 2,871.13 if payment not received by 1 PM.

Legal fees are not included.

Yours truly,  
C & K Mortgage Services Inc. O/A Rescom Capital

**DRAFT**

Eric Kis  
Controller  
[eric@rescomcapital.com](mailto:eric@rescomcapital.com)

e&oe

C&K MORTGAGE SERVICES INC. et al.  
Applicants

-and- AXESS PICKERING LTD.  
Respondent

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**MOTION RECORD  
(Sale Approval, Vesting and Interim Distribution Motion  
returnable January 20, 2022)**

**LAX O'SULLIVAN LISUS GOTTLIEB LLP**

Suite 2750, 145 King Street West  
Toronto ON M5H 1J8

**Andrew Winton** LSO#: 54473I

awinton@lolg.ca

Tel: 416 644 5342

**Patrick M. Wodhams** LSO#: 82991W

pwodhams@lolg.ca

Tel: 416 956 0116

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