

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
(Interim Distribution Motion)**

February 23, 2022

LAX O'SULLIVAN LISUS GOTTLIEB LLP
Counsel
Suite 2750, 145 King Street West
Toronto ON M5H 1J8

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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

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:

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

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AXESS PICKERING LTD.

Respondent

INDEX

Tab	Description	Page No.
1	Notice of Motion	3-8
2	Consent for Motion for Second Interim Distributions	9-17
3	Third Report to Court dated February 17, 2022	18-90

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

**NOTICE OF MOTION
(Interim Distribution Motion)**

The Receiver will make a Motion to a Judge presiding over the Commercial List on a date to be determined at 9:30 a.m., or as soon after that time as the Motion can be heard.

PROPOSED METHOD OF HEARING: The Motion is to be heard

☒ In writing under subrule 37.12.1(1) because it is on consent;

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

☐ In person;

☐ By telephone conference;

☐ By video conference.

-2-

- (a) If necessary, abridging the time for service and filing of this notice of motion and the motion record, including the Third Report of the Receiver (the “**Third Report**”) or, in the alternative, dispensing with same, and further directing that any further service of this notice of motion is properly returnable on the date upon which the motion is heard;
- (b) Authorizing the Receiver to make the Second Interim Distributions (as defined in the Third Report);
- (c) Approving the Third Report and the activities of the Receiver described therein; and,
- (d) Such further and other Relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

- (e) 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. (the “**Company**”);
- (f) On November 8, 2021, this Court made an Order which, among other things, approved the marketing and sales process for the lands and premises located at 1525 Pickering Parkway, Pickering, Ontario (the “**Property**”);

-3-

- (g) On January 20, 2022, this Court made an Order approving the transaction for the sale of the Property and authorizing the Receiver to make the Interim Distributions (as defined in the Second Report);
- (h) On February 14, 2022, the Receiver made the Interim Distributions to the Applicants, as further described in the Third Report;
- (i) Based on the relative priorities described in the Third Report, the Receiver now seeks the Court's authorization to make the Second Interim Distributions (as defined in the Third Report);
- (j) The Receiver consulted with known stakeholders concerning the Second Interim Distributions and is unaware of any opposition to the distributions;
- (k) The Parties have consented to the Order attached as Schedule "A";
- (l) After the Second Interim Distributions, the Receiver intends to finalize tax matters related to the Company and engage with the Company's remaining stakeholders to review and assess remaining claims in anticipation of a final distribution. The Receiver will retain any surplus funds pending further Order of this Court;
- (m) The Receiver has carried out its duties and responsibilities in accordance with the terms of the Appointment Order;
- (n) The grounds set out in the Third Report;

-4-

- (o) Section 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (p) Rules 1.04, 2.03, 3.02, and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (q) 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 Consent signed by the parties and/or their respective lawyers;
- (b) The Third Report; and
- (c) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

February 23, 2022

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

-5-

TO: **THE SERVICE LIST**

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

NOTICE OF MOTION

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Court-Appointed Receiver

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. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 C. C.43, AS AMENDED

B E T W E E N:

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

Applicants

and

AXESS PICKERING LTD.

Respondent

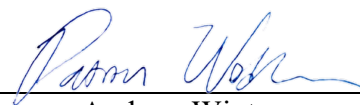
CONSENT

By their respective lawyers and authorized representatives, the Parties and the Receiver consent to an Order in the form attached hereto as **Schedule “A”**. No party affected by the Order is under disability.

DATED AT TORONTO, ONTARIO this 22nd day of February, 2022

**LAX O'SULLIVAN LISUS GOTTLIEB
LLP**

Per:



Andrew Winton

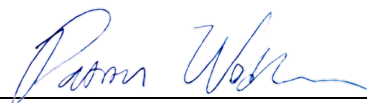
Lawyers for Alvarez & Marsal Canada Inc.
in its capacity as Court-Appointed Receiver

-2-

DATED AT TORONTO, ONTARIO this 22nd day of February, 2022

DICKINSON WRIGHT LLP

Per:



David P. Preger and David Z. Seifer
Lawyers for the Applicants

DATED AT PICKERING, ONTARIO this 22nd day of February, 2022

AXESS PICKERING LTD.

Per:



Dan Hughes
(I have authority to bind the Corporation)

Respondent

DATED AT PICKERING, ONTARIO this 22nd day of February, 2022

**LIBERTY HAMLETS
INCORPORATED**

Per:



Dan Hughes
(I have authority to bind the Corporation)

DATED AT AJAX, ONTARIO this 22nd day of February, 2022

DANIEL ROBERT HUGHES



-3-

DATED AT PICKERING, ONTARIO this 22nd day of February, 2022

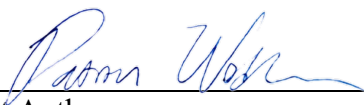
BLAIR GAGNON



DATED AT TORONTO, ONTARIO this 22nd day of February, 2022

975963 ONTARIO INC.

Per:

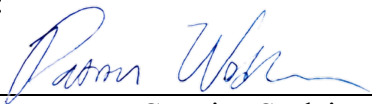


Grant Anthony
(I have authority to bind the Corporation)

DATED AT TORONTO, ONTARIO this 22nd day of February, 2022

**SCALZI PROFESSIONAL
CORPORATION**

Per:




Carmine Scalzi
Lawyers for Sagewise Capital Corporation

DATED AT TORONTO, ONTARIO this 22nd day of February, 2022

LOOPSTRA NIXON LLP

Per:



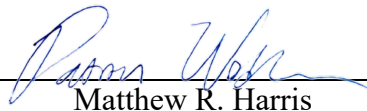
R. Graham Pheonix
Lawyers for Pine Ridge Management Inc.

-4-

DATED AT TORONTO, ONTARIO this 22nd day of February, 2022

**MATTHEW H. HARRIS,
PROFESSIONAL CORPORATION**

Per:



Matthew R. Harris

Lawyers for RNV Investments , LLC and
Gina Batista

DATED AT TORONTO, ONTARIO this 22nd day of February, 2022

SUTHERLAND LAW LLP

Per:



Thom Harley

Lawyers for Atlas Dewatering Corporation,
Quadrangle Architects Limited o/a BDP
Quadrangle, Fieldgate Construction
Management Ltd., Husson Limited,
Madhouse Advertising Inc., Paradigm
Transportation Solutions Limited,
Sutherland Law and Trace Engineering Ltd.

SCHEDULE "A"

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)	THE
)	
JUSTICE)	DAY OF FEBRUARY, 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

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 approving a second interim distribution, was read this day at the court house, 330 University Avenue, 9th Floor, Toronto ON M5G 1R7.

ON READING the Third Report of the Receiver dated February ●, 2022 and the consent of the Parties:

1. THIS COURT ORDERS that the time for and the method of service of the notice of motion and the motion record, including the Third Report are hereby abridged and validated, as

-2-

necessary, such that this motion is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS that the Second Interim Distributions proposed in the Third Report are hereby approved and that the Receiver is hereby authorized to make the Second Interim Distributions in the Third Report in the following amounts and in the following priority:

(a) First, to Sagewise Capital Corporation (“**Sagewise**”) up to the amount of the indebtedness owed to Sagewise; and

(b) Second, to Gina Batista & RNV Investments LLC in the amount of \$925,000.00.

3. THIS COURT ORDERS that the Third 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 making the interim distribution, 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.

-3-

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

(Signature of judge, officer or registrar)

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

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

CONSENT

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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

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

FEBRUARY 17, 2022

TABLE OF CONTENTS

1.0	INTRODUCTION	2
2.0	TERMS OF REFERENCE AND DISCLAIMER	3
3.0	PURPOSE OF THIS REPORT.....	4
4.0	SALE OF THE PROPERTY AND INTERIM DISTRIBUTIONS.....	5
5.0	RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS	6
6.0	SECURITY REVIEW SUMMARY AND SECOND INTERIM DISTRIBUTIONS	7
7.0	ACTIVITIES OF THE RECEIVER TO DATE.....	10
8.0	CONCLUSIONS AND RECOMMENDATIONS	11

INDEX TO APPENDICES

Appendix A	Appointment Order dated October 12, 2021
Appendix B	First Report to Court of the Receiver dated November 3, 2021 (without appendices)
Appendix C	Second Report to Court of the Receiver dated January 14, 2022 (without appendices)
Appendix D	Receiver's Certificate
Appendix E	Irrevocable Confirmation Re: Limited Claim Amount

1.0 INTRODUCTION

- 1.1 This report (the “**Third 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”**, and the Second Report to Court of the Receiver dated January 14, 2022 (the “**Second Report**”), without appendices is attached hereto as **Appendix “C”**.
- 1.3 Background information with respect to Axess and the circumstances leading to the appointment of the Receiver are as described in the First Report.
- 1.4 On January 20, 2022, this Court made an Order (the “**Approval and Vesting Order**”), which, among other things:
- (i) approved the transaction (the “**Transaction**”) for the sale of the Property as contemplated by an agreement of purchase and sale between the Receiver and Pickering Valley Developments Limited (the “**Purchaser**”); and

- (ii) authorized the Receiver to make the Interim Distributions (as defined in the Second Report) to the Applicants.

2.0 TERMS OF REFERENCE AND DISCLAIMER

- 2.1 In preparing this Third 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 Third 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 Third 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 Third Report different than the provisions of this paragraph.

2.4 Unless otherwise stated, all monetary amounts contained in this Third Report are expressed in Canadian dollars.

2.5 Further information about Axxess and copies of materials filed in the Proceedings are available on the Receiver's website at: www.alvarezandmarsal.com/axess (the "**Case Website**").

3.0 PURPOSE OF THIS REPORT

3.1 The purpose of this Third Report is to:

- (a) support the Receiver's motion for an order, among other things:
 - (i) authorizing the Receiver to make the Second Interim Distributions (as defined herein); and
 - (ii) approving this Third Report and the activities of the Receiver described herein;
- (b) report to the Court on the completion of the Transaction;
- (c) provide an update on key aspects of the receivership proceedings (the "**Receivership Proceedings**"), including the potential claims to the remaining proceeds from the Transaction; and
- (d) report to the Court on the Receiver's activities since the date of the Second Report.

4.0 SALE OF THE PROPERTY AND INTERIM DISTRIBUTIONS

- 4.1 As previously described, the Approval and Vesting Order authorized the Receiver to complete the Transaction and the Interim Distributions. On February 10, 2022 (the “**Closing Date**”), the Transaction closed for gross proceeds of \$15.25 million. A copy of the Receiver’s Certificate in respect of the Transaction is attached as **Appendix “D”**.
- 4.2 On February 14, 2022, the Receiver made Interim Distributions to the Applicants: (i) in the amount of \$152,212 to fully repay amounts owing under the Receiver’s Borrowings, including interest, and (ii) in the amount of \$8,747,884 to fully repay amounts owing under the First Mortgage, including interest, fees and legal costs¹.

¹ To simplify flow of funds, legal costs of the Applicants were paid directly from Receiver to Applicants’ counsel.

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 January 8, 2022 to February 15, 2022 (the "Reporting Period") is provided below:

Receipts & Disbursements	
<i>For the period 01/08/2022 through 02/15/2022</i>	
<i>Figures in CAD \$</i>	
Receipts	
Sale Proceeds	\$ 15,250,000
Total Receipts	\$ 15,250,000
Disbursements	
Property Sale Commission	\$ 266,875
Professional Fees and Disbursements	89,875
HST Paid	53,071
Property Tax	19,307
Property Insurance Costs	2,419
Receiver's Certificate Interest	2,212
Other	17
Total Disbursements	\$ 433,776
Net Cash Flow	\$ 14,816,224
Opening Cash Balance	12,669
Net Cash Flow	14,816,224
Less: Receiver's Certificate repayment	(150,000)
Less: First Mortgage repayment	(8,747,884)
Ending Cash Balance	\$ 5,931,009

5.2 Proceeds from the sale of the Property were realized by the Receiver on February 10, 2022, upon closing of the Transaction.

5.3 Disbursements for the period totaled \$433,776 and comprised primarily of:

- (a) Commission payable to Cushman & Wakefield ULC in respect of the Transaction;
- (b) Professional Fees of \$89,875 (including fees paid to the Receiver, the Receiver's independent counsel, Lax O'Sullivan Lisus Gottlieb LLP ("**LOLG**") and the Receiver's real estate counsel);
- (c) HST paid on fees and costs of \$53,071;
- (d) Property tax of \$19,307 relating to unpaid 2021 property tax and accrued 2022 property tax to the Closing Date; and
- (e) Property insurance cost, Receiver's Certificate interest, and other costs of \$4,649.

6.0 SECURITY REVIEW SUMMARY AND SECOND INTERIM DISTRIBUTIONS

- 6.1 As further described in the Second Report, following distribution the Applicants, the net proceeds from the sale of the Property are still subject to (i) 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 (the "**Third Mortgage**") registered by RNV Investments and Gina Batista (collectively the "**Third Mortgagees**") on June 15, 2021 (the Second Mortgage and the Third Mortgage collectively the "**Remaining Secured Creditors**"). In addition to the Remaining Secured Creditors, Pine Ridge Management Inc. ("**Pine Ridge**") registered a notice on title to the Property in respect of the Condominium Sales Agreement. Subject to usual and customary qualifications and assumptions, LOLG has confirmed to the Receiver that the security held by the Remaining Secured Creditors is valid and enforceable in respect of the collateral covered by their respective security.

- 6.2 Also as further described in the Second Report, 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, it was the position of Pine Ridge that the Pine Ridge Interest ranks in priority to both the Second Mortgage and the Third Mortgage. As such, as part of the Sale Approval and Vesting Order, the Receiver only sought interim distributions to the Applicants.
- 6.3 Since the date of the Second Report, the Receiver understands that Pine Ridge, Sagewise and the Third Mortgagees have continued discussions and have resolved outstanding issues related to priority. The Receiver understands that, while Pine Ridge intends to assert a substantial claim against the Company in respect of the Condominium Sales Agreement, Pine Ridge no longer asserts priority over the Second Mortgage. In addition, the Receiver understands that, subject to the Irrevocable Confirmation Re: Limited Claim Amount attached as **Appendix "E"** which limits the claim in respect of the Third Mortgage to \$922,500, Pine Ridge no longer asserts priority over the Third Mortgage.
- 6.4 Following the closing of the Transaction and payment of the Interim Distributions, the Receiver is holding in excess of \$5.9 million, which is sufficient to repay the amounts outstanding to the Remaining Secured Creditors and fund the Receivership Proceedings. As the Receiver has confirmed the priority of the Remaining Secured Creditors and disputes between the stakeholders over priority of the Company's secured creditors have been resolved, the Receiver seeks the Court's approval to make interim distributions in

respect of the Second Mortgage and Third Mortgage (the “**Second Interim Distributions**”).

- 6.5 The Receiver consulted with known stakeholders concerning the Second Interim Distributions and is unaware of any opposition to the distribution.
- 6.6 The below table summarizes amounts owing in respect of the Second Mortgage estimated as of February 11, 2022. Per-diem interest after February 11, 2022, and additional legal costs in connection with these Receivership Proceedings will be in addition to the below summary.

Sagewise Capital Corporation Payout Statement Summary	
Estimated balance at 02/11/2022	
<i>Figures in CAD \$</i>	
Principal	\$1,500,000.00
Interest	336,000.00
Late Fees	1,800.00
Default and Other Fees	5,423.75
Legal Fees	4,647.12
Balance Due	\$1,847,870.87

- 6.7 As noted above, the Irrevocable Confirmation Re: Limited Claim Amount limits the claim in respect of the Third Mortgage to \$922,500 (the “**Third Mortgage Amount**”). The Receiver has been provided sufficient evidence to support the quantum of Third Mortgage Amount.

Liberty Hamlets Creditors

- 6.8 On February 4, 2022, the Receiver received notice from counsel to a group of creditors of Liberty (the “**Liberty Creditors**”) asserting claims against Axess. The Receiver and LOLG have communicated to counsel to the Liberty Creditors, reminding the Liberty Creditors that paragraph 8 of the Appointment Order provides that no proceeding against or in respect of the Company shall be commenced or continued except with written consent of the Receiver or leave of the Court.
- 6.9 The Liberty Creditors have obtained judgment against Liberty, and the Receiver understands that the Liberty Creditors are considering pursuing a further claim against Axess. The Receiver will continue to review information provided in respect of the Liberty Creditors, and will report to the Court the outcome of this review at a future date. The Receiver understands that the Liberty Creditors either consent to or do not oppose the Second Interim Distributions.
- 6.10 After the Second Interim Distributions, the Receiver intends to finalize tax matters related to the Company and engage with the Company’s remaining stakeholders to review and assess remaining claims in anticipation of a final distribution. The Receiver will retain surplus funds pending further Order of this Court.

7.0 ACTIVITIES OF THE RECEIVER TO DATE

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

- (a) attending to matters related to the Transaction closing;
- (b) maintained the Case Website;
- (c) managed the Receiver's trust account;
- (d) corresponded extensively with key stakeholders in these proceedings;
- (e) arranged for cancellation of insurance coverage for the Property upon completion of the sale transaction; and
- (f) prepared this Third Report, and brought this motion.

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 3.1(a) of this Third Report.

All of which is respectfully submitted this 17th day of February 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.alvarezandmarsal.com/axess.

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

GENERAL

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

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

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

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

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

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

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

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

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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

TABLE OF CONTENTS

1.0	INTRODUCTION	2
2.0	PURPOSE OF THIS REPORT	2
3.0	TERMS OF REFERENCE AND DISCLAIMER	3
4.0	BACKGROUND.....	4
5.0	ACTIVITIES OF THE RECEIVER TO DATE.....	7
6.0	OBG AXESS OFFER	8
7.0	SALE OF THE PROPERTY.....	9
8.0	CONCLUSIONS AND RECOMMENDATIONS	12

INDEX TO APPENDICES

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

1.0 INTRODUCTION

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

2.0 PURPOSE OF THIS REPORT

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

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

3.0 TERMS OF REFERENCE AND DISCLAIMER

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

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

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

4.0 BACKGROUND

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

- 4.3 The Cash Consideration was funded by way of: i) a first ranking mortgage of \$8.2 million, registered by the Applicants on March 1, 2021 (the “**First Mortgage**”), (ii) a second ranking mortgage of \$1.5 million, registered by Sagewise Capital Corporation (“**Sagewise**”) on March 1, 2021 (the “**Second Mortgage**”), and (iii) funding from Liberty of \$300,000.
- 4.4 Closing costs in respect of the transfer of the Property, including prepaid interest, lender and referral fees, and tax and insurance amounts totaled \$2,580,130, and were funded by Liberty in the amount of \$1,696,500, and by a third ranking charge on the property in the amount of \$883,630, registered by RNV Investments and Gina Batista on June 15, 2021 (the “**Third Mortgage**”).
- 4.5 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**”)¹ with Pine Ridge to purchase the property for \$10 million. The Liberty APS was originally intended to close on April 4, 2019, but due to a series of extensions which required Liberty to provide additional deposits and consideration, including the Condominium Sale Agreement, the sale of the Property closed on March 1, 2021. In November 2019, Liberty constructed a showroom and began marketing ‘Axess Condominiums’, a proposed mixed-use development including a three storey podium and two point towers. The Axess Condominiums development envisions 22 storeys, including 320 residential units and 4 retail/commercial units, for total commercial gross floor area (“**GFA**”) of 16,490 square feet and residential GFA of 355,554 square feet.

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

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

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

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

5.0 ACTIVITIES OF THE RECEIVER TO DATE

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

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

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

6.0 OBG AXESS OFFER

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

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

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

7.0 SALE OF THE PROPERTY

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

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

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

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

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

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

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

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

8.0 CONCLUSIONS AND RECOMMENDATIONS

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

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

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



Per: Stephen Ferguson
Senior Vice-President



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

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

TABLE OF CONTENTS

1.0	INTRODUCTION	2
2.0	TERMS OF REFERENCE AND DISCLAIMER	3
3.0	PURPOSE OF THIS REPORT	4
4.0	SALE PROCESS SUMMARY	5
5.0	RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS	13
6.0	PRELIMINARY SECURITY REVIEW SUMMARY	14
7.0	PROPOSED INTERIM DISTRIBUTIONS	16
8.0	SEALING ORDER.....	17
9.0	ACTIVITIES OF THE RECEIVER TO DATE.....	18
10.0	CONCLUSIONS AND RECOMMENDATIONS	19

INDEX TO APPENDICES

Appendix A	Appointment Order dated October 12, 2021
Appendix B	First Report to Court of the Receiver dated November 3, 2021 (without appendices)
Appendix C	Sale Process Order and Endorsement of Justice McEwen dated November 8, 2021
Appendix D	Sample Marketing Materials
Confidential Appendix E	Sale Process Summary Prepared by C&W
Confidential Appendix F	Sale Agreement
Confidential Appendix G	Unsolicited Email From Real Estate Agent
Appendix H	Email from Counsel to Pine Ridge
Appendix I	Preliminary Payout Statement from C&K Mortgage Services Inc.

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 (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 thereof¹ (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

¹ 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):

Purchase Price	The purchase price for the Property shall be payable in lawful money of Canada (the “ Purchase Price ”), subject to the adjustments as outlined below.
Deposits	<p>(a) a deposit equivalent to Five Percent (5%) of the Purchase Price (the “First Deposit”), 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 “Second Deposit”), 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>
Purchase Price Adjustments	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.
Closing Date	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 “ Closing Date ” or “ Closing ”).
Closing Conditions	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 “ Approval Date ”). 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:

Receipts & Disbursements	
<i>For the period 10/12/2021 through 01/07/2022</i>	
<i>Figures in CAD</i>	
Receipts	
Receiver's Certificate Advances	\$ 150,000
Total Receipts	\$ 150,000
Disbursements	
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
Total Disbursements	\$ 137,331
Net Cash Flow	\$ 12,669
Opening Cash Balance	-
Net Cash Flow	12,669
Ending Cash Balance	\$ 12,669

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.

C&K Mortgage Services Payout Statement Summary	
Estimated balance at 01/20/2022	
<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
Balance Due	\$ 8,634,171.22

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 Axess' 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-21-00669408-00CL

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&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 January 20, 2022, 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. , as assigned in favour of Pickering Valley Developments Limited (the "Purchaser") and provided for the vesting

-2-

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; and (ii) 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 Transaction has been completed to the satisfaction of the Receiver; and
3. This Certificate was delivered by the Receiver at 11:30 a.m. on February 10, 2022.

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: Stephen Ferguson

Title: Senior Vice President

I have authority to bind the corporation

C & K MORTGAGE SERVICES INC. et al
Applicants

-and- AXESS PICKERING LTD.
Respondent

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

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

**PROCEEDING COMMENCED AT
TORONTO**

RECEIVER'S CERTIFICATE

DICKINSON WRIGHT LLP

Barristers & Solicitors
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Tel: 416-646-6867

Lawyers for the Applicants

IRREVOCABLE CONFIRMATION RE: LIMITED CLAIM AMOUNT

TO: Alvarez & Marsal Canada Inc. in its capacity a receiver and manager (the "Receiver") of all of the assets, undertakings and properties of Axxess Pickering Inc. ("Axxess")

AND TO: Lax O'Sullivan Lisus Gottlieb LLP, counsel to the Receiver

AND TO: Pine Ridge Management Inc. ("Pine Ridge")

AND TO: Loopstra Nixon LLP, counsel to Pine Ridge

RE: Limitation of Claim of Gina Battista and RNV Investments, LLC (the "Lenders")

WHEREAS Axxess is indebted to the Lenders under certain agreements, which indebtedness is secured by a charge/mortgage of land the principal amount of \$883,630.00 receipted as instrument no. DR2015350 on June 15, 2021 (the "Third Mortgage") over real property legally described in PIN 26330-0016 (LT).

AND WHEREAS the Lenders have previously provided to the Receiver details of their claim against Axxess under the Third Mortgage (the "Claim").

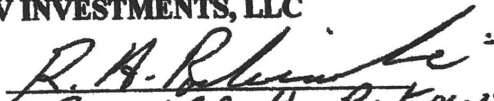
WE HEREBY SERVE YOU WITH NOTICE that Lenders have agreed with Pine Ridge that the gross value of such Claim shall not exceed \$922,500.00 (CAD) and **THAT THE LENDERS EACH HEREBY IRREVOCABLY CONFIRM** that their Claim is hereby advanced (and amended as necessary) in the adjusted gross total aggregate amount of \$922,500.00 (CAD) and that, for greater certainty, the Lenders shall accept such amount in full satisfaction of any and all indebtedness owing to them by Axxess.

This document may be executed either in original, pdf or DocuSign e-signature each of which when so executed and delivered shall be deemed to be an original signature of the party thereto.

DATED as of the 10th day of February 2022.


GINA BATISTA

RNV INVESTMENTS, LLC

Per: 
Name: RICHARD H. BISKOWSKI
Title: PRESIDENT
I have authority to bind the company.

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
(Interim Distribution Motion)**

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