



**First Report to Court of
KSV Restructuring Inc.
as Receiver and Manager of
all partnership interests in Mizrahi
Constantine (180 SAW) LP owned by Sam M
(180 SAW) LP Inc. and all shares in the capital
of Mizrahi Constantine (180 SAW) Inc. owned
by Sam M (180 SAW) Inc.**

June 14, 2024

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COURT FILE NUMBER: CV-24-00715326-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

CONSTANTINE ENTERPRISES INC.

APPLICANT

- AND -

SAM M (180 SAW) LP INC. AND
SAM M (180 SAW) INC.

RESPONDENTS

IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 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

FIRST REPORT OF
KSV RESTRUCTURING INC.
AS RECEIVER AND MANAGER

JUNE 14, 2024

1.0 Introduction

1. Pursuant to an order of the Ontario Superior Court of Justice (the “**Court**”) issued on June 4, 2024 (the “**Receivership Order**”), KSV Restructuring Inc. (“**KSV**”) was appointed as the receiver and manager (the “**Receiver**”) of (i) all partnership interests in Mizrahi Constantine (180 SAW) LP (the “**Partnership**”) owned by Sam M (180 SAW) LP Inc. (“**Mizrahi Partner**”); and (ii) all shares in the capital of Mizrahi Constantine (180 SAW) Inc. (the “**General Partner**”) owned by Sam M (180 SAW) Inc. (“**Mizrahi Shareholder**”, together with Mizrahi Partner, the “**Debtors**”), and in respect of both (i) and (ii), all dividends, distributions, and proceeds therefrom and substitutions therefor (collectively, the “**Property**”). A copy of the Receivership Order is provided in Appendix “A”.
2. The primary purpose of these receivership proceedings is to conduct a sale process for the Property (the “**Sale Process**”).

3. This report (the “**Report**”) is filed by KSV in its capacity as Receiver.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about the Debtors;
 - b) set out a proposed Sale Process for the sale of the Property and the terms of a proposed stalking horse agreement of purchase and sale dated June 14, 2024 between the Receiver and Constantine Enterprises Inc. (“**CEI**”), the Debtors’ only known secured creditor, (the “**Stalking Horse APS**”); and
 - c) recommend that this Court issue an order (the “**Sale Process Order**”):
 - i. approving the Sale Process; and
 - ii. approving the Stalking Horse APS for the purposes of acting as a “stalking horse” in the Sale Process as set out in the Stalking Horse APS.

1.2 Restrictions

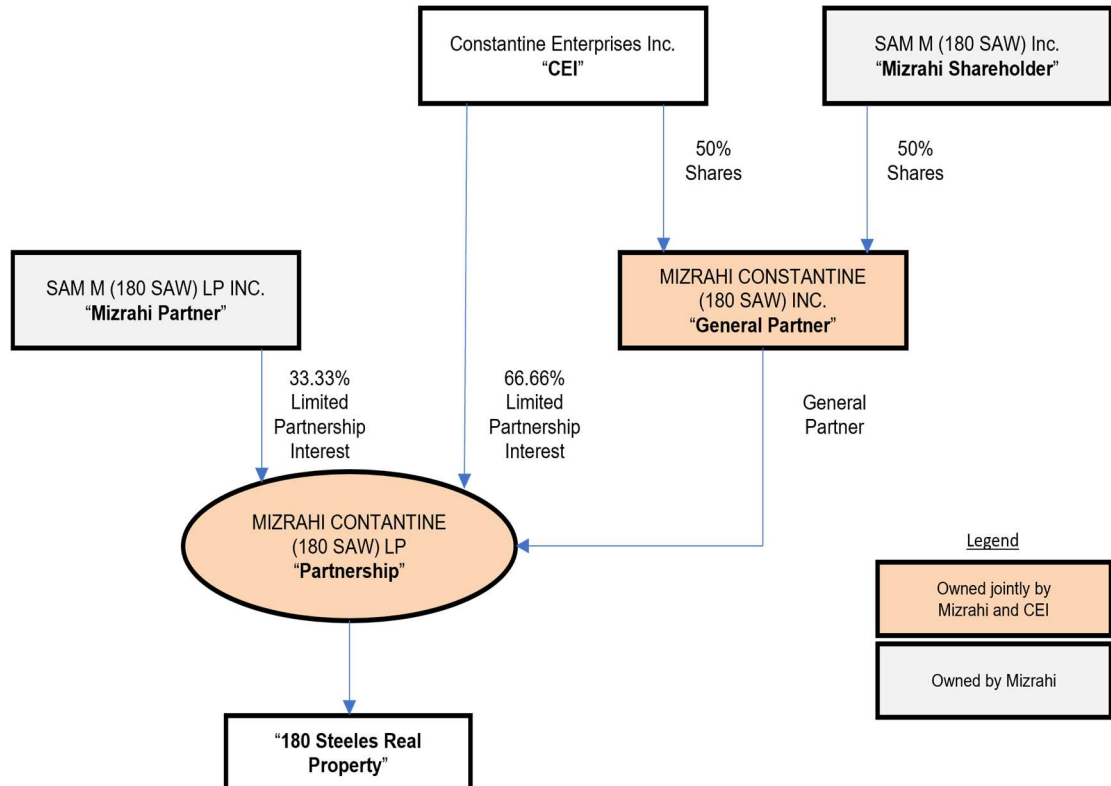
1. In preparing this Report, the Receiver has relied upon (i) discussions and information provided by representatives of CEI; (ii) certain of the Debtors’ unaudited financial information; and (iii) the application materials filed by CEI and the Debtors (collectively, the “**Information**”).
2. The Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that complies with Canadian Auditing Standards (“**CAS**”) pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance as contemplated under the CAS in respect of the Information. Any party wishing to place reliance on the Information should perform its own diligence and the Receiver accepts no responsibility for any reliance placed on the Information in this Report by any party.
3. Additional background information regarding the Debtors and the reasons for the appointment of the Receiver are provided in the affidavits of Robert Hiscox sworn February 23, 2024 and April 16, 2024 (the “**Hiscox Affidavits**”). Copies of the Court materials filed in these proceedings are available on the Receiver’s case website at: <https://www.ksvadvisory.com/experience/case/180SAW>.

2.0 Background

1. The Partnership is the owner of the real property located at 180 Steeles Avenue West, Vaughan, Ontario (the “**180 Steeles Real Property**”). The 180 Steeles Real Property is planned to be a high-rise mixed-use development consisting of up to 2,196 residential units with heights of up to 178.1 metres for two towers which are contemplated to front Steeles Ave West, and with heights up to 113.7 metres for two towers that do not front Steeles Avenue West (the “**180 Steeles Project**”). The 180 Steeles Project is currently in the early stages of development, with zoning being

pursued to convert the property to its proposed use from its current use as a large retail plaza with over a dozen storefronts and a low-rise office building.

2. An organizational chart showing the relationships among CEI, the Partnership, Mizrahi Partner and Mizrahi Shareholder is provided below:



3. As reflected above, the limited partnership interests in the Partnership are held one-third by Mizrahi Partner and two-thirds by CEI. The shares in the capital of the General Partner are held 50% by Mizrahi Shareholder and 50% by CEI.
4. Pursuant to the Receivership Order, the Receiver has been appointed over:
- Mizrahi Partner's interest in the Partnership; and
 - Mizrahi Shareholder's shares in the General Partner.
5. The Receiver has not been appointed over the Partnership's assets and accordingly the Receivership Order does not extend to the 180 Steeles Real Property or the 180 Steeles Project.
6. Decision making in respect of the General Partner is equal between the shareholders, and the shareholders' relationship is governed by a unanimous shareholders' agreement ("**USA**") dated April 30, 2019 among Mizrahi Shareholder and CEI, as shareholders, and the General Partner, as the corporation.
7. Decision making of the partners and their economic interests in the Partnership is governed by a partnership agreement among the General Partner, as general partner, and each of Mizrahi Partner and CEI, as limited partners, initially entered into on April

30, 2019, as amended and restated on December 3, 2021 (the “**Partnership Agreement**”). In accordance with the terms of the Partnership Agreement, each limited partner’s right to share in distributions from the Partnership, and its obligation to make contributions to the Partnership, is based on each partner’s Contributed Capital (as defined in the Partnership Agreement). Mizrahi Partner has contributed one-third of the Contributed Capital (\$4,083,788) and CEI has contributed two-thirds of the Contributed Capital (\$8,167,577). A portion of capital contributed by Mizrahi Partner was loaned to it by CEI, as further described below,

8. Sam Mizrahi is the President of the General Partner and of 1000041090 Ontario Inc. (“**Mizrahi SPV**”). He is also the principal of the Mizrahi Development group of companies, a condominium development and building group (the “**Mizrahi Group**”). Until recently, Mr. Mizrahi was also the President of Mizrahi Partner and Mizrahi Shareholder. Based on a recent corporate profile report, as of March 1, 2024, Amanda Brown is now the President of Mizrahi Partner and Mizrahi Shareholder. Attached as Appendix “B” are copies of the corporate profiles for Mizrahi Partner and Mizrahi Shareholder.
9. Mr. Mizrahi is the borrower under the 180 SAW Loan (as defined below), which is guaranteed by Mizrahi Partner and Mizrahi Shareholder.

3.0 Creditors

3.1 Secured Creditors

1. The Debtors’ secured obligations owing to CEI, as applicable, as of February 29, 2024 (excluding interest accruing from and after February 29, 2024 and legal fees and disbursements incurred before and accruing after that date), are summarized in the table below:

(Unaudited)	Debtor	\$
180 SAW Loan Indebtedness (as defined below)	Mizrahi Partner Mizrahi Shareholder	15,547,985
180 SAW Note Indebtedness (as defined below)	Mizrahi Partner Mizrahi Shareholder	10,758,137
SPV Indebtedness (as defined below)	Mizrahi Partner	2,227,851
Default Loan Indebtedness (as defined below), which continues to accrue, with costs	Mizrahi Partner	444,939
		28,978,912

2. Norton Rose Fulbright Canada LLP, the Receiver’s legal counsel, has conducted a review of the security held in respect of the 180 SAW Loan, the 180 SAW Note, the SPV Loan and the Default Loan Indebtedness and has provided the Receiver opinions that, subject to standard assumptions and qualifications, the security outlined therein is valid and enforceable. In respect of the opinion delivered in connection with the Default Loan Indebtedness, certain additional factual assumptions with respect to the occurrence of the triggering events were included in the opinion.

180 SAW Loan

1. On April 30, 2019, Mr. Mizrahi and CEI entered into a promissory note pursuant to which CEI advanced a loan to Mr. Mizrahi in the original principal amount of \$7.5 million (as amended on November 10, 2020, the “**Original Note**”). The amounts advanced under the Original Note were for purposes unrelated to the 180 Steeles Project.
2. In connection with the Original Note, Mizrahi Partner and Mizrahi Shareholder provided irrevocable and unconditional guarantees in respect of all obligations owing by Mr. Mizrahi to CEI in respect of the Original Note. These guarantees are secured by:
 - a) a pledge by Mizrahi Partner of its partnership interests in the Partnership; and
 - b) a pledge by Mizrahi Shareholder of its common shares in the capital stock of the General Partner.
3. On December 3, 2021, Mr. Mizrahi and CEI entered into an amended and restated promissory note (the “**180 SAW Loan**”) which amended and restated the Original Note. As set out in the Hiscox Affidavits, the balance outstanding under the 180 SAW Loan as at February 29, 2024 was \$15,547,985 (the “**SAW Loan Indebtedness**”). As noted, this amount is exclusive of interest accruing from and after February 29, 2024, and legal fees and disbursements incurred and accruing before and after that date.

180 SAW Note

1. On December 3, 2021, CEI and Mizrahi Partner entered into a promissory note to evidence, among other things, a loan made by CEI to Mizrahi Partner in the principal amount of \$4,833,735 to provide Mizrahi Partner with the capital it required to make its required capital contribution to the Partnership (the “**180 SAW Note**”). The principal amount was subsequently updated to \$4,930,536.
2. The Partnership Agreement required that Mizrahi Partner make additional capital contributions to the Partnership as and when required. As Mizrahi Partner did not make these contributions, CEI advanced, pursuant to the 180 SAW Note, additional funds in the maximum principal amount of \$1,500,000 for the sole purpose of allowing Mizrahi Partner to make capital contributions on such dates and in such amounts as required from time-to-time pursuant to the terms of the Partnership Agreement.
3. As security for its obligations as borrower under the 180 SAW Note, Mizrahi Partner pledged its partnership interests in the Partnership to CEI.

4. In addition, Mizrahi Shareholder guaranteed the obligations of Mizrahi Partner to CEI in connection with the 180 SAW Note pursuant to a guarantee and indemnity agreement with CEI, and pledged its common shares of the General Partner. As set out in the Hiscox Affidavits, the amount owing under the 180 SAW Note as at February 29, 2024 was \$10,758,137 (the “**SAW Note Indebtedness**”). This amount is exclusive of interest accruing from and after February 29, 2024, and legal fees and disbursements incurred and accruing before and after that date.

SPV Loan

1. On December 3, 2021, Mizrahi SPV issued a promissory note (the “**SPV Note**”) in favour of CEI pursuant to which CEI advanced loans to Mizrahi SPV in the principal amount of \$1,500,000 (the “**SPV Loan**”) for the purposes of making capital contributions to the project being developed by Mizrahi (128 Hazelton) Inc. (the “**Hazelton Project**”). KSV is also the receiver and manager of the Hazelton Project pursuant an order of the Court issued on June 4, 2024.
2. On December 3, 2021, Mizrahi Partner guaranteed Mizrahi SPV’s obligations under the SPV Loan and pledged its partnership interests in the Partnership. As set out in the Hiscox Affidavits, the balance outstanding under the SPV Loan as at February 29, 2024 was \$2,227,851 (the “**SPV Indebtedness**”). This amount is exclusive of interest accruing from and after February 29, 2024, and legal fees and disbursements incurred before and after that date.

Other

1. As noted above, pursuant to the Partnership Agreement, CEI elected to advance funds to the Partnership in respect of certain amounts that Mizrahi Partner failed to contribute. The Partnership Agreement provides that such advances by CEI are deemed to be a loan to Mizrahi Partner, subject to monthly interest of 3% and secured by Mizrahi Partner’s interest in the Partnership (the “**Default Loan Obligations**”). As set out in CEI’s receivership application materials, the balance outstanding under the Default Loan Obligations as of February 29, 2024 was \$444,939 (the “**Default Loan Indebtedness**”) and together with the SAW Loan Indebtedness, the SAW Note Indebtedness and the SPV Indebtedness, the “**Indebtedness**”). This amount is exclusive of interest accruing from and after February 29, 2024, and legal fees and disbursements incurred before and after that date.
2. The Receiver understands that, in addition to taking physical possession of the Property (as pledged to CEI), CEI made a registration pursuant to the *Personal Property Security Act* (the “**PPSA**”) in Ontario against Mizrahi Partner in respect of security granted by Mizrahi Partner to CEI to secure the applicable Indebtedness. Additionally, the following registrations appear based on PPSA searches:
 - a) a registration in favour of Mizrahi Shareholder against Mizrahi Partner, and
 - b) a registration in favour of Mizrahi Developments Inc. against Mizrahi Shareholder.

4.0 Sale Process

1. The purpose of the Sale Process is to market the Property for sale – namely all of the interests and shares of Mizrahi Partner in the Partnership and Mizrahi Shareholder in the General Partner (the “Purchased Assets”).
2. The proposed Sale Process includes a stalking horse, pursuant to which the Stalking Horse APS provides a base-line purchase price for the Property, while also enabling the Receiver to test the market to obtain a superior transaction.
3. Subject to Court approval, the Receiver intends to engage CBRE Limited (“CBRE”) to market the Property for sale. CBRE is a leading international real estate brokerage, with relationships with major developers in the Greater Toronto Area and globally. CBRE is familiar with the Property as it was retained by the Partnership in November 2022 to sell the 180 Steeles Project and the related real property. As discussed below, the Receiver understands that the prior sale process was unsuccessful.
4. The Receiver understands that CEI consents to the terms of the Sale Process, including the retention of CBRE.

4.1 Sale Process

1. The Sale Process is set out in the table below. The timelines are based on KSV’s significant experience selling real estate assets in court-supervised proceedings, as well as guidance from CBRE. The timelines assume that the Court approves the Sale Process on the return of this motion. To the extent that the Sale Process is delayed, the deadlines may be correspondingly adjusted.

Summary of Sale Process		
Milestone	Description of Activities	Timeline
<i>Phase 1 – Pre-Sale Process Preparation</i>		
Due diligence	<ul style="list-style-type: none"> ➤ Receiver to upload documentation concerning the 180 Steeles Project to a virtual data room (the “VDR”) so that prospective purchasers can conduct diligence on the Purchased Assets ➤ The VDR will include information required to allow interested parties to submit a bid for the Purchased Assets, including a copy of the Stalking Horse APS and a form of agreement of purchase and sale for bid submissions (the “Bid Form”) 	To be completed within 15 business days of court approval of the Sale Process
Marketing materials	<ul style="list-style-type: none"> ➤ CBRE, with the assistance of the Receiver, will prepare a: <ul style="list-style-type: none"> – short teaser summarizing the opportunity; – confidentiality agreement (“CA”); and – Confidential Information Memorandum (“CIM”). 	
Prospect Identification	<ul style="list-style-type: none"> ➤ In consultation with CEI and the Receiver, CBRE will prepare a list of potentially interested parties which are acceptable to CEI (the “CEI Acceptable Bidders”). ➤ CBRE will, in consultation with the Receiver, advertise this opportunity in such publications as it believes appropriate to generate interest in this opportunity. 	

Summary of Sale Process		
Milestone	Description of Activities	Timeline
<i>Phase 2 – Marketing, Due Diligence and Offer Solicitation</i>		
Stage 1	<ul style="list-style-type: none"> ➤ Market introduction: <ul style="list-style-type: none"> – offering summary and marketing materials printed; – telephone and email canvassing of leading prospects; and – meetings with and interviewing of bidders. ➤ Any potentially interested party who is not a CEI Acceptable Bidder (a “Potentially Interested Party”) expressing an interest in this opportunity will be presented by the Receiver to CEI for its consent that such party can participate in the Sale Process. With CEI’s consent, such Potentially Interested Party will become a “CEI Acceptable Bidder”. CEI’s consent to a party as a CEI Acceptable Bidder does not obviate the need for CEI’s consent to a final transaction. 	Weeks 1 – 2
Stage 2	<ul style="list-style-type: none"> ➤ Due Diligence <ul style="list-style-type: none"> – Only CEI Acceptable Bidders (including Potentially Interested Parties who become CEI Acceptable Bidders) who sign a CA will be provided access to confidential information, the CIM and will be allowed to perform due diligence, including meetings with CEI and information that will be made available in the VDR. – CEI will make its representatives reasonably available for meetings with CEI Acceptable Bidders. – The Receiver shall be permitted to participate in any discussions between CEI and any CEI Acceptable Bidder. 	Weeks 3-6
Stage 3	<ul style="list-style-type: none"> ➤ Any CEI Acceptable Bidder who wishes to make an offer, must submit a binding bid on or before 4 pm (Toronto time), on the date that is 45 days after the Sale Process is approved by the Court (the “Bid Deadline”). To be considered a “Qualified Bid”, offers must provide the following: <ul style="list-style-type: none"> – a blackline to the Bid Form; – a purchase price consisting of cash consideration with a value of not less than the Stalking Horse Purchase Price (defined below) plus \$100,000; – a deposit of 10% of the purchase price; – confirmation that the offer is not conditioned on: (i) the outcome of any further due diligence; or (ii) financing; – the names of the representatives who are authorized to appear and act on behalf of the bidder; – the identity of the person or people who will be sponsoring or participating in, or benefiting from, the transaction; – sufficient financial information to determine that it has the ability to complete the transaction and satisfy and perform any liabilities or obligations assumed pursuant to the bid, including the ability to make capital contributions to the Partnership to fund the development of the project; – include acknowledgements and representations that confirm that the transaction is on an “as is, where is” 	Week 6 through 8

Summary of Sale Process		
Milestone	Description of Activities	Timeline
	<p>basis; the bidder has had an opportunity to conduct any and all due diligence necessary prior to entering into the bid and has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the property in making its bid; and it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the completeness of any information provided in connection therewith, except as expressly stated in the executed bid;</p> <ul style="list-style-type: none"> – includes a condition to closing in favour of the Receiver that on closing the CEI Acceptable Bidder will become a party to the USA and the Partnership Agreement; – includes a covenant to provide a guarantee to the lenders of the 180 Steeles Project in respect of 1/3 of the outstanding debt, the delivery of which guarantee will be a condition of closing – provides that the Qualified Bid shall remain open until the latest of (a) the date on which the Receiver advises the bidder that its bid is not the successful bid or the back-up bid, if one is selected; (b) in the case of the Successful Bid, the closing of the transaction; and (c) in the case of a back-up bid, if one is selected, the earlier of the closing of another successful transaction and the closing of the transaction under the back-up bid; and – include any other terms or conditions the CEI Acceptable Bidder believes are material to the transaction. 	
<i>Phase 3 – Offer Review and Negotiations</i>		
Selection of the Successful Bidder	<ul style="list-style-type: none"> ➤ The Stalking Horse APS shall constitute a “Qualified Bid”. Upon receipt of the bids from CEI Acceptable Bidders, CBRE and the Receiver, in consultation with CEI, may declare one or more CEI Acceptable Bidder(s) as the successful bid, and/or back up bid, or seek further amendments or clarifications to any bids including the Stalking Horse APS or establish further procedures for determining a successful bid, and/or back up bid, including as many rounds of bidding as determined necessary in the discretion of the Receiver. Upon completion of this process, the Receiver will select the successful bidder, in consultation with CEI, and will thereafter seek Court approval of the transaction. 	
Sale Approval Motion and Closing	<ul style="list-style-type: none"> ➤ Prepare materials to seek approval of the transaction. ➤ Close transaction following court approval. 	ASAP after finalizing definitive documents

2. Additional terms of the Sale Process include:

- a) given CEI’s interests in the General Partner and as a limited partner, its consent is required for any transaction;

- b) the Receiver does not and will not have the authority to impose changes on any of the agreements to which CEI is a party, including any agreements governing the management and financing of the Partnership;
- c) the Property will be marketed and sold on an “as-is, where-is” basis, with standard representations and warranties for a receivership transaction;
- d) to the extent permitted by law, all of the right, title and interest of Mizrahi Partner and Mizrahi Shareholder in the Property will be sold free and clear of all pledges, liens, security interests, encumbrances and claims, pursuant to an approval and vesting order to be sought by the Receiver;
- e) the Receiver will have the right to reject any and all offers, including the highest and best offers other than the Stalking Horse APS;
- f) if, in the Receiver’s sole discretion, it will assist to maximize recoveries, the Receiver will have the right to: (i) waive strict compliance with the terms of the Sale Process, including the right to amend any of the deadlines in the table above; and (ii) modify and adopt such other procedures that will better promote the sale of the Property or increase recoveries for stakeholders;
- g) any material modifications to, or the termination of, the Sale Process shall require Court approval; and
- h) any transaction or transactions entered into by the Receiver shall be subject to Court approval.

4.2 The Stalking Horse APS

1. The following is a summary description of the Stalking Horse APS only. Readers are encouraged to read the entirety of the Stalking Horse APS for its terms and conditions, a copy of which is provided in Appendix “C”.
2. The key terms and conditions of the Stalking Horse APS are provided below¹.
 - a) Purchaser: CEI.
 - b) Purchased Assets: the Property.
 - c) Excluded Assets: the Seller shall not sell to the Purchaser and the Purchaser shall not purchase from the Seller any assets other than the Purchased Assets.
 - d) Purchase Price: the Purchase Price is \$8,000,000, which will be satisfied by way of a credit bid.
 - e) Closing Date: no later than the day that is 10 days after the date on which the Court grants the approval and vesting order.

¹ Capitalized terms not otherwise defined are defined in the Stalking Horse APS.

- f) Material Conditions: as follows:
- i. by no later than June 21, 2024, or the first available Court date thereafter, the Court shall have entered and issued the Sale Process Order approving, among other things, (a) the Sale Process; and (b) the Stalking Horse APS as the sole “stalking horse bid” pursuant to the Sale Process, which Sale Process Order shall be in form and substance satisfactory to the Seller and the Purchaser, each acting reasonably;
 - ii. on Closing, the Sale Process Order shall not have been stayed, varied in any material respect or set aside;
 - iii. the Stalking Horse APS being selected as the Successful Bid;
 - iv. the Court shall have issued the Sale Approval and Vesting Order by no later than 14 calendar days following the Transaction being selected as the Successful Bid; and
 - v. no legal or regulatory action or proceeding shall be pending or threatened by any Governmental Authority to enjoin, restrict or prohibit the purchase and sale of the Purchased Assets and no injunction against closing the Transaction.
- g) Termination: among other reasons, the Stalking Horse APS may be terminated automatically and immediately if it is not selected as the Successful Bid, or Back-Up Bid, or if the Seller completes a Superior Transaction with a party other than the Purchaser or an affiliate of the Purchaser.
- h) Acceptance of Successful Bid: the sale of the Purchased Assets to any Successful Bidder by the Receiver is conditional upon the approval of the Successful Bid by the Court.

4.3 Value of the Stalking Horse APS

1. The Receiver understands that the Partnership retained Cushman & Wakefield (ULC) (“Cushman”) on August 9, 2022 to market the 180 Steeles Project and related real property for sale. The term of Cushman’s listing agreement was August 9, 2022 to October 3, 2022; however, the Receiver understands that Cushman’s marketing efforts commenced prior to the date of the listing agreement. Cushman’s marketing efforts were unsuccessful. Thereafter, the Partnership retained CBRE to market 180 Steeles Project, and the related real property, pursuant to a listing agreement executed on December 1, 2022.
2. The Receiver has reviewed CBRE’s final marketing report² which reflects that it conducted an extensive marketing campaign that targeted parties locally and globally. The marketing campaign resulted in 25 signed confidentiality agreements resulting from email blasts, internet marketing, traditional media and direct solicitation of prospective purchasers and investors. CBRE’s marketing material included a

² CBRE prepared seven reporting letters.

brochure and promotional video. CBRE also established a data room for interested parties to perform due diligence. CBRE's process launched on February 15, 2023 and had a bid deadline of April 12, 2023. Ultimately, CBRE's process was also unsuccessful.

3. Canadian Western Bank ("CWB") and Trez Capital ("Trez") have mortgages on the Real Property in the principal amounts of approximately \$78 million and \$20 million³, respectively.
4. The purchase price under the Stalking Horse APS is \$8 million for Mizrahi Partner's one-third equity interest and Mizrahi Shareholder's interest in the General Partner (which provides decision-making rights but has no direct economic entitlement). The sum of the CWB and Trez mortgage debt plus the implied equity value resulting from the amount of the Stalking Horse APS is approximately \$122 million⁴, before considering any other liabilities.
5. Given the results of the marketing processes conducted by Cushman and CBRE, the Receiver is satisfied that the purchase price under the Stalking Horse APS is reasonable for the purpose of the Sale Process. Additionally, the Receiver has considered the purchase price paid by the Partnership to acquire the 180 Steeles Project, and the related real property, as well as the state of the real estate market at the time of that transaction relative to implied purchase price under the Stalking Horse APA and the current state of the real estate market, which has eroded since that time.
6. The Receiver's recommendation also considers that the Stalking Horse APS provides a floor price for the acquisition of the Property and that the Purchaser is not receiving any bid protections (i.e., a break-fee or expense reimbursement).

4.4 Sale Process Recommendation

1. The Receiver recommends that the Court issue an order approving the Sale Process and the Stalking Horse APS as the Stalking Horse Bid for the following reasons:
 - a) the value of the Stalking Horse APS represents a reasonable floor price for the reasons provided in Section 4.3 above;
 - b) the Stalking Horse APS does not include a break fee or expense reimbursement;
 - c) the Sale Process is reasonable and appropriate at this time and is supported by CEI, being the Debtors' only known secured creditor;

³ The Receiver understands that as of the date of this Report, the Trez mortgage is one month in arrears.

⁴ Approximately \$98 million for the sum of the CWB and Trez mortgage debt plus \$24 million of implied equity value, before considering any other liabilities.

- d) the Sale Process is a fair, open and transparent process and is intended to canvass the market broadly to obtain the highest and best price;
- e) the Sale Process is flexible and provides the Receiver with the timelines, procedures and discretion that it believes are necessary to maximize value;
- f) CBRE is a leading national brokerage, with the experience and expertise to market the Property, including significant knowledge of the GTA market in which the 180 Steeles Project is located and with reach to global markets. CBRE is familiar with the property given its prior mandate;
- g) CBRE has relationships with the major developers who may have an interest participating as an owner of the 180 Steeles Project;
- h) the Sale Process recognizes the rights and interests of CEI; and
- i) the Sale Process provides an opportunity to identify a new owner for the Property with the financial ability to make the required contributions to advance the development of the 180 Steeles Project.

5.0 Conclusion

1. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make an order granting the relief detailed in this Report.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
ALL PARTNERSHIP INTERESTS IN MIZRAHI
CONSTANTINE (180 SAW) LP OWNED BY SAM M (180 SAW) LP INC. AND
ALL SHARES IN THE CAPITAL OF MIZRAHI CONSTANTINE (180 SAW) INC.
OWNED BY SAM M (180 SAW) INC.**

Appendix “A”



Court File No. CV-24-00715326-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)
JUSTICE CAVANAGH) TUESDAY, THE 4TH
DAY OF JUNE, 2024

CONSTANTINE ENTERPRISES INC.

Applicant

- and -

**SAM M (180 SAW) LP INC. AND
SAM M (180 SAW) INC.**

Respondents

IN THE MATTER OF AN APPLICATION UNDER 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

**ORDER
(Appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order 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 (the "**CJA**") appointing KSV Restructuring Inc. ("**KSV**") as receiver and manager, without security, over: (i) all partnership interests in Mizrahi Constantine (180 SAW) LP (the "**Partnership**") owned by Sam M (180 SAW) LP Inc. ("**Mizrahi Partner**") and (ii) all shares in the capital of Mizrahi Constantine (180 SAW) Inc. (the "**General Partner**") owned by Sam M (180 SAW) Inc. ("**Mizrahi Shareholder**", together with Mizrahi Partner, the "**Debtors**"), and in respect of both (i) and (ii) all dividends, distributions, and

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proceeds therefrom and substitutions therefor (collectively, the "**Property**"), was heard on May 13, 2024 by judicial videoconference at Toronto, Ontario.

ON READING the Affidavits of Robert Hiscox sworn February 22 and April 16, 2024, the Affidavits of Sam Mizrahi affirmed April 5, April 8, April 23, and May 3, 2024, and in each case the Exhibits thereto and on hearing the submissions of counsel for the Applicant, counsel to the Debtors and such other parties listed on the Counsel Slip, no one appearing although duly served as appears from the Affidavits of Service of Stephanie Fernandes sworn February 23 and February 26, 2024 and on reading the consent of KSV to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application 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 BIA and section 101 of the CJA, KSV is hereby appointed Receiver, without security, of 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, including

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without limitation the Debtors' bank accounts related to the Property wherever located;

- (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 Debtors, or either of them, 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 Debtors, or either of them, in respect of the Property;
- (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 Debtors, or either of them with respect to the Property or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors, or either of them with respect to the Property and to exercise all remedies of the Debtors, or either of them, in collecting such monies, including, without limitation, to enforce any security held by the Debtors, or either of them;

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- (g) to settle, extend or compromise any indebtedness owing to the Debtors, or either of them, with respect to the Property;
- (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 Debtors, or either of them, 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 Debtors, or either of them, 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) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

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and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, 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 receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to consult with the Applicant on all matters relating to the Property and the receivership, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to apply for any permits, licences, approvals or permissions with respect to the Property 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 Debtors, or either of them;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, or either of them, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors, or either of them;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtors, or either of them may have; and

- (r) 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 Debtors, or either of them, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) 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 Debtors, or either of them, 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 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.

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.

7. **THIS COURT ORDERS** that all Persons, including without limitation, Sam Mizrahi, 1000041090 Ontario Inc., Mizrahi Developments Inc. and Mizrahi Inc. (collectively, the “**Mizrahi Group**”), and each of them, shall be required to cooperate, and share information, with the Receiver, in connection with all books and records, contracts, agreements and insurance policies and other documents in respect of the Debtors, or either of them, and the Property.

NO PROCEEDINGS AGAINST THE RECEIVER

8. **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 DEBTORS OR THE PROPERTY

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors, or either of them, 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 Debtors, or either of them, or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. **THIS COURT ORDERS** that all rights and remedies against the Debtors, or either of them, the 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 Debtors, or either of them, to carry on any business which the Debtors, or either of them, is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors, or either of them, 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

11. **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 Debtors, or either of them, in connection with or relating to the Property without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. **THIS COURT ORDERS** that all Persons, including, without limitation, the Mizrahi Group, having oral or written agreements with the Debtors, or either of them, in connection with or relating to the Property 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 Debtors, or either of them, in connection with or relating to the Property 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 Debtors', or either of their 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 Debtors, or either of their, 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

13. **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 in connection with or relating to the Property, 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 Receivership Accounts**") and the monies standing to the credit of such Post Receivership 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

14. **THIS COURT ORDERS** that all employees of the Debtors, or either of them, shall remain the employees of such Debtor until such time as the Receiver, on behalf of the Debtors, or either of them, 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*.

PIPEDA

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, or either of them, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. **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,

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“**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

17. **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

18. **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

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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.

19. **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.

20. **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

21. **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 \$2,000,000 (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, fees, trusts, liens, charges and encumbrances, statutory or

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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.

22. **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.

23. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

24. **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

25. **THIS COURT ORDERS** that The Guide Concerning Commercial List E-Service (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) 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 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL <https://www.ksvadvisory.com/experience/case/180SAW>.

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26. **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 Debtors', or either of their creditors or other interested parties at their respective addresses as last shown on the records of the Debtors, or either of them, 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

27. **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.

28. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a Trustee in bankruptcy of the Debtors, or either of them.

29. **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.

30. **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

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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.

31. **THIS COURT ORDERS** that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors, or either of their estates with such priority and at such time as this Court may determine.

32. **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.

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



Mr. Justice
Cavanagh

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. ●

AMOUNT \$ ●

1. **THIS IS TO CERTIFY** that KSV Restructuring Inc., the receiver and manager (the "**Receiver**") without security, over: (i) all partnership interests in Mizrahi Constantine (180 SAW) LP (the "**Partnership**") owned by Sam M (180 SAW) LP Inc. ("**Mizrahi Partner**") and (ii) all shares in the capital of Mizrahi Constantine (180 SAW) Inc. (the "**General Partner**") owned by Sam M (180 SAW) Inc. ("**Mizrahi Shareholder**", together with Mizrahi Partner, the "**Debtors**"), and in respect of both (i) and (ii) all dividends, distributions, and proceeds therefrom and substitutions therefor (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the ___ day of _____, 2024 (the "**Order**") made in an application having Court file number CV-24-24-00715326-00CL 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 [daily][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 above the prime commercial lending rate of Bank of _____ from time to time.

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

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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 _____, 2024.

KSV Restructuring Inc., solely in its capacity as
Receiver of the Property, and not in its personal
capacity

Per: _____

Name: Bobby Kofman
Title: Managing Director

CONSTANTINE ENTERPRISES INC.

Applicant

- and -

SAM M (180 SAW) LP INC. AND
SAM M (180 SAW) INC.
Respondents

Court File No. CV-24-00715326-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**ORDER
(APPOINTING RECEIVER)**

Cassels Brock & Blackwell LLP
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40 Temperance St.
Toronto, ON M5H 0B4

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Tel: 416.860.6481

sfernandes@cassels.com

Lawyers for the Applicant

Appendix “B”

Ministry of Public and
Business Service Delivery

Profile Report

SAM M (180 SAW) INC. as of May 09, 2024

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	SAM M (180 SAW) INC.
Ontario Corporation Number (OCN)	2691703
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	April 16, 2019
Registered or Head Office Address	125 Hazelton Avenue, Toronto, Ontario, M5R 2E4, Canada

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

A handwritten signature in black ink, appearing to read "V. Quintanilla W.".

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Active Director(s)

Minimum Number of Directors 1
Maximum Number of Directors 10

Name AMANDA BROWN
Address for Service 105 Harrison Garden Boulevard, Suite 1512, Toronto,
Ontario, M2N 0C3, Canada
Resident Canadian Yes
Date Began March 01, 2024

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

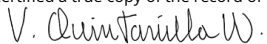
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Active Officer(s)

Name AMANDA BROWN
Position President
Address for Service 105 Harrison Garden Boulevard, Suite 1512, Toronto, Ontario, M2N 0C3, Canada
Date Began March 01, 2024

Name AMANDA BROWN
Position Secretary
Address for Service 105 Harrison Garden Boulevard, Suite 1512, Toronto, Ontario, M2N 0C3, Canada
Date Began March 01, 2024

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.



Director/Registrar

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Corporate Name History**Name**

SAM M (180 SAW) INC.

Effective Date

April 16, 2019

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Active Business Names

This corporation does not have any active business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

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Expired or Cancelled Business Names

This corporation does not have any expired or cancelled business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

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Director/Registrar

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Document List

Filing Name	Effective Date
CIA - Notice of Change PAF: AMANDA BROWN	March 11, 2024
CIA - Initial Return PAF: SAM MIZRAHI - DIRECTOR	June 04, 2019
BCA - Articles of Incorporation	April 16, 2019

All "PAF" (person authorizing filing) information is displayed exactly as recorded in the Ontario Business Registry. Where PAF is not shown against a document, the information has not been recorded in the Ontario Business Registry.

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Ministry of Public and
Business Service Delivery

Profile Report

SAM M (180 SAW) LP INC. as of May 09, 2024

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	SAM M (180 SAW) LP INC.
Ontario Corporation Number (OCN)	2691705
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	April 16, 2019
Registered or Head Office Address	125 Hazelton Avenue, Toronto, Ontario, M5R 2E4, Canada

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

A handwritten signature in black ink, appearing to read "V. Quintanilla W.".

Director/Registrar

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Active Director(s)

Minimum Number of Directors 1
Maximum Number of Directors 10

Name AMANDA BROWN
Address for Service 105 Harrison Garden Boulevard, Suite 1512, Toronto,
Ontario, M2N 0C3, Canada
Resident Canadian Yes
Date Began March 01, 2024

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Director/Registrar

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Active Officer(s)

Name AMANDA BROWN
Position President
Address for Service 105 Harrison Garden Boulevard, Suite 1512, Toronto,
Ontario, M2N 0C3, Canada
Date Began March 01, 2024

Name AMANDA BROWN
Position Secretary
Address for Service 105 Harrison Garden Boulevard, Suite 1512, Toronto,
Ontario, M2N 0C3, Canada
Date Began March 01, 2024

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Corporate Name History**Name**

SAM M (180 SAW) LP INC.

Effective Date

April 16, 2019

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Active Business Names

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Expired or Cancelled Business Names

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Appendix “C”

AGREEMENT OF PURCHASE AND SALE**CONSTANTINE ENTERPRISES INC.****and****KSV RESTRUCTURING INC., solely in its capacity as court-appointed receiver and manager of Sam M (180 SAW) LP Inc. and Sam M (180 SAW) Inc., and not in its personal capacity****June 14, 2024**

THIS AGREEMENT is made as of the 14th day of June, 2024.

B E T W E E N:

CONSTANTINE ENTERPRISES INC.

(hereinafter referred to as the “**Purchaser**”)

AND:

KSV RESTRUCTURING INC., solely in its capacity as court-appointed receiver and manager and not in its personal capacity of (i) all partnership interests in Mizrahi Constantine (180 SAW) LP owned by Sam M (180 SAW) LP Inc. and (ii) all shares in the capital of Mizrahi Constantine (180 SAW) Inc. owned by Sam M (180 SAW) Inc., and in respect of both (i) and (ii) all dividends, distributions and proceeds therefrom and substitutions therefor

(hereinafter referred to as the “**Seller**”)

WHEREAS pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated June 4, 2024, in the proceeding bearing Court file number CV-24-00715326-00CL, KSV Restructuring Inc. was appointed as receiver and manager, without security, of (i) all partnership interests in Mizrahi Constantine (180 SAW) LP (the “**Partnership**”) owned by Sam M (180 SAW) LP Inc. (“**Mizrahi Partner**”) and (ii) all shares in the capital of Mizrahi Constantine (180 SAW) Inc. (the “**General Partner**”) owned by Sam M (180 SAW) Inc. (“**Mizrahi Shareholder**”), and in respect of both (i) and (ii) all dividends, distributions and proceeds therefrom and substitutions therefor;

AND WHEREAS as of February 29, 2024, Mizrahi Partner and Mizrahi Shareholder, as applicable, owe to CEI the aggregate amount of \$28,978,911.50, exclusive of interest accruing from and after February 29, 2024 and legal fees and disbursements incurred and accruing before and after that date, as follows: (a) \$15,547,985 in respect of a promissory note issued by Sam Mizrahi and guaranteed by Mizrahi Partner and Mizrahi Shareholder (such amount plus interest accruing from and after February 29, 2024 and legal fees and disbursements incurred and accruing before and after that date, the “**180 SAW Loan Debt**”); (b) \$10,758,137 in respect of a promissory note issued by Mizrahi Partner and guaranteed by Sam Mizrahi and Mizrahi Shareholder (such amount plus interest accruing from and after February 29, 2024 and legal fees and disbursements incurred and accruing before and after that date, the “**180 SAW Note Debt**”); (c) \$444,938.51 in respect of Mizrahi Partner’s “Default Loan Obligations” (as such term is defined in the Amended and Restated Limited Partnership Agreement between Mizrahi Partners, the General Partner and CEI in respect of the Partnership dated December 3, 2021 (as amended, restated or otherwise modified from time to time, the “**Partnership Agreement**”)) which arose

from Mizrahi Partner's failure to make capital contributions to the Partnership pursuant to the Partnership Agreement (such amount together with other Default Loan Obligations arising since February 29, 2024 and interest accruing from and after February 29, 2024 and legal fees and disbursements incurred and accruing before and after that date, the "**Default Loan Obligations Debt**"); and (d) \$2,227,851 in respect of a promissory note issued by 1000041090 Ontario Inc. and guaranteed by Mizrahi Partner (such amount plus interest accruing from and after February 29, 2024 and legal fees and disbursements incurred and accruing before and after that date, the "**SPV Note Debt**").

AND WHEREAS as soon as possible following execution of this Agreement, the Seller intends to seek the Sale Process Order (as defined herein), among other things approving (a) the Sale Process (as defined herein) and (b) this Agreement solely as a "stalking horse bid" pursuant to the Sale Process;

AND WHEREAS the Purchaser has agreed to act as a "stalking horse bidder" in accordance with the terms and conditions of this Agreement and the Sale Process;

AND WHEREAS, if this Agreement is selected as the Successful Bid (as defined in the Sale Process), the Seller desires to sell and assign to the Purchaser and the Purchaser desires to purchase and assume from the Seller the Purchased Assets (as defined herein) in accordance with the terms of this Agreement;

AND WHEREAS the Seller is prepared to sell to the Purchaser, and the Purchaser is prepared to purchase from the Seller, the Purchased Assets (as defined herein) on the terms and subject to the conditions set out herein;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Seller and the Purchaser agree as follows:

ARTICLE 1 **INTERPRETATION**

1.1 Defined Terms

For the purposes of this Agreement, unless the context otherwise requires, the following terms shall have the respective meanings set out below and grammatical variations of such terms shall have corresponding meanings:

"**180 SAW Loan Debt**" has the meaning set out in the Recitals to this Agreement;

"**180 SAW Note Debt**" has the meaning set out in the Recitals to this Agreement;

"**Business Day**" means any day, other than a Saturday or a Sunday, on which commercial banks in Toronto, Ontario, are open for business during normal banking hours;

"**Closing**" means the closing of the Transaction, including the satisfaction of the Purchase Price and the delivery of the Closing Deliveries on the Closing Date;

“**Closing Date**” means the day that is no later than 10 days after the date on which the Court grants the Sale Approval and Vesting Order (or such other day after the Court grants the Sale Approval and Vesting Order that is agreed to by the parties), provided that if such day is not a Business Day, then the Closing Date shall be the next following Business Day;

“**Closing Deliveries**” means the agreements, instruments and other documents to be delivered by the Seller to the Purchaser pursuant to Section 3.2 and the agreements, instruments, money and other documents to be delivered by the Purchaser to the Seller pursuant to Section 3.3;

“**Court**” has the meaning set out in the Recitals to this Agreement;

“**Default Loan Obligations Debt**” has the meaning set out in the Recitals to this Agreement;

“**Encumbrance**” means any encumbrance, lien, charge, hypothec, pledge, mortgage, title retention agreement, security interest of any nature, adverse claim, exception, reservation, easement, encroachment, servitude, restriction on use, right of occupation, any matter capable of registration against title, option, right of first offer or refusal or similar right, restriction on voting (in the case of any voting or equity interest), right of pre-emption or privilege or any contract to create any of the foregoing;

“**Excluded Assets**” has the meaning set out in Section 2.2;

“**Evidence of Release**” has the meaning set out in Section 2.4;

“**Governmental Authority**” means any domestic or foreign government, including any federal, provincial, state, territorial or municipal government and any government department, body, ministry, agency, tribunal, commission, board, court, bureau or other authority exercising or purporting to exercise executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government;

“**GP Shares**” means 50 Common Shares in the capital of the General Partner held by Mizrahi Shareholder as evidenced by the GP Share Certificate;

“**GP Share Certificate**” means share certificate C-2 evidencing the GP Shares;

“**HST**” means all taxes payable under the *Excise Tax Act* (Canada), including goods and services taxes and any harmonized sales taxes in applicable provinces, or under any provincial legislation similar to the *Excise Tax Act* (Canada), and any reference to a specific provision of the *Excise Tax Act* (Canada) or any such provincial legislation shall refer to any successor provision thereto of like or similar effect;

“**HST Undertaking and Indemnity**” has the meaning set out in Section 2.6;

“**Outside Date**” means the day that is 30 days after the date on which the Court grants the Sale Approval and Vesting Order or such other date as agreed to by the parties;

“**Partnership Agreement**” has the meaning set out in the Recitals above;

“**Partnership Interest**” means all of the partnership interests of Mizrahi Partner in the Partnership as evidenced by Partnership Interest Certificate;

“**Partnership Interest Certificate**” means Partnership Interest Certificate #2 evidencing the Partnership Interest;

“**Proceeds**” means all proceeds received by or owing to Mizrahi Partner, Mizrahi Shareholder or the Seller on account of the Partnership Interest or GP Shares on Closing;

“**Purchase Price**” has the meaning set out in Section 2.2;

“**Purchased Assets**” means all of the right, title and interest of (i) Mizrahi Partner in and to the Partnership Interest and (ii) Mizrahi Shareholder in the GP Shares;

“**Sale Approval and Vesting Order**” means an order of the Court, in form and substance satisfactory to the Seller and the Purchaser, acting reasonably, approving this Agreement and vesting in and to the Purchaser the Purchased Assets, free and clear of and from any and all Encumbrances;

“**Sale Process**” means the sale process in form and substance acceptable to the Seller and the Purchaser, each acting reasonably;

“**Sale Process Order**” has the meaning ascribed thereto in Section 4.3(a);

“**SPV Note Debt**” has the meaning set out in the Recitals to this Agreement;

“**Superior Transaction**” means a transaction for the direct or indirect acquisition of some or all of the Purchased Assets which requires completion on or before the Outside Date and which, in the opinion of the Seller, is capable of being completed by the Outside Date and provides for cash consideration payable on closing in excess of the Purchase Price, plus the amount of \$100,000; and

“**Transaction**” means the transaction of purchase and sale contemplated by this Agreement.

1.2 Currency

Unless otherwise indicated, all dollar amounts in this Agreement are expressed in Canadian currency.

1.3 Sections and Headings

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the interpretation of this Agreement. Unless otherwise indicated, any reference in this Agreement to an Article, Section or Schedule refers to the specified Article, Section or Schedule of or to this Agreement.

1.4 Number, Gender and Persons

In this Agreement, words importing the singular number only shall include the plural and *vice versa*, words importing gender shall include all genders and words importing persons shall include individuals, corporations, partnerships, associations, trusts, unincorporated organizations, governmental bodies and other legal or business entities of any kind whatsoever.

1.5 Interpretation of Certain Non-Capitalized Terms

The word “**including**” means including without limitation.

1.6 Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral. There are no conditions, covenants, agreements, representations, warranties or other provisions, express or implied, collateral, statutory or otherwise, relating to the subject matter hereof except as herein provided.

1.7 Time of Essence

Time shall be of the essence of this Agreement.

1.8 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions hereof, and each provision is hereby declared to be separate, severable and distinct.

1.9 Applicable Law

This Agreement shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the laws of the Province of Ontario and the federal laws of Canada applicable therein, and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of such province and all courts competent to hear appeals therefrom.

**ARTICLE 2
PURCHASE AND SALE****2.1 Purchase and Sale**

The Seller hereby agrees to sell the Purchased Assets to the Purchaser and the Purchaser hereby agrees to purchase the Purchased Assets from the Seller in consideration of the payment of the Purchase Price on the Closing Date, on the terms and subject to the conditions set out in this Agreement.

2.2 Excluded Assets

The Seller shall not sell to the Purchaser and the Purchaser shall not purchase from the Seller any assets other than the specifically enumerated Purchased Assets (collectively, the “**Excluded Assets**”).

2.3 Purchase Price.

The purchase price (the “**Purchase Price**”) payable by the Purchaser to the Seller for the Purchased Assets shall be \$8,000,000, plus applicable taxes, if any.

2.4 Satisfaction of Purchase Price

The Purchase Price shall be satisfied on Closing by the Purchaser by providing evidence to the Seller of the release of the following indebtedness in the following order: (i) a portion of the amount then owing by the Receiver to the Purchaser in connection with the amounts advanced by the Purchaser to the Receiver under Receiver’s Certificates (up to the entire amount of such indebtedness) in an amount equal to the Purchase Price; (ii) a portion of the amount then owing by Mizrahi Partner to the Purchaser in connection with the Default Loan Obligations Debt (up to the entire amount of such indebtedness) in an amount equal to the remaining balance of the Purchase Price, if any; (iii) a portion of the amount then owing by Mizrahi Partner to the Purchaser in connection with the SPV Note Debt (up to the entire amount of such indebtedness) in an amount equal to the remaining balance of the Purchase Price, if any; and (iv) a portion of the amount then owing by Mizrahi Shareholder to the Purchaser in connection with the 180 SAW Note Debt in an amount equal to the remaining balance of the Purchase Price, in any (collectively, the “**Evidence of Release**”).

2.5 Allocation of Purchase Price

The Purchase Price shall be allocated among the Purchased Assets as to (i) \$1,000 to the GP Shares, and (ii) the balance of the Purchase Price to the Partnership Interest.

2.6 Registration and Transfer Taxes

(a) The Seller and the Purchaser shall each be responsible for the costs of their respective solicitors. The Purchaser shall be responsible, if applicable, for all land transfer taxes, sales taxes and/or HST payable in connection with the sale and transfer of the Purchased Assets pursuant to this Agreement. The Seller shall be responsible for registration fees payable, if any, in connection with the discharges of any Encumbrances.

(b) With respect to HST, the parties agree that the Seller shall not collect HST from the Purchaser in connection with transfer of the Purchased Assets if, on the Closing Date, the Purchaser delivers to the Seller (i) a certificate of the Purchaser setting out the registration number of the Purchaser for HST purposes, and (ii) an undertaking by the Purchaser to pay all applicable HST in connection with the transaction contemplated by this Agreement and an indemnity by the Purchaser whereby the Purchaser agrees to indemnify and hold the Seller harmless from and against any and all losses that may be suffered or incurred, directly or indirectly, by the Seller or may become payable by the Seller arising from or in respect of any failure by the Purchaser to

register for the purposes of the HST imposed under the *Excise Tax Act* (Canada) or to perform its obligations under such Act in connection with the transaction contemplated by this Agreement (collectively, the “**HST Undertaking and Indemnity**”).

ARTICLE 3 **CLOSING AND CLOSING CONDITIONS**

3.1 Transfer

Subject to compliance with the terms and conditions hereof, the transfer of possession of the Purchased Assets shall be deemed to take effect, and Closing shall be deemed to have occurred, upon the delivery of the Receiver’s Certificate pursuant to the Sale Approval and Vesting Order (and as defined therein).

3.2 Closing Deliveries by Seller

On or before the Closing Date, subject to the provisions of this Agreement, the Seller shall execute (as applicable) and deliver to the Purchaser, each of which shall be in form and substance satisfactory to the Purchaser acting reasonably:

- (a) a receipt for the satisfaction of the Purchase Price;
- (b) the Proceeds, if any;
- (c) a copy of the issued and entered Sale Approval and Vesting Order;
- (d) the original GP Share Certificate endorsed in favour of the Purchaser;
- (e) the Partnership Interest Certificate endorsed in favour of the Purchaser;
- (f) a certificate of an officer of the Seller confirming that all conditions to Closing in its favour are either satisfied or waived; and
- (g) any other documents required pursuant to this Agreement in form and substance satisfactory to the Purchaser and the Seller, each acting reasonably.

3.3 Closing Deliveries by the Purchaser

On or before the Closing Date, subject to the provisions of this Agreement, the Purchaser shall execute (as applicable) and deliver to the Seller, each of which shall be in form and substance satisfactory to the Seller acting reasonably:

- (a) the Evidence of Release;
- (b) the HST Undertaking and Indemnity;

- (c) a certificate of the Purchaser certifying that all of the representations and warranties of the Purchaser contained in this Agreement are true and correct as if made as of the Closing Date;
- (d) a certificate of an officer of the Purchaser confirming that all conditions to Closing in its favour are either satisfied or waived; and
- (e) any other documents required pursuant to this Agreement in form and substance satisfactory to the Purchaser and the Seller, each acting reasonably.

3.4 Further Assurances

Each party to this Agreement covenants and agrees that it will at all times after the Closing Date, at the expense of the requesting party, promptly execute and deliver all such documents, including, without limitation, all such additional conveyances, transfers, consents and other assurances and do all such other acts and things as the other party, acting reasonably, may from time to time request be executed or done in order to better evidence or perfect or effectuate any provision of this Agreement or of any agreement or other document executed pursuant to this Agreement or any of the respective obligations intended to be created hereby or thereby.

ARTICLE 4 **CONDITIONS**

4.1 Conditions of Closing in Favour of the Purchaser

The sale and purchase of the Purchased Assets is subject to the following terms and conditions for the exclusive benefit of the Purchaser, to be performed or fulfilled at or prior to Closing (or such earlier date as may be specified below):

- (a) Representations and Warranties. On Closing, the representations and warranties of the Seller contained in this Agreement shall be true and correct as if made as of the Closing Date;
- (b) Covenants. All of the terms, covenants and conditions of this Agreement to be complied with or performed by the Seller on or before the Closing shall have been complied with or performed in all material respects; and
- (c) Documents. The Seller shall have delivered the documents referred to in Section 3.2.

4.2 Conditions of Closing in Favour of the Seller

The sale and purchase of the Purchased Assets is subject to the following terms and conditions for the exclusive benefit of the Seller, to be performed or fulfilled at or prior to Closing (or such earlier date as may be specified below):

- (a) Representations and Warranties. On Closing, the representations and warranties of the Purchaser contained in this Agreement shall be true and correct as if made as of the Closing Date;
- (b) Covenants. All of the terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser on or before the Closing shall have been complied with or performed in all material respects; and
- (c) Documents. The Purchaser shall have made the payments and delivered the documents referred to in Section 3.3.

4.3 Conditions of Closing for the Mutual Benefit of the Seller and Purchaser

The sale and purchase of the Purchased Assets is subject to the following terms and conditions for the mutual benefit of the Seller and the Purchaser, to be performed or fulfilled at or prior to Closing (or such earlier date as may be specified below):

- (a) Sale Process Order. (i) By no later than June 21, 2024 or the first available Court date thereafter (or such later date as the Seller and the Purchaser may agree in their sole discretion), the Court shall have entered and issued an order, *inter alia*, approving (y) the Sale Process, and (z) this Agreement solely as the “stalking horse bid” pursuant to the Sale Process (the “**Sale Process Order**”), which Sale Process Order shall be in form and substance satisfactory to the Seller and the Purchaser, each acting reasonably; and (ii) on Closing, the Sale Process Order shall not have been stayed, varied in any material respect or set aside;
- (b) Successful Bid. The Transaction shall have been selected as the Successful Bid (as defined in the Sale Process) in accordance with the Sale Process Order and the Sale Process;
- (c) Sale Approval and Vesting Order. (i) By no later than fourteen (14) calendar days following the Transaction being selected as the Successful Bid or the first available Court date thereafter (or such later date as the Seller and the Purchaser may agree in their sole discretion), the Seller shall have obtained the Sale Approval and Vesting Order; and (ii) on Closing, the Sale Approval and Vesting Order shall not have been stayed, varied in any material respect or set aside;
- (d) No Action or Proceeding. No legal or regulatory action or proceeding shall be pending or threatened by any Governmental Authority to enjoin, restrict or prohibit the purchase and sale of the Purchased Assets contemplated hereby; and
- (e) Injunctions. There shall be in effect no injunction against closing the Transaction entered by a court of competent jurisdiction.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES

5.1 Representations and Warranties of the Seller

The Seller represents and warrants to and in favour of the Purchaser that, as of the date of this Agreement:

- (a) the Seller is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada); and
- (b) the Seller has been appointed by the Court as receiver and manager, without security, of the Purchased Assets. Subject only to the entry of the Sale Process Order and the Approval and Vesting Order, (i) it will on Closing have the necessary authority to enter into this Agreement and to carry out the Transaction on the terms and subject to the conditions set out in this Agreement and (ii) this Agreement constitutes a legal, valid and binding obligation of the Seller, enforceable against the Seller by the Purchaser in accordance with its terms

5.2 Representations and Warranties of the Purchaser

The Purchaser represents and warrants to and in favour of the Seller that, as of the date of this Agreement:

- (a) the Purchaser is a corporation duly incorporated and organized and validly subsisting under the laws of the Province of Ontario pursuant to the Business Corporations Act (Ontario) and has the corporate power to enter into this Agreement and to perform its obligations hereunder and to consummate the Transaction;
- (b) this Agreement has been duly authorized, executed and delivered by the Purchaser and is a legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser by the Seller in accordance with its terms;
- (c) the Purchaser is a “Canadian”, as defined in the *Investment Canada Act* (Canada);
- (d) the Purchaser is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada); and
- (e) the Purchaser is a registrant for purposes of Part IX of the *Excise Tax Act* (Canada) whose registration number is 84061 7575 RT0001.

5.3 Survival

The representations, warranties and certifications of the Seller and the Purchaser contained in this Agreement and in any Closing Deliveries shall merge on Closing and not survive following Closing.

ARTICLE 6
AS IS, WHERE IS SALE

6.1 **“As is, Where is”**

The Purchaser acknowledges that the Seller is selling the Purchased Assets on an “as is, where is” basis as they shall exist on the Closing Date and that, as of the date of this Agreement, the Purchaser has completed all of its due diligence in respect of the transaction contemplated by this Agreement and has satisfied itself in all respects as to the Purchased Assets. Any information provided by the Seller to the Purchaser describing the Purchased Assets has been prepared solely for the convenience of prospective purchasers and is not warranted to be complete, accurate or correct. Unless specifically stated in this Agreement, no representation, warranty, covenant or condition, whether statutory, express or implied, oral or written, legal, equitable, conventional, collateral or otherwise is being given in this Agreement or in any instrument furnished in connection with this Agreement as to title, outstanding liens, Encumbrances, description, merchantability, value, suitability or marketability thereof or in respect of any other matter or thing whatsoever including, without limitation, the respective rights, titles and interests of the Seller, if any, therein. The Purchaser shall be deemed to have relied entirely on its own inspection and investigation in proceeding with the Transaction.

ARTICLE 7
TERMINATION

7.1 **Termination**

This Agreement may be terminated at any time prior to Closing as follows:

- (a) automatically and without any action or notice by either party, immediately if this Agreement is not selected as the Successful Bid or the Back-Up Bid (as defined in the Sale Process) in accordance with the Sales Process;
- (b) automatically and without any action or notice by either party, immediately if the Seller completes a Superior Transaction with a party other than the Purchaser or an affiliate of the Purchaser;
- (c) automatically and without any action or notice by either party, immediately upon the issuance of a final and non-appealable order, decree, or ruling or any other action by a Governmental Authority to restrain, enjoin or otherwise prohibit the Transaction;
- (d) by mutual written consent of the Seller and the Purchaser;
- (e) by either the Seller or the Purchaser if the Closing has not occurred on or before the Outside Date; provided, however, that a party may not exercise such termination right if they are in material breach of their obligations under this Agreement;

- (f) by the Seller, if the Purchaser fails to fulfill any condition set forth in Section 4.2 by the Outside Date and failure has not been waived by the Seller or cured by the Outside Date;
- (g) by the Purchaser, if the Seller fails to fulfill any condition set forth in Section 4.1 by the Outside Date and such failure has not been waived by the Purchaser or cured by the Outside Date; or
- (h) by either, if the conditions set forth in Section 4.3 have not been satisfied by the date specified therein or, if not specified, by the Outside Date.

7.2 **Effects of Termination**

If this Agreement is terminated pursuant to Section 7.1, except as expressly provided herein, all further rights and obligations of the parties under or pursuant to this Agreement shall terminate without further liability of any party to the other.

ARTICLE 8 MISCELLANEOUS

8.1 **Notices**

(a) Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be delivered in person, transmitted by e-mail or sent by registered mail, charges prepaid, addressed as follows:

- (i) if to the Seller:

KSV Restructuring Inc.
220 Bay Street, 13th Floor PO Box 20
Toronto, Ontario M5J 2W4

Attention: Bobby Kofman
E-Mail: bkofman@ksvadvisory.com

with a copy to, which copy shall not constitute notice:

Norton Rose Fulbright Canada LLP
220 Bay Street, Suite 3000 PO Box 53
Toronto, ON M5K 1E7

Attention: Jennifer Stam
E-Mail: Jennifer.stam@nortonrosefulbright.com

- (ii) if to the Purchaser:

Constantine Enterprises Inc.
333 Bloor Street East, 10th Floor

Toronto, ON M4W 1G9

Attention: Robert Hiscox / Chris Donlan
E-Mail: robert.hiscox@constantineinc.com /
chris.donlan@constantineinc.com

with a copy to, which copy shall not constitute notice:

Cassels Brock & Blackwell LLP
Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance Street
Toronto, Ontario M5H 0B4

Attention: Jason Arbuck / Jane Dietrich
Email: jarbuck@cassels.com / jdietrich@cassels.com

Any such notice or other communication shall be deemed to have been given and received on the day on which it was delivered or transmitted (or, if such day is not a Business Day or if delivery or transmission is made on a Business Day after 5:00 p.m. at the place of receipt, then on the next following Business Day) or, if mailed, on the third Business Day following the date of mailing; provided, however, that if at the time of mailing or within three Business Days thereafter there is or occurs a labour dispute or other event which might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication hereunder shall be delivered or transmitted by means of recorded electronic communication as aforesaid.

Either party may at any time change its address for service from time to time by giving notice to the other party in accordance with this Section 8.1.

8.2 Enurement and Assignment

This Agreement shall enure to the benefit of and shall be binding on and enforceable by the parties and, where the context so permits, their respective successors and permitted assigns. Neither party may assign any of its rights or obligations under this Agreement without the prior written consent of the other party, which consent may be unreasonably withheld or delayed. No assignment by the Purchaser shall relieve the Purchaser from any of its obligations hereunder.

8.3 Amendment and Waivers

No amendment or waiver of any provision of this Agreement shall be binding on either party unless consented by such party in a writing specifically referencing the provision waived.

8.4 **No Personal Liability of the Seller**

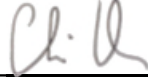
The Seller is executing this Agreement solely in its capacity as Court-appointed receiver and manager of the Purchased Assets and not in personal or corporate capacity and none of the Seller, KSV Restructuring Inc. or any of their respective directors, officers, agents, servants or employees shall have any personal or corporate liability hereunder or at common law, or by statute, or equity or otherwise as a result hereof.

8.5 **Counterparts**

This Agreement and all documents contemplated by or delivered under or in connection with this Agreement may be executed and delivered in any number of counterparts, with the same effect as if all parties had signed and delivered the same document, and all counterparts shall be construed together to be an original and will constitute one and the same agreement.


IN WITNESS WHEREOF this Agreement has been executed by the parties on the date first written above.

CONSTANTINE ENTERPRISES INC.

by 

Name: Chris Donlan
Title: Chief Financial Officer

KSV RESTRUCTURING INC., in its capacity as court-appointed receiver and manager of (i) all partnership interests in Mizrahi Constantine (180 SAW) LP owned by Sam M (180 SAW) LP Inc. and (ii) all shares in the capital of Mizrahi Constantine (180 SAW) Inc. owned by Sam M (180 SAW) Inc., and in respect of both (i) and (ii) all dividends, distributions and proceeds therefrom and substitutions therefor, and not in its personal capacity

by 

Name: Bobby Kofman
Title: Managing Director

CONSTANTINE ENTERPRISES INC. -and-
Applicant

SAM M (180 SAW) LP INC. AND
SAM M (180 SAW) INC.

Court File No.: CV-24-00715326-00CL

Respondents

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

Proceeding commenced at Toronto

**FIRST REPORT OF KSV RESTRUCTURING INC.
AS RECEIVER DATED JUNE 14, 2024
(180 SAW)**

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000, P.O. Box 53
Toronto, ON M5K 1E7

Jennifer Stam, LSO#: 46735J
Tel: 416.202.6707
jennifer.stam@nortonrosefulbright.com

Lawyers for the Receiver