

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

THE HONOURABLE MADAM) THURSDAY, THE 16TH
)
JUSTICE STEELE) DAY OF JANUARY, 2025
)

B E T W E E N:

MARSHALLZEHR GROUP INC.

Applicant

- and -

**98 JAMES SOUTH (2022) INC. and 98 JAMES SOUTH (2022) LIMITED
PARTNERSHIP**

Respondents

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

APPROVAL AND VESTING ORDER

THIS MOTION, made by KSV Restructuring Inc. (“**KSV**”), in its capacity as court-appointed receiver (the “**Receiver**”), over the assets, undertaking and properties of 98 James South (2022) Inc. and 98 James South (2022) Limited Partnership (collectively, the “**Respondents**”), including, the real property located at 98 James Street South, Hamilton, Ontario and having the legal description set out in **Schedule “A”** to this Order (the “**Real Property**”) for an order, *inter alia*, approving the transaction (the “**Transaction**”) contemplated by a Stalking Horse Agreement of Purchase and Sale (the “**APS**”) between the Receiver and Vantage Acquisition Inc. (“**Vantage**”) dated November 1, 2024, as assigned to HAMILTON 98 LP, by its general partner, HAMILTON 98 GP INC. (the “**Purchaser**”) pursuant to an

assignment and assumption agreement dated January 6, 2025, and vesting in the Purchaser, the Debtors' right, title and interest in and to the Purchased Assets (as defined in the APS), including the Real Property, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report of the Receiver dated January 7, 2025, the affidavit of Noah Goldstein sworn January 6, 2025, the affidavit of David Im sworn January 7, 2025, and on hearing the submissions of counsel for the Receiver, and such other parties shown on the counsel slip:

SERVICE

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

APPROVAL OF THE TRANSACTION AND VESTING ORDER

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the APS by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached hereto as **Schedule "B"** (the "**Receiver's Certificate**"), all of the Debtors' right, title and interest in and to the Purchased Assets shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Cavanagh dated August 14, 2024; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act*

(Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule “D”** hereto (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule “C”**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Real Property are hereby expunged and discharged as against the Real Property.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Wentworth (#62) of an Application for Vesting Order in the form prescribed by the *Land Titles Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the Real Property in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule “D”** hereto.

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

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

7. **THIS COURT ORDERS** that, notwithstanding:

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

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors, or any of them, and

shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States of America 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.

9. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Eastern Time) on the date of this Order without the need for entry or filing.

Schedule A – Real Property

Municipal Address: 98 James Street South, Hamilton, Ontario

PIN: 17171-0260 (LT)

Property Description: PT LT 75 P. HAMILTON SURVEY (UNREGISTERED) CITY OF HAMILTON; PT LT 76 P. HAMILTON SURVEY (UNREGISTERED) CITY OF HAMILTON (BTN HUNTER ST, MACNAB ST, JACKSON ST & JAMES ST) AS IN HA59712; EXCEPT PT 1, 62R21103; CITY OF HAMILTON

Schedule B –Form of Receiver’s Certificate

Court File No. CV-24-00717051-00CL

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

B E T W E E N:

MARSHALLZEHR GROUP INC.

Applicant

- and -

**98 JAMES SOUTH (2022) INC. and 98 JAMES SOUTH (2022) LIMITED
PARTNERSHIP**

Respondents

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) dated August 14, 2024, KSV Restructuring Inc. (“**KSV**”) was appointed as the receiver (the “**Receiver**”) of the of the assets, undertaking and properties of the Debtors, 98 James South (2022) Inc. and 98 James South (2022) Limited Partnership (the “**Debtors**”), including the real property located at 98 James Street South, Hamilton, Ontario (the “**Real Property**”).

B. Pursuant to an Order of the Court dated November 12, 2024, the Court approved a Stalking Horse agreement of purchase and sale (the “**APS**”) between the Receiver and Vantage Acquisition Inc. (“**Vantage**”) dated November 1, 2024, as assigned to HAMILTON 98 LP, by its general partner, HAMILTON 98 GP INC. (the “**Purchaser**”) pursuant to an assignment and assumption agreement dated January 6, 2025, and the vesting in the Purchaser, all of the Debtors’ right, title and interest in and to the Purchase Assets (as defined in the APS), including

the Real Property, which vesting is to be effective with respect to the Purchase Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the APS have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

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

**KSV Restructuring Inc., in its capacity as the
Court-appointed Receiver of the Real
Property, and not in its personal capacity**

Per: _____
Name:
Title:

Schedule C – Permitted Encumbrances

1. Any registered reservations, restrictions, rights of way, easements or covenants that run with the Lands.
2. Any registered agreements with a municipality or a supplier of utility service including, without limitation, electricity, water, sewage, gas, telephone or cable television or other telecommunication service.
3. All Applicable Laws, by-laws and regulations and all outstanding work orders, deficiency notices and notices of violation affecting the Lands.
4. Any minor easements for the supply of utility service to the Lands or adjacent properties.
5. Encroachments disclosed by any errors or omissions in existing surveys of the Lands or neighbouring properties and any title defect, encroachment or breach of a zoning or building by-laws or any other Applicable Law, by-laws or regulations which might be disclosed by a more up-to-date survey of the land and survey matters generally.
6. The exceptions and qualifications set forth in the Land Titles Act (Ontario).
7. The reservations contained in the original grant from the Crown.
8. Liens for taxes if such taxes are not due and payable.
9. Instrument No. VM36576, registered on February 16, 1990, being a By-Law.
10. Instrument No. VM60787, registered on September 7, 1990, being an Historical Easement Agreement with The Corporation of the City of Hamilton.
11. Instrument No. VM111553, registered on February 17, 1992, being a Notice of Claim re easement from The Trustees of the James Street Baptist Church.
12. Plan 62R-21103, deposited on February 22, 2019, being a Reference Plan.
13. Instrument No. WE1369352, registered on July 24, 2019, being a Notice of Encroachment Agreement between the City of Hamilton and Hue Developments and Investments Canada Inc.

Schedule D – Claims to be deleted and expunged from title to Real Property

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
WE1313543	2018/10/05	APL VESTING ORDER	\$8,500,000	Ontario Superior Court of Justice – Commercial List	Hue Developments & Investments Canada Inc.
WE1632774	2022/09/09	TRANSFER	\$24,000,000	Hue Developments & Investments Canada Inc.	98 James South (2022) Inc.
WE1632777	2022/09/09	CHARGE	\$13,200,000	98 James South (2022) Inc.	MarshallZehr Group Inc.
WE1632778	2022/09/09	NO ASSGN RENT GEN		98 James South (2022) Inc.	MarshallZehr Group Inc.
WE1632779	2022/09/09	CHARGE	\$14,000,000	98 James South (2022) Inc.	Hue Developments & Investments Canada Inc.
WE1632780	2022/09/09	RESTRICTION-LAND		98 James South (2022) Inc.	
WE1756767	2024/09/05	APL COURT ORDER		Ontario Superior Court of Justice – Commercial List	MarshallZehr Group Inc.

MARSHALLZEHR GROUP INC.

-and-

98 JAMES SOUTH (2022) INC. and 98 JAMES SOUTH (2022)
LIMITED PARTNERSHIP

Applicant

Respondent

Court File No. CV-24-00717051-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDING COMMENCED AT
TORONTO

APPROVAL AND VESTING ORDER

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**Lawyers for KSV Restructuring Inc., in its capacity as
Court-Appointed Receiver**