

**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

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

FINAL DISTRIBUTION AND DISCHARGE ORDER

THIS MOTION, made by KSV Restructuring Inc. (“**KSV**”), in its capacity as the Court-appointed receiver (the "**Receiver**") without security, of all assets, undertakings, and properties of 98 James South (2022) Inc. and 98 James South (2022) Limited Partnership (collectively, the "**Respondents**"), for an order, *inter alia*, (i) authorizing and directing the Receiver to make certain payments and distributions, including one or more distributions to MarshallZehr; (ii) approving the Second Report of the Receiver dated January 7, 2025, and the appendices thereto (the "**Second Report**") and the Receiver’s conduct and activities described therein; (iii) approving the fees and disbursements of the Receiver, its counsel, Chaitons LLP (“**Chaitons**”), and its counsel solely with respect to a review of MarshallZehr’s security, Fasken Martineau DuMoulin LLP (“**Fasken**”), as set out in the Fee Affidavits (defined below), and the Fee Accrual (as defined in the Second Report); and (iv) upon the Receiver’s delivery of the Discharge Certificate (as defined below), discharging KSV as Receiver and releasing KSV from any and all liability, was heard this day at 330 University Avenue, Toronto, Ontario by Zoom videoconference.

ON READING the Second Report, the Fee Affidavits, and on hearing the submissions of counsel for the Receiver and the other parties listed on the counsel slip, no one else appearing for any other party although duly served as appears from the Affidavit of Service of Lynda Christodoulou sworn January 8, 2025,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service 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.
2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Second Report.

DISTRIBUTIONS

3. **THIS COURT ORDERS** that subject to the fees of the Receiver and its legal counsel, and the Fee Accrual, the Receiver is hereby authorized and directed to make one or more distributions to distribute the net proceeds of the Transaction to MarshallZehr up to the full amount owing by the Debtors to MarshallZehr.
4. **THIS COURT ORDERS** that the Receiver or any other person facilitating payments and distributions pursuant to this Order shall be entitled to deduct and withhold from any such payment or distribution such amounts as may be required to be deducted or withheld under any applicable law and to remit such amounts to the appropriate governmental authority or other person entitled thereto as may be required by such law. To the extent that amounts are so withheld or deducted and remitted to the appropriate governmental authority or other person entitled thereto, such withheld or deducted amounts shall be treated for all purposes as having been paid pursuant to this Order.
5. **THIS COURT ORDERS** that, notwithstanding (a) the pendency of these proceedings; (b) any motions or applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Respondents and any bankruptcy order issued pursuant to any such application; and (c) any assignment in bankruptcy made in respect of the Respondents, any payment or distributions made pursuant to this Order

are final and irreversible and shall be binding on any trustee in bankruptcy that has or may be appointed in respect of any of the Respondents and shall not be void or voidable by creditors of such entity, 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 they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

APPROVAL OF THE RECEIVER'S REPORT, ACTIVITIES AND FEES

6. **THIS COURT ORDERS** that the Second Report, and the actions, conduct and activities of the Receiver as set out therein, are hereby approved; provided, however, in each case, that only the Receiver, in its personal capacity and only with respect to its own liability, shall be entitled to rely upon or utilize in any way such approvals.

7. **THIS COURT ORDERS** that the fees and disbursements of the Receiver, Chaitons and Fasken, as set out in the Second Report, the Affidavit of Noah Goldstein sworn January 6, 2025, the Affidavit of David Im sworn January 7, 2025 and the Affidavit of Daniel Richer sworn January 6, 2025 (the "**Fee Affidavits**") are hereby approved.

8. **THIS COURT ORDERS** that the Fee Accrual in connection with the completion by the Receiver of its remaining duties and administration of the receivership proceedings of the Respondents is hereby approved, and neither the Receiver nor Chaitons shall be required to pass their accounts in respect of any further fees and disbursements, up to the amount of the Fee Accrual, incurred in connection with the completion by the Receiver of its remaining duties and administration of the receivership proceedings of the Respondents.

9. **THIS COURT ORDERS** that the Receiver is authorized and directed to pay any balance remaining in the Fee Accrual after payment of all fees and disbursements of the Receiver and Chaitons incurred in connection with the completion by the Receiver of its remaining duties and administration of the receivership proceedings of the Respondents to MarshallZehr.

TERMINATION AND DISCHARGE

10. **THIS COURT ORDERS** that upon the Receiver's completion of its remaining duties and administration of the receivership proceedings of the Respondents and upon the filing by the Receiver of a certificate substantially in the form attached hereto as Schedule "A" (the "**Discharge Certificate**") certifying that, to its knowledge, all matters to be attended to in connection with the Respondents' receivership proceedings, as determined by the Receiver, have been completed to the satisfaction of the Receiver, the Receiver shall be discharged Receiver, provided however that, notwithstanding its discharge herein: (a) the Receiver shall remain Receiver in respect of the performance of such incidental duties as may be required to complete the administration of the receivership proceedings; and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in these proceedings, including, without limitation, all approvals, protections and stay of proceedings in favour of KSV in its capacity as Receiver.

11. **THIS COURT ORDERS AND DECLARES** that, upon the Receiver filing the Discharge Certificate, KSV is hereby released and discharged from any and all liability that KSV now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of KSV while acting in its capacity as Receiver herein, save and except for any gross negligence or willful misconduct on the Receiver's part. Without limiting the generality of the foregoing, KSV is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceeding, save and except from any gross negligence or willful misconduct on the Receiver's part.

12. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

13. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal and regulatory or administrative bodies, having jurisdiction in Canada or in any other foreign jurisdiction, to give effect to this Order and to assist the Receiver and its respective agents in carrying out the terms of this Order. All courts, tribunals and 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 respective agents in carrying out the terms of this Order.

14. **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.

Jana
Steele

Digitally signed by
Jana Steele
Date: 2025.01.16
12:04:17 -05'00'

SCHEDULE "A"
FORM OF RECEIVER'S DISCHARGE 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 DISCHARGE CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Cavanagh of the Ontario Superior Court of Justice (the "**Court**") dated August 14, 2024, KSV Restructuring Inc. was appointed as the receiver (the "**Receiver**") of the property, assets and undertakings of each of the above noted Respondents.

B. Pursuant to a Final Distribution and Discharge Order of the Court dated [DATE], the Court ordered the discharge of the Receiver to become effective (and conditional) upon the filing with the Court by the Receiver of a certificate confirming that all matters to be attended to in connection with the Respondents' receivership proceedings have been completed to the satisfaction of the Receiver.

THE RECEIVER CERTIFIES the following:

1. To its knowledge, all matters to be attended to in connection with the Respondents' receivership proceedings, as determined by the Receiver, have been completed to the satisfaction of the Receiver.

This Receiver's Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

KSV Restructuring Inc., in its capacity as court-appointed receiver, without security, of all assets, undertakings and properties of 98 James South (2022) Inc. and 98 James South (2022) Limited Partnership, and not in its personal capacity

Per: _____

Name:

Title:

MARSHALLZEHR GROUP INC.

-and-

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

Applicant

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

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

FINAL DISTRIBUTION AND DISCHARGE ORDER

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Maya Poliak (LSO No. 54100A)

Tel: (416) 218-1161

E-mail: maya@chaitons.com

Laura Culleton (LSO No. 82428R)

Tel (416) 218-1128

Email: LauraC@chaitons.com

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