

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

)

TUESDAY, THE 12TH

JUSTICE OSBORNE

)

DAY OF NOVEMBER, 2024

)

BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant

- and -

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

Respondents

**ORDER
(Sale Process Approval)**

THIS MOTION, made by KSV Restructuring Inc. in its capacity as Court-appointed receiver, without security (in such capacities, the “**Receiver**”), over all assets, undertakings and properties of the Respondents for an order, *inter alia*, approving a sale process (the “**Sale Process**”) for the real property owned by the Respondents located at 98 James Street South, Hamilton, Ontario (the “**Real Property**”), was heard this day via Zoom videoconference at 330 University Avenue, Toronto, Ontario.

ON READING the First Report of the Receiver dated November 4, 2024, the Factum of the Receiver dated November 9, 2024 and the Motion Record of the Responding Party, Marcus Gillam, dated November 11, 2024, and on hearing the submissions of counsel for the Receiver, and such other counsel as are present and listed on the counsel slip, no one else appearing for any other party although duly served as appears from the affidavits of service of Lynda Christodoulou, sworn on November 4, 2024 and November 11, 2024,

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 SALE PROCESS

2. **THIS COURT ORDERS** that the sale process in the form attached hereto as **Schedule “A”** (the “**Sale Process**”) is hereby approved and the Receiver is hereby authorized and directed to perform its obligations under and in accordance with the Sale Process and to take such further steps as it considers necessary or desirable in carrying out the Sale Process.

3. **THIS COURT ORDERS** that the Receiver and its affiliates, partners, directors, officers, employees, legal advisors, representatives, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities of any nature or kind to any person in connection with or as a result of the Sale Process, except to the extent of losses, claims, damages or liabilities that arise or result from the gross negligence or wilful misconduct of the Receiver in performing its obligations under the Sale Process, as determined by this Court in a final order that is not subject to appeal or other review.

4. **THIS COURT ORDERS** that, in conducting the Sale Process, the Receiver shall have all of the benefits and protections granted to it under the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3, as amended, and the Receivership Order dated August 14, 2024 and any other Order of this Court in the within proceeding.

STALKING HORSE AGREEMENT

5. **THIS COURT ORDERS** that the Receiver is hereby authorized and empowered, *nunc pro tunc*, to enter into the asset purchase agreement dated November 1, 2024 (the “**Stalking Horse APS**”) between the Receiver and Vantage Acquisition Inc. (the “**Stalking Horse Purchaser**”) in the form attached as Appendix “D” to the Receiver’s First Report to the Court dated November 4, 2024 (the “**First Report**”), with such minor amendments as may be acceptable to each of the parties thereto; provided nothing herein approves the sale and vesting of the Real Property to the

Stalking Horse Purchaser pursuant to the Stalking Horse APS and that the approval of the sale of the Real Property shall be considered by this Court on a subsequent motion made to this Court.

6. **THIS COURT ORDERS** that the Bid Protection (as defined in the Stalking Horse APS) is hereby approved and the Receiver is hereby authorized and directed to pay, if applicable, the Bid Protection amount to the Stalking Horse Purchaser (or such other person as it may direct) in the manner and circumstances described in the Stalking Horse APS.

PIPEDA

7. **THIS COURT ORDERS** that pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 and any similar legislation in any other applicable jurisdictions, the Receiver and its advisors are hereby authorized and permitted to disclose and transfer to prospective Sale Process participants that are party to a nondisclosure agreement with the Receiver (each, a “**Sale Process Participant**”) and their respective advisors personal information of identifiable individuals, but only to the extent required to negotiate or attempt to complete a transaction pursuant to the Sale Process (a “**Transaction**”). Each Sale Process Participant 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 for the purpose of effecting a Transaction, and, if it does not complete a Transaction, shall return all such information to the Receiver, or, in the alternative, destroy all such information and provide confirmation of its destruction if requested by the Receiver. The bidder with a Successful Bid shall maintain and protect the privacy of such information and, upon closing of the Transaction(s) contemplated in the Successful Bid(s), shall be entitled to use the personal information provided to it that is related to the Respondent’s business and/or property acquired pursuant to the Sale Process in a manner that is in all material respects identical to the prior use of such information by the Respondent, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed and provide confirmation of its destruction if requested by the Receiver.

APPROVAL OF ACTIVITIES

8. **THIS COURT ORDERS** that the Receiver's activities as described in the First Report be and are hereby approved, provided, however, that only the Receiver, in its personal capacity and with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

GENERAL

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

10. **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.

11. **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"

SALE PROCESS

98 James South Sale Process

1. On August 14, 2024, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an order (the “**Receivership Order**”), among other things, appointing KSV Restructuring Inc. as the receiver and manager (in such capacity, 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 “**Debtors**”) acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the “**Property**”), including the real property located at 98 James Street South, Hamilton, Ontario (the “**Real Property**”).
2. On or about ●, 2024, the Court granted an order (the “**Sale Process Order**”) that, among other things: (a) authorized the Receiver to implement a sale process in accordance with the terms hereof (“**Sale Process**”); and (b) authorized and empowered the Receiver to enter into an agreement of purchase and sale between the Receiver and Vantage Acquisition Inc. (in such capacity, “**Stalking Horse Purchaser**”) dated November 1, 2024 (the “**Stalking Horse APS**”). Capitalized terms that are not otherwise defined herein have the meanings ascribed to them in the Sale Process Order or the Stalking Horse APS, as the case may be. A copy of the Sale Process Order can be found at <https://www.ksvadvisory.com/experience/case/98jamessouth>.
3. This Sale Process sets out the manner in which: (a) binding bids for executable transaction alternatives that are superior to the sale transaction contemplated by the Stalking Horse APS involving the property and assets of the Debtors will be solicited from interested parties; (b) any such bids received will be addressed; (c) any Successful Bid (as defined in schedule “B”) will be selected; and (d) Court approval of any Successful Bid will be sought.
4. This Sale Process shall be conducted by the Receiver and the Receiver shall be entitled to receive all information in relation to the Sale Process.
5. Parties who wish to have their bids considered must participate in this Sale Process as conducted by the Receiver.
6. This Sale Process will be conducted such that the Receiver will:
 - a) disseminate marketing materials and a process letter to potentially interested parties identified by the Receiver;
 - b) solicit interest from parties with a view to such interested parties entering into non-disclosure agreements in form and substance satisfactory to the Receiver in its sole discretion (each a “**NDA**”) (other than the Stalking Horse Bidder, parties shall only obtain access to the data room and be permitted to participate in this Sale Process

if they execute an NDA and agree to the additional measures that are required by the Receiver to protect competitively sensitive information);

- c) provide applicable parties with access to a data room containing diligence information; and
 - d) request that such parties (other than the Stalking Horse Purchaser) submit a binding offer meeting at least the requirements set forth in Section 8 below, as determined by the Receiver (a **“Qualified Bid”**), by the Qualified Bid Deadline (as defined below).
7. This Sale Process shall be conducted subject to the terms hereof and the following key milestones:
- a) the Receiver to commence the solicitation process – as soon as practicable following the granting of the Sale Process Order;
 - b) the deadline to submit a Qualified Bid – 5:00 p.m. Eastern Time on the date that is thirty-five (35) calendar days following the granting of the Sale Process Order (the **“Qualified Bid Deadline”**);
 - c) Receiver to determine whether a bid is a Qualified Bid and, if applicable, to notify those parties who submitted a Qualified Bid of the Auction (as defined below) – 5:00 p.m. Eastern Time on the date that is thirty-six (36) calendar days following the granting of the Sale Process Order;
 - d) Receiver to hold an Auction (if applicable) – within two (2) business days of the Receiver determining that the Auction will take place;
 - e) The Receiver will bring a motion for the Approval and Vesting Order (as defined below) (the **“Sale Motion”**) by serving its materials in support of the Sale Motion by no later than fifteen (15) Business Days following the selection (or deemed selection) of the Successful Bid; and
 - f) the closing of the Successful Bid – as soon as reasonably practicable after the Approval and Vesting Order and, in any event, no later than ten (10) Business Days after the Approval and Vesting Order or such later date as agreed to among the Receiver and the Successful Bidder but, in any event, by no later than February 28, 2025 (as defined below) (the **“Outside Date”**), except that the Outside Date for the Stalking Horse Bid shall be, if the Stalking Horse Bid is selected as the Successful Bid, as set out in the Stalking Horse APS.
8. In order to constitute a Qualified Bid, a bid must comply with the following:
- a) it provides consideration that, in the opinion of the Receiver, is superior to the consideration provided for in the Stalking Horse APS, which for greater certainty includes the amount of at least the purchase price set out in the Stalking Horse APS (\$13,000,000), plus the break fee and expense reimbursement set out in the Stalking

Horse APS (\$260,000) plus a minimum amount of \$100,000; (the “**Consideration Value**”);

- b) it provides for the closing of the transaction contemplated thereunder by no later than the Outside Date;
- c) it contains:
 - i. the legal name and identity (including jurisdiction of existence) and contact information of the bidder, full disclosure of its direct and indirect principals, and the name(s) of its controlling equityholder(s) and/or sponsors;
 - ii. a purchase agreement duly executed and binding on the bidder;
 - iii. a redline of the purchase agreement to the Stalking Horse APS;
 - iv. evidence of authorization and approval from the bidder’s board of directors (or comparable governing body) and, if necessary to complete the transaction, the bidder’s equityholder(s) in form and substance reasonably satisfactory to the Receiver;
 - v. disclosure of any connections or agreements with the Debtors or any of their affiliates, any known, potential, prospective bidder, or any officer, manager, director, member or known equity security holder of the Debtors or any of their affiliates; and
 - vi. such other information as may be reasonably requested by the Receiver;
- d) it is irrevocable until closing of the Successful Bid; provided, that if such bid is not selected as the Successful Bid or as the next-highest or otherwise best Qualified Bid as compared to the Successful Bid (such bid, the “**Back-Up Bid**”) it shall only remain irrevocable until selection of the Successful Bid;
- e) it provides that the bid will serve as the Back-Up Bid if it is not selected as the Successful Bid and if selected as the Back-Up Bid it will remain irrevocable until the earlier of: (i) closing of the Successful Bid, or (ii) closing of the Back-Up Bid;
- f) it provides written evidence of a bidder’s ability to fully fund and consummate the transaction (including financing required, if any, prior to the closing of the transaction to finance the receivership proceedings) and satisfy its obligations under the transaction documents, including binding equity/debt commitment letters and/or guarantees covering the full value of all cash consideration and the

additional items (in scope and amount) covered by the guarantees provided by affiliates of the bidder in connection with the Successful Bid;

- g) it does not include any request for or entitlement to any break fee, expense reimbursement or similar type of payment;
- h) it is not conditional upon:
 - i. approval from the bidder's board of directors (or comparable governing body) or, if applicable, equityholder(s);
 - ii. the outcome of any due diligence by the bidder; or
 - iii. the bidder obtaining financing;
- i) it includes an acknowledgment and representation that the bidder:
 - i. has had an opportunity to conduct any and all required due diligence prior to making its bid, and has relied solely upon its own independent review, investigation and inspection in making its bid;
 - ii. is not relying upon any written or oral statements, representations, promises, warranties, conditions, or guaranties whatsoever, whether express or implied (by operation of law or otherwise), made by any person or party, including the Receiver and its employees, officers, directors, agents, advisors and other representatives, regarding the proposed transaction, this Sale Process, or any information (or the completeness of any information) provided in connection therewith, except as expressly stated in the proposed transaction documents;
 - iii. is making its bid on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description by the Receiver or any of its employees, officers, directors, agents, advisors and other representatives;
 - iv. is bound by this Sale Process and the Sale Process Order; and
 - v. is subject to the exclusive jurisdiction of the Court with respect to any disputes or other controversies arising under or in connection with this Sale Process or its bid;
- j) it specifies any regulatory or other third-party approvals the bidder anticipates would be required to complete the proposed transaction (including the anticipated timing necessary to obtain such approvals);
- k) it is accompanied by a cash deposit (the "**Deposit**") by wire transfer of immediately available funds equal to five percent (5%) of the Consideration Value, which

Deposit shall be retained by the Receiver in a non-interest bearing trust account in accordance with the terms hereof;

- l) it includes a statement that the bidder will bear its own costs and expenses (including legal and advisor fees) in connection with the proposed transaction, and by submitting its bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis; and
 - m) it is received by the Receiver by the Qualified Bid Deadline at the email addresses specified on **Schedule "A"** hereto.
9. The Qualified Bid Deadline may be extended by the Receiver, in consultation with MarshallZehr Group Inc. ("**MarshallZehr**"), or by further order of the Court.
 10. The Receiver may, in consultation with MarshallZehr, waive compliance with any one or more of the requirements specified in Section 8 above and deem a non-compliant bid to be a Qualified Bid.
 11. Notwithstanding the requirements specified in Section 8 above, the transaction contemplated by the Stalking Horse APS (the "**Stalking Horse Bid**"), is deemed to be a Qualified Bid.
 12. If one or more Qualified Bids (other than the Stalking Horse Bid) have been received by the Receiver on or before the Qualified Bid Deadline, the Receiver will proceed with an auction process to determine the successful bid(s) (the "**Auction**"), which Auction shall be administered in accordance with **Schedule "B"** hereto. The successful bid(s) selected within the Auction shall constitute the "**Successful Bid**". Forthwith upon determining to proceed with an Auction, the Receiver shall provide written notice to each party that submitted a Qualified Bid (including the Stalking Horse Purchaser) in accordance with the terms herein, along with copies of all Qualified Bids and a statement by the Receiver specifying which Qualified Bid is the leading bid.
 13. If, by the Qualified Bid Deadline, no Qualified Bid (other than the Stalking Horse Bid) has been received by the Receiver, then the Stalking Horse Bid shall be deemed the Successful Bid and shall be consummated in accordance with and subject to the terms of the Stalking Horse APS.
 14. Following selection of the Successful Bid, the Receiver, with the assistance of its advisors, shall seek to finalize any remaining necessary definitive agreement(s) with respect to the Successful Bid in accordance with the milestones set out in Section 7. Once the necessary definitive agreement(s) with respect to a Successful Bid have been finalized, as determined by the Receiver, the Receiver shall apply to the Court for an order or orders approving such Successful Bid and/or the mechanics to authorize the Receiver to complete the transactions contemplated thereby, as applicable, and authorizing the Receiver to: (a) enter into any and all necessary agreements and related documentation with respect to the Successful Bid; (b) undertake such other actions as may be necessary to give effect to such Successful Bid; and (c) implement the transaction(s) contemplated by such Successful Bid (each, an "**Approval and Vesting Order**"). If the Successful Bid is not consummated in accordance

with its terms, the Receiver shall be authorized, but not required, to elect that the Back-Up Bid (if any) is the Successful Bid.

15. If a Successful Bid is selected and an Approval and Vesting Order authorizing the consummation of the transaction contemplated thereunder is granted by the Court, any Deposit paid in connection with such Successful Bid will be non-refundable and shall, upon closing of the transaction contemplated by such Successful Bid, be applied to the cash consideration to be paid in connection with such Successful Bid or be dealt with as otherwise set out in the definitive agreement(s) entered into in connection with such Successful Bid. Any Deposit delivered with a bid will be returned, without interest thereon, to the applicable bidder as soon as reasonably practicable (but not later than ten (10) business days) after the date upon which the Successful Bid is approved pursuant to the Approval and Vesting Order or such earlier date as may be determined by the Receiver; provided, however, that the Deposit in respect of the Back-Up Bid shall not be returned to the applicable bidder until the closing of the Successful Bid.
16. The Receiver shall be permitted, in its discretion, to provide general updates and information in respect of this Sale Process to any creditor (each a "**Creditor**") on a confidential basis, upon: (a) the irrevocable confirmation in writing from such Creditor that it will not submit any bid in this Sale Process; and (b) such Creditor executing a confidentiality agreement with the Receiver, in form and substance satisfactory to the Receiver.
17. Any amendments to this Sale Process may only be made by the Receiver exercising its discretion in accordance with the terms of this Sale Process, or by further order of the Court.

SCHEDULE "A": E-MAIL ADDRESSES FOR DELIVERY OF BIDS

To the Receiver:

ngoldstein@ksvadvisory.com; jwong@ksvadvisory.com

With a copy to the counsel for the Receiver:

maya@chaitons.com; markw@chaitons.com; harvey@chaitons.com

SCHEDULE "B": AUCTION PROCEDURES

1. **Auction.** If the Receiver receives at least one Qualified Bid (other than the Stalking Horse Bid), the Receiver will conduct and administer the Auction in accordance with the terms of the Sale Process. Instructions to participate in the Auction, which will take place via video conferencing, will be provided to Qualified Parties (as defined below) not less than 24 hours prior to the Auction.

2. **Participation.** Only parties that provided a Qualified Bid by the Qualified Bid Deadline, including the Stalking Horse Bid (collectively, the "**Qualified Parties**" and each a "**Qualified Party**"), shall be eligible to participate in the Auction. No later than 5:00pm Eastern Time two days prior to the Auction, the Receiver will provide unredacted copies of the Qualified Bid(s) which the Receiver believes is/are (individually or in the aggregate) the highest or otherwise best Qualified Bid(s) to all parties that have made a Qualified Bid. No later than 5:00 p.m. Eastern Time on the day prior to the Auction, each Qualified Party (other than the Stalking Horse Purchaser) must inform the Receiver whether it intends to participate in the Auction ("**Auction Bidders**"). The Receiver will promptly thereafter inform in writing each Auction Bidder who has expressed its intent to participate in the Auction of the identity of all other Auction Bidders that have indicated their intent to participate in the Auction. If no Qualified Party provides such expression of intent, the Stalking Horse Bid shall be the Successful Bid.

3. **Auction Procedures.** The Auction shall be governed by the following procedures:

- a. **Attendance.** Only the Receiver, the Auction Bidders, and each of their respective advisors will be entitled to attend the Auction, and only the Auction Bidders will be entitled to make any subsequent Overbids (as defined below) at the Auction;
- b. **Minimum Overbid.** The Auction shall begin with the Qualified Bid that represents the highest or otherwise best Qualified Bid as determined by the Receiver (the "**Initial Bid**"), and any bid made at the Auction by a Auction Bidder subsequent to the Receiver's announcement of the Initial Bid (each, an "**Overbid**"), must proceed in minimum additional cash increments of \$100,000;
- c. **Bidding Disclosure.** The Auction shall be conducted such that all bids will be made and received in one group video-conference, on an open basis, and all Auction Bidders will be entitled to be present for all bidding with the understanding that the true identity of each Auction Bidder will be fully disclosed to all other Auction Bidders and that all material terms of each subsequent bid will be fully disclosed to all other Auction Bidder throughout the entire Auction; provided, however, that the Receiver, in its discretion, may establish separate video conference rooms to permit interim discussions between the Receiver and individual Action Bidders with the understanding that all formal bids will be delivered in one group video conference, on an open basis; to the extent not previously provided (which shall be determined by the Receiver), an Auction Bidder submitting an Overbid must submit, at the Receiver's discretion written evidence

demonstrating such Auction Bidder's ability to close the transaction proposed by the Overbid

- d. **Bidding Conclusion.** The Auction shall continue in one or more rounds and will conclude after each participating Auction Bidder has had the opportunity to submit one or more additional bids with full knowledge and written confirmation of the then-existing highest bid(s); and
- e. **No Post-Auction Bids.** No bids will be considered for any purpose after the Auction has concluded.
- f. **Auction Cancellation/Postponement.** The Receiver reserves the right to cancel or postpone the Auction.
- g. **Additional Rules.** Except as otherwise set forth herein, the Receiver may establish additional rules for conducting the Auction, provided that such rules are: (a) disclosed to each participating Auction Bidder; (b) designed, in the Receiver's business judgment, to result in the highest and otherwise best offer; and (c) not contrary to any material term set out herein.

4. **Selection.** Before the conclusion of the Auction, the Receiver, will: (a) review each Qualified Bid, considering the factors set out in Section 8 of the Sale Process and, among other things, (i) the amount of consideration being offered and, if applicable, the proposed form, composition and allocation of same, (ii) the value of any assumption of liabilities or waiver of liabilities not otherwise accounted for in (i) above; (iii) the likelihood of the Qualified Party's ability to close a transaction by the Outside Date and the timing thereof (including factors such as the transaction structure and execution risk, including conditions to, timing of, and certainty of closing; termination provisions; availability of financing and financial wherewithal to meet all commitments; and required governmental or other approvals), (iv) the likelihood of the Court's approval of the Qualified Bid, and (v) any other factors the Receiver may, consistent with its fiduciary duties, reasonably deem relevant; and (b) identify the highest or otherwise best bid received at the Auction (the "**Successful Bid**" and the Qualified Party making such bid, the "**Successful Party**").

5. **Acknowledgement.** The Successful Party shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made within one business day of the Successful Bid being selected as such, unless extended by the Receiver, subject to the milestones set forth in Section 7 of the Sale Process.

MARSHALLZEHR GROUP INC.

-and-

98 JAMES SOUTH (2022) INC. et. al.

Applicant

Respondents

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

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

PROCEEDING COMMENCED AT
TORONTO

SALE PROCESS APPROVAL ORDER
(November 12, 2024)

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