

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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

**MOTION RECORD
(Returnable November 12, 2024)**

November 4, 2024

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(as at November 4, 2024)

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INDEX

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

B E T W E E N:

MARSHALLZEHR GROUP INC.

Applicant

- and -

SPOTLIGHT ON COURTLAND INC.

Respondent

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

INDEX

Tab	Document
1.	Notice of Motion dated November 4 , 2024
2.	First Report of Receiver dated November 4 , 2024
A	Receivership Order dated August 14, 2024
B	Building Permit Extension Letter
C	Heritage Permit Extension Letter
D	Stalking Horse APS dated November 1, 2024
E	Break Fee Comparison
F	Sale Process
3.	Draft Sale Process Order

TAB 1

**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

NOTICE OF MOTION

KSV Restructuring Inc. (“**KSV**”), in its capacity as 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 “**Debtors**”), including all proceeds thereof (the “**Property**”), will make a motion to a judge of the Ontario Superior Court of Justice (the “**Court**”), on Tuesday, November 12, 2024, at 12:00 pm, or as soon after that time as the motion can be heard.

THE PROPOSED METHOD OF HEARING:

- In writing under subrule 37.12.1 (1) because it is (insert one of on consent, unopposed or made without notice);
- In writing as an opposed motion under subrule 37.12.1 (4);
- In person;
- By telephone conference;
- BY VIDEO CONFERENCE.**

THE MOTION IS FOR:

1. an order:
 - a. if necessary, abridging the time for service of this Notice of Motion and the Receiver's motion materials;
 - b. approving the marketing and sale process (the "**Sale Process**") for the Real Property, appended as **Schedule "A"** to the proposed Sale Process Approval Order;
 - c. authorizing and directing the Receiver, *nunc pro tunc*, to enter into the Agreement of Purchase and Sale dated November 1, 2024 (the "**Stalking Horse APS**") between the Receiver and Vantage Acquisition Inc., as purchaser (the "**Stalking Horse Purchaser**"), solely for the purpose of acting as the stalking horse bid in the Sale Process, in the form attached as Appendix "D" to the Receiver's First Report to the Court dated November 4, 2024 (the "**First Report**"), including approving the break fee and expense reimbursement (collectively, the "**Break Fee**") in favour of the Stalking Horse Purchaser contemplated therein; and
 - d. approving the Receiver's activities as described in the First Report; and
2. such further and other relief that the Receiver may request and this Honourable Court may consider just.

THE GROUNDS FOR THE MOTION ARE:**Background**

1. The Debtors are the registered owners of the real property located at 98 James Street South, Hamilton, Ontario (the “**Real Property**”), which is the Debtors’ primary asset. The Debtors intended the Real Property to be developed into a 31-storey, high-density, mixed-use building with 315 residential condominium units and retail area (the “**Development**”).
2. MarshallZehr Group Inc. (“**MarshallZehr**”) is the Debtors senior secured lender and holds a first ranking mortgage against the Real Property in the principal amount of \$13.2 million. The Real Property was acquired by the Debtors on September 9, 2022 from Hue Developments & Investments Canada Inc. (“**Hue**”). The acquisition of the Real Property was financed by the loan from MarshallZehr and a vendor take back mortgage from Hue in the principal amount of \$14 million which was subordinated to MarshallZehr’s mortgage pursuant to a subordination and standstill agreement dated September 9, 2022 between MarshallZehr and Hue.
3. The Debtor has been in default of its payment obligations to MarshallZehr since November 2023. MarshallZehr brought its application to appoint the Receiver in April 2024, which was adjourned to give the Debtors the opportunity to complete the sale of the Real Property. The sale was not completed and KSV was appointed as Receiver pursuant to an order of the Court on August 14, 2024. The Debtor continues to be indebted to MarshallZehr in the approximate amount of \$15.1 million.
4. The activities of the Receiver since its appointment are set out in the First Report dated November 4, 2024 (the “**First Report**”).

The Sale Process and the Stalking Horse APS

5. The Appointment Order authorizes the Receiver to market and sell the Real Property.
6. In conjunction with its appointment as Receiver, the Receiver was introduced to the Stalking Horse Purchaser by Marshallzehr.
7. The Receiver has developed a stalking horse sale process pursuant to which the Stalking Horse APS provides a base-line purchase price for the Real Property, while also enabling the Receiver to test the market to obtain a higher selling price. The following is summary of the proposed Sale Process timeline:

Milestone	Key Dates
Distribution of marketing materials	As soon as possible following the Sale Procedure Order
Qualified Bid Deadline	35 calendar days following the Sale Procedure Order
Selection of Qualified Bids	36 calendar days following the Qualified Bid Deadline
Auction (if required)	2 Business Days following Selection of Qualified Bid(s)
Motion Materials Served for the Approval and Vesting Order	Within 15 Business Days after the selection of the Successful Bid
Outside Date for Closing of Successful Bid	February 28, 2025

8. The purchase price for the Real Property listed in the Stalking Horse APS is \$13,000,000. The deposit payable upon execution of the Stalking Horse APS is \$650,000. Pursuant to the Stalking Horse APS, the deposit is to be paid to the Receiver by end of day on November 5, 2024. The Receiver will confirm that the deposit has been received at the return of this motion.
9. The Stalking Horse APS includes the Break Fee of \$260,000, representing 2% of the purchase price. The Break Fee is designed to compensate the Stalking Horse Purchaser for its investment of time and resources, as well as its agreement to act as the stalking horse bidder. This includes costs associated with preparing the Stalking Horse APS and conducting due diligence.

The Break Fee is payable if the Stalking Horse APS is not selected as the successful bid in accordance with the Sale Process and will be disbursed following the completion of the successful bid.

10. Based on its review of other bid protections approved by Canadian courts in insolvency proceeding between 2023-2024, the Receiver is of the view that the Break Fee in this proceeding is on the low end of the range of reasonable bid protections in comparable insolvency proceedings and is reasonable in these circumstances.

11. To be a “Qualified Bid” in the Sale Process, a bid must, among other things, meet the following requirements:

- a. Provide consideration that in the opinion of the Receiver, is superior to the consideration provided by the Stalking Horse APS, including cash consideration of at least \$13,360,000, being: (a) the cash amount payable under the Stalking Horse APS (\$13,000,000); (b) the Break Fee (\$260,000); and (c) a bid increment of \$100,000;
- b. Not be conditional on, among other things, financing or due diligence;
- c. Serve as a back-up bid if it is not selected as the successful bid; and
- d. Provide evidence of the bidder’s ability to fund and consummate the transaction.

12. If no Qualified Bids are received in the Sale Process, the Receiver will return to Court to seek an order approving the sale of the Real Property to the Stalking Horse Purchaser. If Qualified Bids are received, pursuant to the terms of the Sale Process, the Receiver will conduct an auction to determine the successful bidder.

13. The Receiver recommends that the Court approve the Sale Process and the Stalking Horse APS for the following reasons:

- a. The Sale Process facilitates broad marketing of the Real Property, ensuring that the market is fully tested for the benefit of all stakeholders;
- b. Stalking horse sale processes are a recognized mechanism in restructuring proceedings to maximize recoveries while creating stability and certainty for the insolvent debtor's stakeholders;
- c. The Stalking Horse APS is fair and reasonable, and it is in the best interests of the Debtors' stakeholders that the Stalking Horse APS be preserved in order to have the opportunity to maximize value and to protect downside risk in the event that a superior transaction is not identified;
- d. As set out in the First Report, the Stalking Horse Purchaser assisted in facilitating the Receiver's negotiations with the City to secure conditional extensions of the Building Permit and the Heritage Permit (as defined in the First Report). In the Receiver's opinion, in the absence of the Stalking Horse Purchaser, it may not have been possible to secure these extensions, which would have substantially reduced the value of the Real Property for the reasons set out in the First Report.
- e. Timely completion of the sale of the Real Property is critical to ensuring that the above referenced permit extensions are secured. The Stalking Horse APS mitigates the uncertainty of the current real estate market while also providing a "floor price" that discourages low-ball offers from potential buyers who might attempt to leverage the deadline pressure to complete the City's conditions against the Receiver;
- f. The duration of the Sale Process is sufficient to allow interested parties to perform diligence and submit offers and will benefit from the Receiver's efforts to obtain the extension of the Building Permit and Heritage Permit;

- g. the Stalking Horse APS is supported by the Applicant as senior secured creditor despite the fact that it will suffer a shortfall if the Stalking Horse APS becomes the Successful Bid;
 - h. the Break Fee is on the low end of the range of break fees typically observed in stalking horse processes and is reasonable in the circumstances; and
 - i. the stalking horse process is appropriate in the circumstances, which include the complexities associated with the development of this property.
14. Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure* (Ontario).
15. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

- 1. The First Report.
- 2. Such further and other material as counsel may advise and this Honourable Court may permit.

November 4, 2024

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TO: SERVICE LIST

MARSHALLZEHR GROUP INC.

Applicant

-and-

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

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

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

NOTICE OF MOTION
(Returnable November 12, 2024)

CHAITONS LLP

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

TAB 2



**First Report to Court of
KSV Restructuring Inc.
as Receiver of
98 James South (2022) Inc. and 98 James
South (2022) Limited Partnership**

November 4, 2024

Contents

	Page
1.0 Introduction.....	1
1.1 Purposes of this Report.....	2
1.2 Restrictions	2
2.0 Background	3
3.0 Creditors.....	3
4.0 The Real Property.....	4
5.0 Stalking Horse APS and Sale Process.....	5
5.1 Background.....	5
5.2 Stalking Horse APS.....	5
5.2.1 Break Fee	7
5.3 Considerations Regarding Stalking Horse.....	7
5.4 Sale Process.....	8
5.4.1 Marketing Process	9
5.4.2 Qualified Bids.....	9
5.4.3 Selection of the Successful Bid	10
5.5 Sale Process and Stalking Horse APS Recommendation	11
6.0 Receiver’s Activities.....	11
7.0 Conclusion.....	13

Appendices

Appendix	Tab
Receivership Order dated August 14, 2024	A
Building Permit Extension Letter	B
Heritage Permit Extension Letter.....	C
Stalking Horse APS dated November 1, 2024	D
Break Fee Comparison.....	E
Sale Process.....	F



COURT FILE NUMBER: 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

**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**

NOVEMBER 4, 2024

1.0 Introduction

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") made on August 14, 2024 (the "**Receivership Order**"), KSV Restructuring Inc. ("**KSV**") was 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 "**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**"). A copy of the Receivership Order is attached as Appendix "A".
2. The application to appoint the Receiver was brought by MarshallZehr Group Inc. ("**MarshallZehr**"), the Debtors' senior secured creditor, which was owed approximately \$12.3 million as at the date of the Receivership Order.
3. The purpose of these proceedings is for the Receiver to realize on the Real Property in an efficient and orderly manner which includes:
 - a) preserving the value of the Real Property, as discussed in Section 4 below; and
 - b) conducting a sale process for the Real Property (the "**Sale Process**")

4. 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 Real Property;
 - b) detail the proposed Sale Process for the Real Property;
 - c) summarize the terms of an Agreement of Purchase and Sale dated November 1, 2024 (the “**Stalking Horse APS**”) between the Receiver and Vantage Acquisition Inc., (the “**Stalking Horse Purchaser**”), that, subject to Court approval, will serve as a “stalking horse” bid in the Sale Process;
 - d) summarizing the Receiver’s activities since the commencement of the receivership proceedings;
 - e) recommend that this Court issue an order (the “**Sale Procedure Order**”) approving:
 - i. the Sale Process;
 - ii. the Stalking Horse APS solely as the “stalking horse” bid, including approving the break fee and expense reimbursement (the “**Break Fee**”) in favour of the Stalking Horse Purchaser contemplated therein; and
 - iii. approving this Report and the Receiver’s activities described herein.

1.2 Restrictions

1. In preparing this Report, the Receiver has relied upon: (i) discussions and information provided by the Debtors; (ii) information provided by MarshallZehr; (iii) the receivership application materials; (iv) discussions and information provided by third-party consultants; and (v) discussions and information provided by the City of Hamilton (the “**City**”).
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.
3. Additional background information regarding the Debtors and the reasons for the appointment of the Receiver are provided in MarshallZehr’s application record including the affidavit of Cecil Hayes sworn February 28, 2024. Copies of the Court materials filed in these proceedings are available on the Receiver’s case website at: <https://www.ksvadvisory.com/experience/case/98jamessouth>.

2.0 Background

1. The Debtors are the registered owners of the Real Property, which is the Debtors' primary asset. The Debtors intended the Real Property to be developed into a 31-storey, high-density, mixed-use building with 315 residential condominium units and retail area (the "**Development**").
2. The front façade of a former church is located on the Real Property and has been designated by the City as a heritage property (the "**Heritage Building**"). At the start of these receivership proceedings, the Receiver, in coordination with the City, took steps to secure the Heritage Building from unauthorized access.
3. The Receiver understands that the Debtors do not have any employees.
4. As described in greater detail in MarshallZehr's receivership application materials, the Debtors have been in default of their payment obligations to MarshallZehr since November 2023. MarshallZehr brought its application to appoint the Receiver in April 2024.
5. As set out in the affidavit of Laura Culleton sworn August 14, 2024 (the "**Culleton Affidavit**"), on the eve of MarshallZehr's receivership application being heard, MarshallZehr and the Debtors entered into a settlement agreement dated April 15, 2024 (the "**Settlement Agreement**"), which was subsequently amended, to permit the Debtors to advance a potential sale to a potential purchaser. As set out in the Culleton Affidavit, following several amendments to the Settlement Agreement, the potential purchaser did not waive its due diligence condition and the Receiver was appointed shortly thereafter.

3.0 Creditors

1. As of October 2, 2024, the following charges were registered against the Real Property¹:

Secured Creditor	Date Registered	C\$
Marshall Zehr	September 9, 2022	13,200,000
Hue Developments & Investments Canada Inc. (" Hue ")	September 9, 2022	14,000,000

2. MarshallZehr provided a loan (the "**Loan**") to the Debtors pursuant to a commitment letter dated August 19, 2022. As security for the Loan, MarshallZehr was granted by the Debtor i) a first ranking mortgage registered against title to the Real Property dated September 9, 2022, (ii) a general assignment of rents, and (iii) a general security agreement. As at October 29, 2024, MarshallZehr advised it was owed approximately \$15.1 million. Hunter Milborne and Marcus Gillam are guarantors. The Receiver will conduct a security opinion of MarshallZehr's security in due course.
3. Hue registered a \$14 million charge against the Real Property on September 9, 2024 in connection with a vendor take-back mortgage.

¹ The Receiver understands that interest, fees and costs continue to accrue.

4. Pursuant to a subordination and standstill agreement dated September 9, 2022, Hue agreed to subordinate and postpone its security in favour of MarshallZehr's security.
5. During this receivership proceeding, MarshallZehr also advanced \$200,000 to the Receiver which is secured by the "Receiver's Borrowing Charge", pursuant to the Receivership Order.

4.0 The Real Property

1. The Debtors acquired the Real Property from Hue in 2022 pursuant to an agreement of purchase and sale dated August 25, 2022 (the "**2022 APS**"). Hue paid development charges ("**DCs**") of approximately \$2.47 million to the City in or around 2019 in connection with the City issuing an Excavation and Shoring Building Permit #19-117434-R3 (the "**Building Permit**").
2. Based on discussions and correspondence with the City, the Receiver understands:
 - a) the City's development charge rates have increased significantly since 2019;
 - b) at the start of these receivership proceedings, the Building Permit contained a condition that shoring and excavation work be commenced by December 18, 2024 (the "**Building Permit Expiration Date**") or the Building Permit would be revoked by the City;
 - c) if the Building Permit is revoked, any proposed development will incur development charges at the City's current rate, which would result in a significant increase in development charges and a reduction in the Real Property's value.
3. The Real Property also includes a heritage-designated structure, which requires a heritage permit for any alterations, development, or repairs. The heritage permit (Permit HP2024-029) (the "**Heritage Permit**") is essential to ensure compliance with the City's heritage conservation requirements and allows certain approved activities to proceed without compromising the property's heritage status. At the start of this receivership proceedings, the Heritage Permit was valid until March 31, 2025, after which any development activity would need to apply for a further extension or new permit (the "**Heritage Permit Expiration Date**").

5.0 Stalking Horse APS and Sale Process²

5.1 Background

1. In conjunction with the receivership, the Receiver was introduced to the Stalking Horse Purchaser by Marshall Zehr. The Stalking Horse Purchaser advised it would be unwilling to enter into the Stalking Horse APS absent, among other things, an extension of the Building Permit Expiration Date and the Heritage Permit Expiration Date.
2. Following several discussions, and subject to certain conditions, the City agreed to extend the Building Permit Expiration Date to December 31, 2026 pursuant to a letter dated October 31, 2024 (the “**Building Permit Extension Letter**”). Subject to certain conditions, the City also agreed to extend the Heritage Permit Expiration Date to December 31, 2028 pursuant to a letter dated October 24, 2024 (the “**Heritage Permit Extension Letter**”). Copies of the Building Permit Extension Letter and Heritage Permit Extension Letter are included as Appendices “B” and “C”, respectively.

5.2 Stalking Horse APS

1. The purpose of the Sale Process is to market the Real Property for sale. The Sale Process is a stalking horse sale process pursuant to which the Stalking Horse APS provides a base-line purchase price for the Real Property, while also enabling the Receiver to test the market to obtain a higher selling price.
2. The following constitutes a summary description of the Stalking Horse APS only. Reference should be made to the Stalking Horse APS for the complete terms and conditions. A copy of the Stalking Horse APS is attached as Appendix “D”.
3. The key terms and conditions of the Stalking Horse APS are provided below.
 - **Vendor:** the Receiver.
 - **Stalking Horse Purchaser:** Vantage Acquisition Inc.
 - **Purchased Assets:** substantially all of the Debtors’ and the Vendor’s right, title and interest in its property and assets, including the following:
 - a) the Assumed Contracts, being the Contracts that the Stalking Horse Purchaser agrees to assume, or is deemed to assume, on Closing (as provided in Schedule “C” of the Stalking Horse APS);
 - b) the Cash Collateral, being all cash security deposited by or on behalf of the Debtors with a Government Authority, Tarion and/or with a financial institution, as required by the Government Authority and/or Tarion in connection with the development and construction of the project;

² Capitalized terms in this section have the meaning provided to them in the Stalking Horse APS or the Sale Process unless otherwise defined herein.

- c) the Lands, being the Real Property (as legally described in Schedule “A” of the Stalking Horse APS);
 - d) the Permits, being all authorizations, registrations, permits, certificates of approval, approvals, consents, commitments, rights or privileges issued, granted or required by any Government Authority in respect of the Lands and/or the Project, including, without limitation;
 - (i) rights, interests and benefits of development charges paid, letters of credit posted, building, demolition and excavation permits and licences and any related development, site plan and other agreements; and
 - (ii) entitlement to any reimbursement or refund regarding any cancelled or revoked building permit applied for by any Person and all other reimbursements and refunds related to Section 1(cc) of the Stalking Horse APS; and
 - e) the Prepaid Expenses and Deposits, being all prepayments, prepaid charges, deposits, security deposits, sums and fees in any way related to the Purchased Assets, but excluding the Cash Collateral;
 - f) the Project Documents, being all plans, designations, drawings, designs, agreements, and specifications in connection with the Project that are in the possession or control of the Vendor; and
 - g) all Rights under or pursuant to all warranties, representations and guarantees, express, implied, or otherwise of or made by suppliers to the Debtors in connection with the Purchased Assets.
- **Excluded Assets:** The Stalking Horse Purchaser may, at its option and upon written notice to the Vendor not less than two (2) Business Days prior to the Closing Date, exclude any of the Purchased Assets from the Transaction;
 - **Purchase Price:** \$13,000,000.
 - **Deposit:** \$650,000, which is to be paid by November 5, 2024 pursuant to the Stalking Horse APS.
 - **Assumed Liabilities:** include:
 - a) the Permitted Encumbrances, being the Encumbrances listed in Schedule “B” of the Stalking Horse APS and, without duplication, those encumbrances, easements and restrictive covenants listed or to be listed on Schedule “D” to the Approval and Vesting Order;
 - b) all Liabilities under the Assumed Contracts; and
 - c) all Liabilities arising from the Stalking Horse Purchaser’s ownership of the Purchased Assets after Closing.

- **Closing Date:** no later than the day that is 10 Business Days following the date on which the Court grants the Approval and Vesting Order;
- **Representations and Warranties:** consistent with the standard terms of an insolvency transaction, i.e. on an “as is, where is” basis, with limited representations and warranties.
- **Outside Date:** February 28, 2025.
- **Material Conditions:** include, among other things:
 - a) the Sale Procedure Order shall have been obtained and the Stalking Horse APS shall be selected by the Receiver as the successful bid in accordance with the Sale Procedure Order and the Sale Process;
 - b) other than the Permitted Encumbrances, there shall be no Encumbrances registered on title to the Purchased Assets or matters affecting title to the Purchased Assets, in each case which are not otherwise vested-out pursuant to the Approval and Vesting Order; and
 - c) the Court shall have issued the Approval and Vesting Order and no appeals thereof shall be pending.

5.2.1 Break Fee

1. The Stalking Horse APS includes the Break Fee of \$260,000, representing 2% of the Purchase Price.
2. The Break Fee is designed to compensate the Stalking Horse Purchaser for its investment of time and resources, as well as its agreement to act as the stalking horse bidder. This includes costs associated with preparing the Stalking Horse APS and conducting due diligence. The Break Fee is payable if the Stalking Horse APS is not selected as the successful bid in accordance with the Sale Process and will be disbursed following the completion of the successful bid.
3. The Receiver compared the Break Fee to other bid protections approved by Canadian courts in insolvency proceedings commenced between 2023 to 2024. The comparison is attached as Appendix “E”.
4. Accordingly, the Receiver is of the view that the Break Fee falls on the low end of bid protections typically appearing in comparable insolvency proceedings and is fair and reasonable given the time and expense invested by the Stalking Horse Purchaser in this transaction.

5.3 Considerations Regarding Stalking Horse

1. The Receiver considered whether the Stalking Horse Purchaser’s offer warrants being the stalking horse. The Receiver’s considerations include:
 - a) the Stalking Horse APS is the result of extensive discussions between the Receiver, the City and the Stalking Horse Purchaser to preserve the value of, and increase the likelihood of, a sale of the Real Property by securing an extension of the Building Permit and Heritage Permit, subject to certain

conditions. If the conditions are not met by the deadlines set out in the Building Permit Extension Letter and Heritage Permit Extension Letter, the City will revoke both permits. If the Building Permit is revoked, the Real Property will incur significantly higher DCs which would reduce the value of the Real Property and negatively impact the Debtors' creditors. The Receiver is of the view that, in the absence of the Stalking Horse Purchaser, it may not have been possible to secure an extension of the Building Permit and Heritage Permit;

- b) based on the Receiver's experience, uncertainty in the current real estate market poses a risk regarding the timing of the sale of the Real Property. As noted above, timely completion of the sale is critical due to the deadlines to meet the conditions. The Stalking Horse APS provides a 'floor price', discouraging 'low-ball' offers from potential buyers who might attempt to leverage the deadline pressure against the Receiver if they perceive soft market interest in the Real Property;
- c) the Stalking Horse APS increases the likelihood of the sale of the Real Property which is in the best interest of parties;
- d) MarshallZehr supports the offer, despite incurring a shortfall if the Stalking Horse APS becomes the Successful Bid; and
- e) the bid protections are lower than those typically observed in stalking horse processes.

5.4 Sale Process

1. Subject to Court approval, the Receiver will be responsible for the marketing and sale of the Real Property.
2. The Sale Process is included in Appendix "F" and the key aspects of the proposed Sale Process are summarized below; however, interested parties are strongly encouraged to review the full terms of the Sale Process.
3. A summary of Sale Process timeline is as follows:

Milestone	Key Dates
Distribution of marketing materials	As soon as possible following the Sale Procedure Order
Qualified Bid Deadline	35 calendar days following the Sale Procedure Order
Selection of Qualified Bids	36 calendar days following the Qualified Bid Deadline
Auction (if required)	2 business days following Selection of Qualified Bid(s)
Motion Materials Served for the Approval and Vesting Order	Within 15 Business Days after the selection of the Successful Bid
Outside Date for Closing of Successful Bid	February 28, 2025

4. The Receiver is of the view that the duration of the Sale Process is sufficient to allow interested parties to perform diligence and submit offers and is consistent with the timelines and structure for sales processes involving a stalking horse in other insolvency proceedings.

5.4.1 Marketing Process

1. The Receiver will prepare and disseminate the marketing materials and solicit interest from parties potentially interested in pursuing a transaction, as identified by the Receiver (each, a **"Potential Bidder"**).
2. In particular, the Receiver will:
 - a) prepare marketing materials and a process letter to potentially interested parties identified by the Receiver, including a form of non-disclosure agreement (an **"NDA"**);
 - b) as soon as practicable following the granting of the Sale Procedure Order, disseminate the marketing materials to potentially interested parties;
 - c) subject to receipt of a signed NDA, provide potentially interested parties access to a virtual data room (the **"VDR"**) containing diligence information; and
 - d) request that potentially interested parties (other than the Stalking Horse Purchaser) submit a binding offer meeting at least the requirements of a Qualified Bid (as set out below) by no later than 35 days following the granting of the Sale Procedure Order (the **"Qualified Bid Deadline"**)
3. A Potential Bidder that wishes to make a bid must deliver a written copy of its bid and other materials required by the Sale Process by no later than 5:00 p.m. (Eastern Time) on the Qualified Bid Deadline. The Qualified Bid Deadline may be extended by the Receiver, in consultation with MarshallZehr, or by further order of the Court.
4. The Receiver will be conducting the marketing and sale process. Representatives of the Receiver have significant real estate experience and have conducted numerous similar real estate sale processes in recent years.

5.4.2 Qualified Bids

1. To be a "Qualified Bid", a bid must, among other things, meet the following requirements:
 - a) provide consideration that, in the opinion of the Receiver, is superior to the consideration provided by the Stalking Horse APS, including cash consideration of at least \$13,360,000, being: (a) the cash amount payable under the Stalking Horse APS (\$13,000,000); (b) the Break Fee (\$260,000); and (c) a bid increment of \$100,000 (in aggregate, the **"Consideration Value"**);
 - b) provide for the closing of a transaction by not later than February 28, 2025, being the Outside Date;
 - c) include the following materials terms:
 - i. the legal name and identity (including jurisdiction of existence) and contact information of the Potential Bidder, full disclosure of its direct and indirect principals, and the name(s) of its controlling equityholder(s) and/or sponsors, including any connections to the Debtors;

- ii. a purchase agreement duly executed and binding on the bidder;
 - iii. a redline of the purchase agreement to the Stalking Horse APS;
- 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) provide that the bid will serve as a 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) provide written evidence of a bidder’s ability to fully fund and consummate the transaction;
 - g) not be conditional upon, among other things, the bidder obtaining financing or the completion of due diligence;
 - h) specify 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);
 - i) include a cash deposit by wire transfer of immediately available funds equal to five percent 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; and
 - j) must be received by the Receiver by the Qualified Bid Deadline.
- 2. Notwithstanding the qualification requirements in the Sale Process, the Stalking Horse APS is deemed to be a Qualified Bid.

5.4.3 Selection of the Successful Bid

- 1. If no Qualified Bids are submitted by the Bid Deadline, the Stalking Horse APS will be the Successful Bid.
- 2. If one or more Qualified Bids are received by the Bid Deadline, the Receiver will proceed with an auction process to determine the successful bid(s) (the “**Auction**”), and the successful bid(s) selected within the Auction shall constitute the Successful Bid.
- 3. 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 key milestones under the Sale Process, including seeking an Approval and Vesting Order in connection with the Successful Bid.

5.5 Sale Process and Stalking Horse APS Recommendation

1. The Receiver requests and recommends that this Court issue an order approving the Sale Process and the Stalking Horse APS for the following reasons:
 - a) the Sale Process is a fair, open and transparent process and is intended to facilitate a broad marketing of the Real Property to obtain the highest and best price by completing a transaction with greater value than the Stalking Horse APS;
 - b) the duration of the Sale Process is sufficient to allow interested parties to perform diligence and submit an offer and will benefit from pre-Sale Process efforts to obtain the extension of the Building Permit and Heritage Permit;
 - c) the Stalking Horse APS is fair and reasonable and is in the best interests of the Debtors' creditors to maximize value and protect against downside risk in the event that a superior transaction is not identified or in the event that an interested party would otherwise have attempted to aggressively discount their offer as described above;
 - d) the Stalking Horse APS increases the likelihood of a transaction and therefore preserving the value of the historical DCs that were paid;
 - e) MarshallZehr, the Debtors' senior secured creditor, supports the Sale Process, the Stalking Horse APS and the Break Fee;
 - f) the Stalking Horse APS will increase the likelihood of a successful and timely closing which is critical to meeting the City's deadlines to complete the conditions on the Building Permit and Heritage Permit; and
 - g) the Break Fee is fair and reasonable in the circumstances and will not discourage interested parties from submitting offers in the Sale Procedure.

6.0 Receiver's Activities

1. In addition to dealing with the matters addressed above, the Receiver's activities have included, among other things, the following:
 - reviewing MarshallZehr's receivership application materials and the Receivership Order;
 - corresponding on a regular basis with Chaitons and MarshallZehr regarding all aspects of this mandate;
 - corresponding with the Debtors' representatives regarding the Real Property, including the permits, DCs and development status;

- corresponding with the Debtors regarding their books and records and reviewing same, including the development status, Building Permit, Heritage Permit, correspondence between the Debtors and the City, DCs, reports and correspondence from architects, planners and engineers, property tax information, maintenance information, property insurance, environmental reports, property condition assessments and engineering reports;
- engaging a third-party contractor at the commencement of these proceedings to assess the Real Property and secure access to the Real Property and the Heritage Building in coordination with the City;
- corresponding with Tacoma Engineers Inc. regarding engineering assessments and maintenance work to be completed on the Heritage Building;
- corresponding with the Debtors' architect and planner;
- attending at the Real Property;
- corresponding extensively with the City and the Stalking Horse Purchaser regarding the extension of the Building Permit and the Heritage Permit and the conditions thereto, among other things;
- reviewing the Building Permit Extension Letter and Heritage Permit Extension Letter;
- corresponding extensively with the Stalking Horse Purchaser regarding the Stalking Horse APS and the Sale Process and reviewing same;
- opening a receivership bank account;
- corresponding with an insurance broker regarding liability and property insurance coverage;
- arranging funding from MarshallZehr and preparing a Receiver's certificate in respect of same;
- paying expenses incurred during this receivership proceeding;
- drafting and sending to all creditors the Notice and Statement of the Receiver pursuant to Sections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act*;
- drafting this Report and reviewing all motion materials filed in connection with this motion; and
- dealing with other matters pertaining to the administration of this mandate.

7.0 Conclusion

1. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1(1)(e) of this Report.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS RECEIVER OF
98 JAMES SOUTH (2022) INC. AND 98 JAMES SOUTH (2022) LIMITED PARTNERSHIP
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

Appendix “A”

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) WEDNESDAY, THE 14TH
JUSTICE CAVANAGH) DAY OF AUGUST 2024

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

**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. as receiver (the "**Receiver**") without security, of all of the assets, undertakings and properties of 98 James South (2022) Inc. and 98 James South (2022) Limited Partnership (the "**Respondents**") acquired for, or used in relation to a business carried on by the Respondents, was heard this day at 330 University Avenue, Toronto.

ON READING the affidavit of Cecil Hayes sworn February 28, 2024 and the Exhibits thereto, the affidavit of Laura Culleton sworn August 13, 2024 and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant and for the Respondents, and on reading the consent of KSV Restructuring Inc. to act as the Receiver,

APPOINTMENT

1. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, KSV Restructuring Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Respondents acquired for, or used in relation to a business carried on by the Respondents, including all proceeds thereof (the "**Property**"), including, without limitation, the real property described in **Schedule "A"** attached hereto.

RECEIVER'S POWERS

2. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Respondents, 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 Respondents;
- (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 Respondents or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Respondents and to exercise all remedies of the Respondents in collecting such monies, including, without limitation, to enforce any security held by the Respondents;
- (g) to settle, extend or compromise any indebtedness owing to the Respondents;
- (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 Respondents, 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

Respondents, 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;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Respondents;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Respondents, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Respondents;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Respondents 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 Respondents, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

3. **THIS COURT ORDERS** that (i) the Respondents, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its 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.

4. **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 Respondents, 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.

5. **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.

6. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

7. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE RESPONDENTS OR THE PROPERTY

8. **THIS COURT ORDERS** that no Proceeding against or in respect of the Respondents 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 Respondents or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. **THIS COURT ORDERS** that all rights and remedies against the Respondents, 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 Respondents to carry on any business which the Respondents are not lawfully entitled to carry on, (ii) exempt the Receiver or the Respondents from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

10. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Respondents, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Respondents 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 Respondents 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 Respondents' 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 Respondents or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this

Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post 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

13. **THIS COURT ORDERS** that all employees of the Respondents shall remain the employees of the Respondents until such time as the Receiver, on the Respondents' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

14. **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 Respondents, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

16. **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

17. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

18. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its 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.

19. **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

20. **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 \$200,000 (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, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. **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.

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

23. **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.

RETENTION OF COUNSEL

24. **THIS COURT ORDERS** that the Receiver may retain lawyers to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order. Such lawyers may include Chaitons LLP, lawyers for the Applicant herein, in respect of any matter where there is no conflict of interest. The Receiver shall, however, retain independent lawyers in respect of any legal advice or services where a conflict exists, or may exist.

SERVICE AND NOTICE

25. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (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 www.ontariocourts.ca/scj/practice/practice-directions/toronto/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 “•”.

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 Respondents' creditors or other interested parties at their respective addresses as last shown on the records of the Respondents 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.

27. **THIS COURT ORDERS** that the Applicant, the Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Respondents' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

28. **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.

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

30. **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.

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

32. **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 Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Applicant from the Respondents' estate with such priority and at such time as this Court may determine.

33. **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.

34. **THIS COURT ORDERS** that this order is effective from the date it is made, and it is enforceable without any need for entry and filing, provided that any party may nonetheless submit a formal order for original, signing, entry and filing, as the case may be.



SCHEDULE "A"

Municipal Address: 98 James Street South, Hamilton, Ontario

PIN: 17171-0259 (LT)

Property Description: PART LOT 75 PLAN HAMILTON SURVEY
(UNREGISTERED) IN THE BLOCK BOUNDED BY
JACKSON, JAMES, HUNTER AND MACNAB STREETS;
PART 1 ON PLAN 62R-21103; CITY OF HAMILTON

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties of 98 James South (2022) Inc. and 98 James South (2022) Limited Partnership (the "**Respondents**") acquired for, or used in relation to a business carried on by the Respondents, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (the "**Court**") dated the ____th day of _____, 2024 (the "**Order**") made in an application having Court file number CV-●, 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 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 _____, 202__.

KSV RESTRUCTURING INC., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: _____

Name:

Title:

MARSHALLZEHR GROUP INC.
Applicant

-and-

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

ORDER
(Appointing Receiver)

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

Maya Poliak (LSO #54100H)
Tel: (416) 218-1161
E-mail: maya@chaitons.com

Laura Culleton (LSO #82428R)
Tel: (416) 218-1128
E-mail: laurac@chaitons.com

Lawyers for the Applicant

Appendix “B”



Hamilton

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Building Division
71 Main Street West – 3rd Floor
Hamilton, Ontario, Canada, L8P 4Y5
Phone: 905.546.2720 Fax: 905.546.2764
building@hamilton.ca
www.hamilton.ca

DATE: October 31, 2024

KSV Restructuring Inc. c/o Jordan Wong
Jwong@ksvadvisory.com

Attention: Jordan Wong

**RE: 98 James Street S, Hamilton
Building Permit Number 19-117-434-R3
Your Request to extend the building permit dated: October 18, 2024**

The Building Division has received your letter dated October 18, 2024, requesting an extension to the above building permit no. 19-117434-R3 ***“Excavation and installation of shoring to permit the development of a new building on this site.”***

Please be advised that your request for extension has been approved, and extended to December 31, 2026, with the following conditions;

Failure to:

- Seriously commence construction to the satisfaction of the Chief Building Official on or before December 31, 2026, or
- Make forward progress, in achieving the agreed upon milestones in the attached email, dated October 23, 2024, between Jordan Wong, Ken Coit, and other key stakeholders,

Will result in the revocation of Building Permit No. 19-117434-R3.

If you require further information, please contact Bob Nuttall at (905) 546-2424 ext. 4993 or building@hamilton.ca.

Regards,

for Jorge Caetano
Acting Director, Building Division
JC/bn



Hamilton

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Building Division
71 Main Street West – 3rd Floor
Hamilton, Ontario, Canada, L8P 4Y5
Phone: 905.546.2720 Fax: 905.546.2764
building@hamilton.ca
www.hamilton.ca

From: Coit, Ken <Ken.Coit@hamilton.ca>
Sent: October 22, 2024 12:31 PM
To: Jordan Wong <Jwong@ksvadvisory.com>
Cc: Tony Trifunovic <ttrifunovic@ksvadvisory.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Shamil Jiwani <sjiwani@vantagedevcorp.com>; Fabac, Anita <Anita.Fabac@hamilton.ca>; Alan Leela <aleela@vantagedevcorp.com>; Golden, Alissa <Alissa.Golden@hamilton.ca>; Robichaud, Steve <Steve.Robichaud@hamilton.ca>; Weaver, Kirk <Kirk.Weaver@hamilton.ca>; Nuttall, Bob <Bob.Nuttall@hamilton.ca>; Beckett, Joyanne <Joyanne.Beckett@hamilton.ca>
Subject: 98 James Street South, Hamilton - Permit extensions

Hi Jordan

In response to your requests and our meeting today please see the following.

Based on our meeting it is city staff understanding that a prospective new owner for the site is seeking to complete the project generally as designed within the currently approved building massing and height with minor changes to parking and unit count and that construction on the new building would begin in 2026-2027.

Given this the city is amenable to extending both the current Heritage Permit and Building Permit for two years providing that the new owner is demonstrating that they are working towards a 2026-2027 construction start by completing the work, providing studies and making applications as outlined below on or before the noted deadlines. The city may revoke the building permit if one or more of these deadlines are not met.

Heritage Structure

- Comply with all Orders to Comply currently in place or issued by the city in 2024-25
- Install temporary interior platforming in the heritage structure to facilitate safety and monitoring report inspections by Q4 2024 This was completed on September 30, 2024 in accordance with the specifications of Chris Atchison, Supervisor, Building Inspections. On the same day, the receiver's contractors attended on site with the city's building inspections team, Hamilton police and Tacoma Engineering. Access points were boarded up. The platform will allow Tacoma to continue their ongoing monitoring.
- Provide report by professional engineer assessing the heritage structure from the September 30/24 inspection to the satisfaction of the Chief Building Official identifying any restoration and stabilization requirements by November 15, 2024 Please see attached for the monitoring report and structural assessment.
- Undertake any remedial construction to stabilize and secure the heritage structure pursuant to the above noted report.
- Apply for and obtain building permit for the remedial construction work on or before Nov. 30/24 (or as per required actions of P.Eng report noted above – as applicable)

Heritage Permit

- Provide ongoing monthly monitoring reports as per the requirements of the permit. Not required when work on site is being undertaken.



Hamilton

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Building Division
71 Main Street West – 3rd Floor
Hamilton, Ontario, Canada, L8P 4Y5
Phone: 905.546.2720 Fax: 905.546.2764
building@hamilton.ca
www.hamilton.ca

- Undertake clean-up and tidying of site, including removal of demolition rubble and levelling and grading the rear of the site by July 1, 2025
- Implement the Documentation and Salvage Report recommendations (re-securing the salvaged features stored on site, salvaging any remaining stone from the rubble pile at the rear, moving and salvaging what remains of the former stained glass window in the rear yard, etc.) by July 1, 2025
- Commence stabilization and restoration work on the retained historic structure (as determined by an updated building condition assessment) by September 15, 2025

Site Plan

- Submit revised drawings and reports for staff review to clear Conditional Site Plan Approval conditions for the new development by Q4 2025
- Receive final site plan approval by Q4 2027

The changes to the develop as described at the Sept 19th meeting and noted above would be considered as minor and not require a new site plan application. Please note that as development changes have been paid the date of the site plan is now irrelevant.

Zoning

- Apply for and receive approval for any required variances resulting from changes to the design or as identified in the conditional approval by Q3 2027

Building Permit

- Apply for an extension to the existing building permit by Nov 15, 2024 Application sent to Bob Nuttall and Jorge Caetano on Friday October 18, 2024.
- Apply for a Building Permit revision for excavation and shoring by Q4 2025
- Apply for a Building Permit revision for foundation by Q4 2025 (Please note that the site plan has already been cleared for shoring and foundation permits)

The changes to the develop as described at the Sept 19th meeting and noted above would be considered as minor and not require a new site plan application. Please note that as development charges have been paid the date of the site plan is now irrelevant.

Please advise that you and the prospective new owner are in agreement with the above. Once we have received that confirmation we will prepare the heritage permit extension and receive their application to extend the current building permit.

Happy to discuss further if needed.

Thank you

KEN COIT
BES BArch OAA
Director Heritage and Urban Design
Planning Division

Appendix “C”



Mailing Address:
71 Main Street West
Hamilton, Ontario
Canada L8P 4Y5
www.hamilton.ca

Planning and Economic Development Department
Planning Division

FILE: HP2024-029

October 24, 2024

KSV Restructuring Inc.
c/o Tony Trifunovic
220 Bay Street, Suite 1300
Toronto, ON M5J 2W4

Re: Heritage Permit Application HP2024-029: Extension of Previously-Approved Heritage Permit Application HP2024-010 for the Redevelopment of 98 James Street South, Hamilton (Former James Street Baptist Church, By-law No. 90-33) (Ward 2)

Please note that Heritage Permit HP2024-029 is an extension of the previously approved Heritage Permit applications, including HP2013-058, HP2018-044, HP2020-041, HP2022-036, HP2023-017 and HP2024-010. KSV Restructuring Inc., in their capacity as the court-appointed receiver of 98 James South (2022) Inc. and James South (2022) Limited Partnership, submitted a request for extension of the previously approved permit HP2024-010 before its conditional expiry on August 31, 2024.

Please be advised that pursuant to By-law No. 05-364, as amended by By-law No. 07-322, which delegates the power to consent to alterations to designated property under the *Ontario Heritage Act* to the Director of Planning and Chief Planner, Heritage Permit Application HP2024-029 is approved for the designated property at 98 James Street South, Hamilton, in accordance with the materials submitted with the application for the following alterations:

- To renew previously-approved Heritage Permit HP2024-010, including:
 - Retention of the existing front (east) façade and corner towers on James Street South in situ, including all existing windows, doors, and other features (the “retained portions”);
 - Salvage and reuse of features and materials from the removed portions of the building (the “salvaged portions”); and,
 - Construction of a new building and/or addition on the remainder of the site and attached to the retained portions (the “new building”).

Re: Heritage Permit Application HP2024-029: Extension of Previously-Approved Heritage Permit Application HP2024-010 for the Redevelopment of 98 James Street South, Hamilton (Former James Street Baptist Church, By-law No. 90-33) (Ward 2) - Page 2 of 4

Subject to the following conditions:

That the applicant be advised that Heritage Permit Application HP2024-029 is approved in accordance with the previously-submitted application, subject to the following conditions:

- a) That the applicant submits, on a quarterly basis, ongoing monitoring reports assessing and outlining the condition of the retained portions to City staff;
- b) That the clean-up and tidying of the site, including removing the demolition rubble and levelling and grading the rear of the site, be completed, to the satisfaction and approval of the Director of Planning and Chief Planner, by **July 1, 2025**. If the work is not completed by **July 1, 2025**, then this approval expires as of that date and no alterations shall be undertaken without a new approval issued by the City of Hamilton;
- c) That the recommendations of the Documentation and Salvage Report from mcCallumSather, dated March 27, 2024, be implemented, to the satisfaction and approval of the Director of Planning and Chief Planner, by **July 1, 2025**. If the recommendations are not implemented by **July 1, 2025**, then this approval expires as of that date and no alterations shall be undertaken without a new approval issued by the City of Hamilton;
- d) That stabilization and restoration work on the retained historic structure commence, to the satisfaction and approval of the Director of Planning and Chief Planner, by **September 15, 2025**. If the work does not commence by **September 15, 2025**, then this approval expires as of that date and no alterations shall be undertaken without a new approval issued by the City of Hamilton;
- e) That a Conservation Plan consisting of the following items shall be submitted, to the satisfaction of the Director of Planning and Chief Planner prior to the commencement of any alterations:
 - I. Documentation of the existing building and its architectural features and finishes in situ.
 - II. Specifications and methodology for the protection, stabilization, and restoration of the retained portions.
 - III. Inventory of the existing architectural features and building materials and a methodology for salvaging these features and materials from the removed portions.
 - IV. A plan for the storage and protection of retained and salvaged heritage elements, including the on or off site storage location(s), environmental

Re: Heritage Permit Application HP2024-029: Extension of Previously-Approved Heritage Permit Application HP2024-010 for the Redevelopment of 98 James Street South, Hamilton (Former James Street Baptist Church, By-law No. 90-33) (Ward 2) - Page 3 of 4

conditions and security, a schedule of regular inspections and monitoring, and any other protection measures as appropriate. In addition:

- i. If the storage location is to be changed, the new location and address shall be submitted to the satisfaction and approval of staff, prior to the removal of the heritage elements to a new storage facility.
 - ii. Any unsatisfactory environmental conditions or failures in the security measures shall be reported to Planning staff as soon as they are discovered and appropriate remedies shall be developed and approved by Planning staff prior to implementation, except in emergency situations.
 - iii. City staff shall be allowed reasonable access to inspect the heritage elements in storage, at any time.
- f) That, once the alterations are complete, the owner shall agree to appropriate amendments to the Heritage Conservation Easement agreement to reflect the altered building;
- g) That any minor changes to the plans and elevations following approval shall be submitted, to the satisfaction and approval of the Director of Planning and Chief Planner, prior to submission as part of any application for a Building Permit and / or the commencement of any alterations; and,
- h) That implementation of the alterations, in accordance with this approval, shall be completed no later than **December 31, 2028**. If the alterations are not completed by **December 31, 2028**, then this approval expires as of that date and no alterations shall be undertaken without a new approval issued by the City of Hamilton.

Please note that this property is designated under Part IV of the *Ontario Heritage Act*, and that this permit is only for the above-noted work. Any departure from the approved plans and specifications is prohibited, and could result in penalties, as provided for by the *Ontario Heritage Act*. The terms and conditions of this approval may be appealed to the Ontario Land Tribunal within 30 days of your receipt of this Notice.

The issuance of this permit under the *Ontario Heritage Act* is not a waiver of any of the provisions of any By-law of the City of Hamilton, the requirements of the *Building Code Act*, the *Planning Act*, or any other applicable legislation.

If you have any further questions, feel free to contact Alissa Golden, Cultural Heritage Program Lead, at 905-546-2424 ext. 1202 or via email at Alissa.Golden@hamilton.ca.

Re: Heritage Permit Application HP2024-029: Extension of Previously-Approved Heritage Permit Application HP2024-010 for the Redevelopment of 98 James Street South, Hamilton (Former James Street Baptist Church, By-law No. 90-33) (Ward 2) - Page 4 of 4

Yours truly,

A handwritten signature in cursive script, appearing to read "Anita Fabac".

Anita Fabac, MCIP RPP
Acting Director, Planning and Chief Planner

cc: Alissa Golden, Cultural Heritage Program Lead
Chantal Costa, Plan Examination Secretary
Matt Gauthier, Legislative Coordinator
Councillor Kroetsch, Ward 2

Appendix “D”

STALKING HORSE PURCHASE AGREEMENT

THIS AGREEMENT dated the 1st day of November, 2024.

BETWEEN:

KSV RESTRUCTURING INC., in its capacity as Court-appointed receiver of 98 James South (2022) Inc. and 98 James South (2022) Limited Partnership (collectively, the "**Debtor**") and not in its personal or corporate capacity and without personal or corporate liability (the "**Vendor**")

- and -

VANTAGE ACQUISITION INC.
(the "**Purchaser**")

RECITALS:

- A. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated August 14, 2024 (the "**Receivership Order**"), the Vendor was appointed as receiver over all property, assets and undertakings of the Debtor, including, without limitation, the real property located at 98 James Street South, Hamilton, Ontario and bearing the legal description described in Schedule "A" hereto;
- B. Pursuant to the Receivership Order the Vendor was authorized to, among other things, market the Purchased Assets for sale and apply for an order of the Court approving the sale of the Purchased Assets and vesting in and to a purchaser all of the Debtor's right, title and interest in and to the Purchased Assets;
- C. The Vendor will bring a motion for the Sale Procedures Order among other things to (i) conduct a sales process with respect to the Purchased Assets and (ii) authorize the Vendor to enter into this Agreement solely as a Stalking Horse Bid pursuant to the Sale Procedures;
- D. Subject to the granting of the Sale Procedures Order, the Purchaser has agreed to: (a) act as a "stalking horse bidder", and (b) purchase the Purchased Assets in the absence of a superior bid pursuant to the Sale Procedures for the Purchased Assets in accordance with the transaction of purchase and sale contemplated in this Agreement; and
- E. If this Agreement is selected as the Successful Bid (as defined in the Sale Procedures), the Vendor desires to sell and assign to the Purchaser and the Purchaser desires to purchase and assume from the Vendor the Purchased Assets (as defined herein) in accordance with the terms of this Agreement.

NOW THEREFORE in consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the Parties agree as follows:

1. **DEFINITIONS.**

In this Agreement, including the Recitals, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

- (a) **"Agreement"** means this asset purchase agreement, including the attached Schedules to this Agreement, as it or they may be amended or supplemented from time to time;
- (b) **"Applicable Laws"** means, with respect to any Person, property, transaction, event or other matter, all applicable laws, statutes, regulations, rules, ordinances, protocols, regulatory policies, codes, guidelines, official directives, orders, rulings, judgments and decrees of any Government Authority;
- (c) **"Application"** has the meaning ascribed to it in Subsection 16(a);
- (d) **"Approval and Vesting Order"** means an order made by the Court approving this agreement and the Transaction and vesting in the Purchaser on Closing all the right, title and interest of the Debtor in the Purchased Assets free and clear of all Encumbrances (except for Permitted Encumbrances), in form and substance satisfactory to the Vendor and the Purchaser, acting reasonably, and subject to amendments as the Vendor and Purchaser may mutually agree acting reasonably;
- (e) **"Assignment Order"** has the meaning ascribed to it in Section 13;
- (f) **"Assumed Contracts"** has the meaning ascribed to it in Section 12;
- (g) **"Assumed Liabilities"** has the meaning ascribed to it in Subsection 11(a);
- (h) **"Business Day"** means a day on which banks are open for business in the City of Toronto, but does not include a Saturday, Sunday, or statutory holiday recognized in the Province of Ontario;
- (i) **"Cash Collateral"** means all cash security deposited by or on behalf of the Debtor with a Government Authority, Tarion and/or with a financial institution, as required by the Government Authority and/or Tarion in connection with the development and construction of the Project;
- (j) **"Closing"** has the meaning ascribed to it in Section 15;
- (k) **"Closing Date"** has the meaning ascribed to it in Section 15;
- (l) **"Contracts"** means all contracts, agreements, leases and arrangements to which the Debtor is bound or affected in connection with the Purchased Assets and/or the Project;
- (m) **"Court"** means the Ontario Superior Court of Justice (Commercial List);
- (n) **"Cure Costs"** means all monetary Liabilities of the Debtor under the Purchased Assets up to and including the date of assignment that must be paid or otherwise satisfied to cure all monetary and other defaults under the Purchased Assets;
- (o) **"Debtor"** has the meaning ascribed to it on page 1 above;
- (p) **"Deposit"** has the meaning ascribed to it in Subsection 5(a);
- (q) **"Encumbrances"** means any and all security interests (whether contractual, statutory, or otherwise), mortgages, pledges, charges, debentures, assignments by way of security interests, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, leases, title retention agreements, reservations of ownership, demands, executions, levies, Work Orders, rights of way, options or other rights to acquire any interest in any assets, or other financial or monetary claims, whether or not same have attached or been perfected,

registered or filed and whether secured, unsecured or otherwise, and all contracts to create any of the foregoing, easements, servitudes, rights of way, restrictions, executions or other liens, charges or encumbrances (including notices or other registrations in respect of any of the foregoing) against title to the Purchased Assets or any part thereof or interest therein, or encumbrances of any kind or character whatsoever, other than Permitted Encumbrances;

- (r) **“Environmental Laws”** means any and all applicable international, federal, provincial, municipal or local laws, by-laws, statutes, regulations, treaties, orders, judgments, decrees, ordinances, official directives and all authorizations relating to the environment, occupational health and safety, health protection or any Hazardous Materials;
- (s) **“ETA”** means the *Excise Tax Act* (Canada);
- (t) **“Excluded Assets”** has the meaning ascribed to it in Section 14;
- (u) **“Government Authority”** means any Person, body, department, bureau, agency, board, tribunal, commission, branch or office of any federal, provincial or municipal governments having or claiming to have jurisdiction over part or all of the Purchased Assets, the Transaction and/or one or both of the Parties;
- (v) **“HST”** has the meaning ascribed to it in Section 30(a);
- (w) **“Hazardous Materials”** means any contaminants, pollutants, substances or materials that, when released to the natural environment, could cause, at some immediate or future time, harm or degradation to the natural environment or risk to human health, whether or not such contaminants, pollutants, substances or materials are or shall become prohibited, controlled or regulated by any Government Authority and any **“Contaminants”**, **“Dangerous Substances”**, **“Hazardous Materials”**, **“Hazardous Substances”**, **“Hazardous Wastes”**, **“Industrial Wastes”**, **“Liquid Wastes”**, **“Pollutants”** and **“Toxic Substances”**, all as defined in, referred to or contemplated in federal, provincial and/or municipal legislation, regulations, orders and/or ordinances relating to environmental, health and/or safety matters and, not to limit the generality of the foregoing, includes asbestos, urea formaldehyde foam insulation and mono or poly-chlorinated biphenyl wastes;
- (x) **“Indemnitees”** has the meaning ascribed to it in Subsection 22(a);
- (y) **“Lands”** means the lands and premises (including but not limited to all buildings situated thereon) legally described in Schedule “A” attached hereto;
- (z) **“Liabilities”** means any and all claims, actions, causes of action, suits, proceedings, applications, complaints, costs, expenses, charges, debts, liabilities, losses, damages, orders, judgments, demands, fines, penalties, and obligations of any nature of kind whatsoever, whether primary or secondary, direct or indirect, fixed, contingent, absolute or otherwise, arising from the Purchaser’s ownership of the Purchased Assets;
- (aa) **“Outside Date”** means the 28th day of February, 2025;
- (bb) **“Party”** means a party to this Agreement and any reference to a Party includes its successors and permitted assigns and **“Parties”** means collectively the Vendor and the Purchaser;
- (cc) **“Permits”** means all authorizations, registrations, permits, certificates of approval, approvals, consents, commitments, rights or privileges issued, granted or required by any

Government Authority in respect of the Lands and/or the Project, including without limitation all (i) rights, interests and benefits of development charges paid, letters of credit posted, building, demolition and excavation permits and licences and any related development, site plan and other agreements and (ii) entitlement to any reimbursement or refund regarding any cancelled or revoked building permit applied for by any Person and all other reimbursements and refunds related to this Section 1(cc);

- (dd) **"Permitted Encumbrances"** means those Encumbrances listed in Schedule "B" attached hereto and without duplication those encumbrances, easements and restrictive covenants listed or to be listed on Schedule "D" to the Approval and Vesting Order;
- (ee) **"Person"** means an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity;
- (ff) **"Prepaid Expenses and Deposits"** means all prepayments, prepaid charges, deposits, security deposits, sums and fees in any way related to the Purchased Assets, but excluding the Cash Collateral;
- (gg) **"Project"** means the proposed 30-storey high density mixed-use building with 315 residential condominium units and 2,885 square feet for commercial area to have been developed and constructed by the Debtor on the Lands;
- (hh) **"Project Documents"** means all plans, designations, drawings, designs, agreements, and specifications in connection with the Project that are in the possession or control of the Vendor (it being acknowledged that the Vendor is under no obligation to incur additional expense to obtain such plans, designs and specifications);
- (ii) **"Purchase Price"** has the meaning ascribed thereto in Section 4;
- (jj) **"Purchased Assets"** means all of the Debtor's right, title and interest in the following assets:
 - (i) the Assumed Contracts;
 - (ii) the Cash Collateral;
 - (iii) the Lands;
 - (iv) the Permits;
 - (v) the Prepaid Expenses and Deposits;
 - (vi) the Project Documents; and
 - (vii) all Rights under or pursuant to all warranties, representations and guarantees, express, implied, or otherwise of or made by suppliers to the Debtor in connection with the Purchased Assets,and in each case, other than the Excluded Assets;
- (kk) **"Purchaser"** has the meaning ascribed to it on page 1 above;
- (ll) **"Purchaser's Solicitors"** means the firm of means the firm of Cassels Brock & Blackwell

LLP, Suite 3200, Bay Adelaide Centre-North Tower, 40 Temperance Street, Toronto, Ontario (Attention: Mickey Lungu / Monique Sassi / Manny Mukkar), E-mail: mlungu@cassels.com / msassi@cassels.com / mmukkar@cassels.com;

- (mm) **"Receiver's Certificate"** means the certificate attached as a schedule to the Approval and Vesting Order confirming *inter alia* that the Vendor has received the Purchase Price and all conditions to Closing, if any, have been satisfied or waived by the Parties;
- (nn) **"Receivership Order"** has the meaning ascribed to it in the Recitals;
- (oo) **"Rights"** has the meaning ascribed to it in Section 13;
- (pp) **"Sale Procedures"** means the sale solicitation process substantially in the form attached hereto as Schedule "D" together with any amendments thereto to be acceptable to each of the Vendor and the Purchaser, each acting reasonably;
- (qq) **"Sale Procedures Order"** has the meaning ascribed thereto in Section 7(b);
- (rr) **"Stalking Horse Bid"** has the meaning ascribed thereto in Section 7(b);
- (ss) **"Statement of Adjustments"** has the meaning ascribed to it in Subsection 26(a)(iii);
- (tt) **"Successful Bid"** has the meaning ascribed thereto in Schedule "D" attached hereto;
- (uu) **"Successful Bidder"** has the meaning ascribed thereto in Schedule "D" attached hereto;
- (vv) **"Transaction"** means the transaction contemplated by this Agreement;
- (ww) **"Vendor"** has the meaning ascribed to it on page 1 above;
- (xx) **"Vendor's Solicitors"** means the firm of Chaitons LLP, 5000 Yonge Street, 10th Floor, Toronto, Ontario (Attention: Mark Willis-O'Connor), E-mail: markw@chaitons.com); and
- (yy) **"Work Orders"** means, collectively, all work orders issued by a Government Authority, notices of violation issued by a Government Authority, open permits, and other matters of non-compliance with zoning and other requirements of a Government Authority relating to the Lands and/or the Project.

2. SCHEDULES.

The following schedules are appended to this Agreement:

- Schedule "A" Lands
- Schedule "B" Permitted Encumbrances
- Schedule "C" Assumed Contracts
- Schedule "D" Sale Procedures

3. AGREEMENT TO PURCHASE AND SELL.

On the Closing Date, the Vendor shall sell the Purchased Assets and assign the Assumed Liabilities and the Purchaser shall purchase the Purchased Assets and assume the Assumed Liabilities, upon and subject to the terms of this Agreement.

4. **PURCHASE PRICE.**

The purchase price payable by the Purchaser to the Vendor for the Purchased Assets shall be the sum of Thirteen Million (\$13,000,000) Dollars (the "**Purchase Price**").

5. **SATISFACTION OF PURCHASE PRICE.**

The Purchase Price shall be paid and satisfied as follows:

- (a) a deposit in the amount of Six Hundred and Fifty Thousand (\$650,000) Dollars (the "**Deposit**"), to be paid by the Purchaser to the Vendor in trust within two (2) Business Days of acceptance of this Agreement; and
- (b) the balance of the Purchase Price, subject to the adjustments contemplated in this Agreement, shall be paid by the Purchaser to the Vendor on the Closing Date.

The Deposit and the balance due on Closing shall be paid by way of wire drawn on or issued by a Canadian chartered bank. The Vendor and the Purchaser acknowledge and agree that they shall each make their own allocations of the Purchase Price between the Purchased Assets for the purposes of the *Income Tax Act* (Canada) and any filings in accordance with the provisions thereof.

6. **DEPOSIT.**

The Deposit shall be held in trust by the Vendor in an interest bearing trust account (at the then prevailing rate in such account) and shall be:

- (a) credited, with all interest earned thereon, on account of the Purchase Price on the Closing Date if the Transaction is completed;
- (b) refunded to the Purchaser, with all interest earned thereon and without deduction, if the Transaction is not completed or this agreement is terminated, provided that the Purchaser is not in default under this Agreement; or
- (c) retained by the Vendor, with all interest earned thereon, as a genuine pre-estimate of liquidated damages and not as a penalty, as the sole right and remedy of the Vendor, at law or in equity, may have under this Agreement and at law if the Transaction is not completed on account of the default of the Purchaser.

7. **SALE PROCEDURES.**

- (a) The Vendor and the Purchaser acknowledge that this Agreement and the transactions contemplated hereby are subject to Court approval.
- (b) The Vendor and the Purchaser acknowledge and agree that the Vendor shall apply to the Court by November 12, 2024 or the first available Court date thereafter (or such later date as the Vendor and the Purchaser may agree in their sole discretion) (the "**Sale Procedures Order**") *inter alia*, recognizing this Agreement, and in particular the Purchase Price, as a baseline or "stalking horse bid" (the "**Stalking Horse Bid**") and approving the Sale Procedures, the payment of the Bid Protections in the circumstances set out in Section 8, and the Parties will use commercially reasonable efforts to have the Sale Procedures Order issued. The Purchaser acknowledges and agrees that the Sale Procedures are in contemplation of determining whether a superior bid can be obtained for the Purchased Assets.

8. **BID PROTECTION.**

In consideration for the Purchaser's expenditure of time and money and agreement to act as the initial bidder through the Stalking Horse Bid, and the preparation of this Agreement, and in performing due diligence pursuant to this Agreement, and subject to Court approval, the Purchaser shall be entitled to a break fee and expense reimbursement in the aggregate amount of Two Hundred Sixty Thousand (\$260,000) Dollars (inclusive of HST) (collectively, the "**Bid Protection**") in the event that the Purchaser is not the Successful Bidder, payable by the Vendor to the Purchaser only in the event that a Successful Bid for any of the Purchased Assets other than the Stalking Horse Bid is accepted by the Vendor, approved by the Court and completed. The payment of the foregoing amount shall be approved in the Sale Procedures Order and shall be payable to the Purchaser out of the sale proceeds derived from and upon completion of proceeds received upon closing of Successful Bid which is not the Stalking Horse Bid for all of the Purchased Assets. Each of the Parties acknowledges and agrees that the foregoing amount represents a fair and reasonable estimate of the costs and damages that will be incurred by the Purchaser as a result of the Purchaser not being the Successful Bidder, and is not intended to be punitive in nature nor to discourage competitive bidding for the Purchased Assets. The Purchaser agrees to indemnify and hold harmless the Vendor from and against any tax, interest and penalties assessed, reassessed or imposed upon the Vendor as a result of or in connection with the failure to withhold or remit any amount required to be withheld and remitted under Part XIII of the *Income Tax Act* (Canada) in respect the break fee or expense reimbursement payable pursuant to this Section 8.

9. **APPROVAL AND VESTING ORDER.**

If the Transaction is selected as the Successful Bid, the Vendor shall serve its court materials seeking an Approval and Vesting Order approving this Agreement no later than 15 Business Days following the selection (or deemed selection) of the Successful Bid (or such later date as the Vendor and the Purchaser may agree in their sole discretion) with a court date as soon as practicable thereafter, as agreed between the Vendor and the Purchaser. The Purchaser shall, at its sole cost and expense, promptly provide to the Vendor all such information and assistance as the Vendor may reasonably require to obtain the Approval and Vesting Order. In the event that the Court does not grant the Approval and Vesting Order, the (i) Vendor covenants and agrees to return the Deposit to the Purchaser together with all interest earned thereon and without deduction in accordance with the provisions of this Agreement and (ii) Purchaser acknowledges and agrees that it shall have no further rights or remedies against the Vendor arising out of the termination of this Agreement.

10. **CLOSING ADJUSTMENTS.**

Adjustments shall be made, as of 12:01 a.m. on the Closing Date, for all operating costs, realty taxes, local improvement rates, municipal/provincial levies and charges, water and assessment rates, rent, security deposits and interest thereon (if any), utilities, and any other items which are usually adjusted in purchase transactions involving assets similar to the Purchased Assets in the context of a receivership sale. All income and expenses on the day of Closing shall be for the account of the Purchaser. Other than as provided for in this Section 10, there shall be no adjustments to the Purchase Price.

11. **ASSUMED LIABILITIES.**

- (a) On Closing, the Purchaser shall assume and be liable for the following Liabilities from and after Closing (collectively, the "**Assumed Liabilities**"):
 - (i) the Permitted Encumbrances;
 - (ii) all Liabilities under the Assumed Contracts; and
 - (iii) all Liabilities arising from the Purchaser's ownership of the Purchased Assets after Closing.

- (b) The Purchaser is not assuming, and shall not be deemed to have assumed, shall have no obligation to pay, discharge, honour, fulfill or perform any Liabilities of the Debtor other than the Assumed Liabilities, including without limitation any Liabilities arising or accruing from the ownership or use of the Purchased Assets prior to the Closing.

12. **ASSUMED CONTRACTS.**

The Purchaser shall assume on Closing the Contracts listed on Schedule "C" attached hereto (the "**Assumed Contracts**").

13. **ASSIGNMENT OF PURCHASED ASSETS.**

To the extent that any of the Purchased Assets to be transferred to the Purchaser on the Closing, or any claim, right or benefit arising under or resulting from such Purchased Assets (collectively, the "**Rights**") is not capable of being transferred without the approval, consent or waiver of any Person, this Agreement shall not constitute an agreement to transfer such Rights unless and until such approval, consent, waiver or order of the Court has been obtained (the "**Assignment Order**") and the Purchaser has paid all applicable Cure Costs related to such Purchased Assets unless agreed otherwise between the Purchaser and the Person entitled to such payment.

14. **EXCLUDED ASSETS.**

The Purchaser may, at its sole option and upon written notice to the Vendor not less than two (2) Business Days prior to the Closing Date, exclude any of the Purchased Assets from the Transaction (the "**Excluded Assets**"), whereupon such assets shall be deemed to form part of the Excluded Assets. In the event that the Purchaser exercises such option, there shall be no reduction and/or abatement to the Purchase Price as a result of such exclusion(s).

15. **CLOSING DATE.**

The Transaction shall be completed ten (10) Business Days following the date on which the Approval and Vesting Order is granted, or such other date as the Parties may agree in writing (the "**Closing Date**" or "**Closing**"). If, prior to the Closing, the Approval and Vesting Order (or any orders dismissing appeals thereof) shall have been appealed or a proceeding shall have been commenced to restrain or prevent the completion of the Transaction, then notwithstanding the foregoing and/or anything contained herein to the contrary, the Vendor shall have the option, exercisable by it, as it may determine in its sole and unfettered discretion, to extend the Closing Date by written notice thereof to the Purchaser to the date this is no later than ten (10) Business Days immediately following the date that any such appeals and/or proceedings are dismissed, or such later date as agreed between the Parties in writing.

16. **CLOSING ARRANGEMENTS.**

- (a) The delivery and exchange of the closing documents shall not occur contemporaneously with the registration of the application for vesting order (the "**Application**") and other registerable documentation.
- (b) The Purchaser expressly acknowledges and agrees that the Vendor will not release the Receiver's Certificate confirming the effectiveness of the Approval and Vesting Order until the balance of funds due on Closing are remitted to the Vendor or as it may direct.
- (c) Notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed by the Parties that an effective tender shall be deemed to have been made by the Vendor upon the Purchaser when the Vendor's Solicitors have:
 - (i) delivered all documents required to be delivered by the Vendor to the Purchaser

pursuant to subsection (b) in respect of the Receiver's Certificate, if applicable, and Section 26 in respect of all other such documents; and

- (ii) advised the Purchaser's Solicitors in writing that the Vendor is ready, willing and able to complete the Transaction in accordance with the terms and provisions of this Agreement,

without the necessity of personally attending upon the Purchaser or the Purchaser's Solicitors with the closing documents, and without any requirement to have an independent witness evidencing the foregoing.

- (d) Notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed by the Parties that an effective tender shall be deemed to have been made by the Purchaser upon the Vendor, when the Purchaser's Solicitors have:

- (i) delivered the balance due at Closing and all the documents required to be delivered by the Purchaser to the Vendor pursuant to Section 27; and

- (ii) advised the Vendor's Solicitors in writing that the Purchaser is ready, willing and able to complete the transaction in accordance with the terms and provisions of this Agreement,

without the necessity of personally attending upon the Vendor or the Vendor's Solicitors with the closing documents, and without any requirement to have an independent witness evidencing the foregoing.

17. PRE-CLOSING RISK.

- (a) The Purchased Assets are and shall remain at the Vendor's risk until Closing and the Vendor shall hold all insurance policies and the proceeds thereunder, in trust, for the Parties as their respective interests may appear pending Closing. After Closing occurs, the (i) Purchased Assets shall be at the sole risk of the Purchaser regardless of the location of the Purchased Assets and (ii) Purchaser shall be responsible for placing its own property, liability and other insurance coverage with respect to the Purchased Assets in respect of the period from and after Closing.
- (b) If, prior to Closing, all or any material part of the Purchased Assets are destroyed or damaged by fire or any other casualty or shall be appropriated, expropriated or seized by any Governmental Authority, in each case in excess of fifteen (15%) of the Purchase Price, the Purchaser shall be entitled but not required to complete the purchase contemplated hereby without a reduction to the Purchase Price. If the Purchaser elects within ten (10) days after disclosure to the Purchaser by the Vendor of the damage or loss and the extent thereof by notice in writing to the Vendor to complete the purchase contemplated hereby in accordance with the previous sentence, the Purchaser shall be entitled to all proceeds of insurance related to the Purchased Assets arising from such destruction or damage, in the event of destruction or damage, and, in the event of appropriation, expropriation or seizure, to all compensation related to the Purchased Assets for appropriation, expropriation or seizure that are, in each case, payable to the Vendor, and all right and claim of the Vendor to any such amounts not paid by the Closing Date shall be assigned to the Purchaser. If the Purchaser fails to deliver such notice within such period, the Purchaser will be deemed to have elected to terminate this Agreement, in which case this Agreement shall be terminated, null and void and of no force or effect whatsoever, and the Deposit shall be returned to the Purchaser with all interest earned thereon and without deduction.

18. **PURCHASER'S REPRESENTATIONS AND WARRANTIES.**

- (a) The Purchaser represents and warrants to the Vendor that, as at the date hereof:
 - (i) it is a corporation duly incorporated, organized and validly subsisting under the laws of the Province of Ontario and has all requisite corporate power, authority and capacity to execute and deliver and to perform each of its obligations pursuant to this Agreement;
 - (ii) this Agreement has been duly executed and delivered by the Purchaser and constitutes a legal, valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms;
 - (iii) it is or will on Closing be a registrant under Part IX of the ETA;
 - (iv) it has made adequate arrangements to have sufficient funds available to satisfy its obligation to pay the Purchase Price to the Vendor on Closing;
 - (v) it is not a non-resident within the meaning of the *Income Tax Act* (Canada); and
 - (vi) the representations and warranties of the Purchaser contained in this Section 18 or any other agreement, certificate or instrument delivered pursuant to this Agreement shall survive Closing.
- (b) The Purchaser shall promptly deliver to the Vendor written notice specifying the occurrence or likely occurrence of any event which may result in any of the Purchaser's representations and warranties contained in this Agreement not continuing to be true as at Closing.

19. **VENDOR'S REPRESENTATIONS AND WARRANTIES.**

Subject to the granting by the Court of the Sale Procedures Order, the Vendor represents and warrants to the Purchaser that, as at the date hereof:

- (a) it is a registrant under Part IX of the ETA;
- (b) it is not a non-resident within the meaning of the *Income Tax Act* (Canada);
- (c) subject to the Court granting the Approval and Vesting Order, and any other orders required by the Court in connection with the Transaction, the Vendor has the power, authority and right to enter into and deliver this Agreement and to carry out its obligations hereunder;
- (d) subject to the Court granting the Approval and Vesting Order, and any other orders required by the Court in connection with the Transaction, this Agreement has been duly executed and delivered by the Vendor and constitutes a legal, valid and binding obligation of the Vendor enforceable against the Vendor in accordance with its terms; and
- (e) the Receivership Order is in full force and effect.

20. **"AS IS, WHERE IS".**

The Purchaser acknowledges that the Vendor is selling the Purchased Assets on an "as is, where is" and "without recourse" basis. Other than as specifically indicated herein, the Vendor nor any of its directors, officers, employees, professional consultants or advisors, agents or representatives make or grant any representations, warranties, terms, conditions, understandings or collateral agreements, express or

implied, statutory or otherwise, including, without limitation, under the *Sale of Goods Act* (Ontario), all of which are expressly waived by the Purchaser, with respect to title, encumbrances, outstanding liens, assignability, merchantability, condition, description, present or future uses, fitness for purpose or use, quality, quantity, cost, value or the validity, invalidity, or enforceability of any patent, copyright or trade-mark right, or as to any other matter whatsoever regarding the Purchased Assets or the Debtor. Without limiting the generality of the foregoing, the Purchaser acknowledges having conducted its own due diligence and investigations in respect of the environmental state of the Purchased Assets, the existence, nature, kind, state or identity of any Hazardous Materials on, under, or about the Purchased Assets, the existence, state, nature, kind, identity, extent and effect of any administrative order, control order, stop order, compliance order or any other orders, proceedings or actions under any Environmental Law, and the existence, nature, kind, state or identity, extent and effect of any liability to fulfill any obligation to compensate any third party for any costs incurred in connection with or damages suffered as a result of any discharge of any Hazardous Materials whether on, under or about the Purchased Assets or elsewhere. The Purchaser has relied entirely on its own judgment, inspection and investigation of the Purchased Assets, and further acknowledges that: at its own expense, it has inspected the Purchased Assets; and in entering into this Agreement and proceeding with and completing its purchase of the Purchased Assets pursuant hereto, it is satisfied with and has relied entirely on its own inspection, investigations and judgment. The provisions of this paragraph shall survive closing.

21. ENCROACHMENTS.

The Purchaser agrees that the Vendor shall not be responsible for any matters relating to encroachments on or to the Purchased Assets, or encroachments onto adjoining lands, or to remove same, or for any matters relating to any Applicable Laws, including without limitation, zoning regulations or by-laws in existence now or in the future affecting any of the Purchased Assets.

22. INDEMNIFICATION AND RELEASE BY PURCHASER.

- (a) The Purchaser shall indemnify and save harmless the Vendor and its directors, officers, employees, shareholders, agents and representatives (collectively, the “**Indemnitees**”) from and against any and all Liabilities incurred by or asserted against them arising out of or in connection with the Purchased Assets after the Closing Date, including without limitation any Liabilities relating to any Environmental Laws.
- (b) The Purchaser agrees to release and discharge the Vendor together with its directors, officers, employees, agents, and representatives from every Liability of any kind that the Purchaser may make, suffer, sustain or incur in regard to any Hazardous Materials relating to the Purchased Assets. The Purchaser further agrees that the Purchaser will not, directly or indirectly, attempt to compel the Vendor to clean up or remove or pay for the cleanup or removal of any Hazardous Materials, remediate any condition or matter in, on, under or in the vicinity of the Purchased Assets, or seek an abatement in the Purchase Price or damages in connection with any Hazardous Materials.
- (c) The foregoing provisions shall not merge on Closing and shall remain in effect thereafter without limitation.

23. NON-REGISTRATION.

The Purchaser hereby covenants and agrees that it shall not register this Agreement or notice of this Agreement or a caution, certificate of pending litigation, or any other document, instrument or court order or judgement providing evidence of this Agreement against title to the Lands. Should the Purchaser be in default of its obligations under this Section 23, the Vendor may (as agent and attorney of the Purchaser) cause the removal of such notice of this Agreement, caution, certificate of pending litigation or other document providing evidence of this Agreement or any assignment of this Agreement from the title to the Purchased Assets. The Purchaser irrevocably nominates, constitutes and appoints the Vendor as its agent and attorney in fact and in law to cause the removal of such notice of this Agreement, any caution, certificate

of pending litigation or any other document or instrument whatsoever from title to the Purchased Assets. The Purchaser acknowledges and agrees that the Vendor may rely on the terms of this Section 23 as a full estoppel to any proceeding, suit, claim, motion or other action brought by the Purchaser in order to obtain and attempt to register against the title to the Lands any of the items set out in this Section 23.

24. VENDOR'S CLOSING CONDITIONS.

- (a) The Vendor shall not be obliged to complete the transaction contemplated hereunder unless, on or before the Closing Date, the following conditions shall have been satisfied, it being understood that the conditions are included for the exclusive benefit of the Vendor and may be waived in writing in whole or in part by the Vendor at any time:
- (i) all the representations and warranties of the Purchaser contained in this Agreement shall be true and correct in all material respects on the Closing Date with the same force and effect as if such representations and warranties were made at such time, and a certificate of the Purchaser, dated as of the Closing Date, to that effect shall have been delivered to the Vendor, such certificate to be in a form and substance satisfactory to the Vendor, acting reasonably;
 - (ii) all of the terms, covenants and agreements set forth in this Agreement to be complied with or performed by the Purchaser on or before the Closing Date shall have been complied with or performed by the Purchaser;
 - (iii) no court order restraining or prohibiting the Closing shall have been made;
 - (iv) the Transaction shall have been selected as the Successful Bid;
 - (v) the Purchased Assets shall not have been removed from the Vendor's control;
 - (vi) the Approval and Vesting Order shall have been issued and no appeals thereof shall be pending; and
 - (vii) the delivery of the documents referenced in Section 27 to the Vendor.

25. PURCHASER'S CLOSING CONDITIONS.

The Purchaser shall not be obliged to complete the transaction contemplated herein unless, on or before the Closing Date, the following conditions shall have been satisfied, it being understood that the conditions are included for the exclusive benefit of the Purchaser and may be waived in writing in whole or in part by the Purchaser at any time:

- (a) the Sale Procedure Order shall be final without any appeals thereof pending;
- (b) the Transaction shall have been selected as the Successful Bid in accordance with the Sale Procedure Order;
- (c) all the representations and warranties of the Vendor contained in this Agreement shall be true and correct in all material respects on the Closing Date with the same force and effect as if such representations and warranties were made at such time, and a certificate of the Vendor, dated as of the Closing Date, to that effect shall have been delivered to the Purchaser, such certificate to be in a form and substance satisfactory to the Purchaser, acting reasonably;
- (d) all of the terms, covenants and agreements set forth in this Agreement to be complied with or performed by the Vendor on or before the Closing Date shall have been complied with

or performed by the Vendor;

- (e) save and except for the Permitted Encumbrances, there shall be no Encumbrances registered on title to the Purchased Assets or matters affecting title to the Purchased Assets, in each case which are not otherwise vested-out pursuant to the Approval and Vesting Order;
- (f) no court order restraining or prohibiting the Closing shall have been made and no legal proceeding shall be pending which enjoins, restricts or prohibits the purchase and sale of the Purchased Assets contemplated hereby;
- (g) the Sale Procedure Order and the Approval and Vesting Order shall have been issued and no appeals thereof shall be pending; and
- (h) the delivery of the documents referenced in Section 26 to the Purchaser.

26. VENDOR'S CLOSING DELIVERIES.

- (a) The Vendor covenants to execute, where applicable, and deliver the following to the Purchaser at Closing or on such other date expressly provided herein:
 - (i) the Approval and Vesting Order;
 - (ii) the Receiver's Certificate;
 - (iii) Vendor's certificate setting out that each of the Vendor's representations and warranties contained in this Agreement are true as at Closing;
 - (iv) a statement of adjustments prepared in accordance with Section 10 (the "**Statement of Adjustments**");
 - (v) a general conveyance and assumption of liabilities with respect to Purchased Assets and the Assumed Liabilities;
 - (vi) an assignment and assumption agreement with respect to the Debtor's right, title and interest in the Permits;
 - (vii) an assignment and assumption agreement with respect to the Debtor's right, title and interest in any Assumed Contracts;
 - (viii) any Assignment Order(s), in a form as agreed between the Vendor and Purchaser;
 - (ix) an undertaking to readjust;
 - (x) a certificate setting out that the Vendor is not a "non-resident" of Canada within the meaning and purpose of Section 116 of the *Income Tax Act* (Canada); and
 - (xi) to the extent that they are in the possession and control of the Vendor, original copies of the Project Documents.

27. PURCHASER'S CLOSING DELIVERIES.

The Purchaser covenants to execute, where applicable, and deliver the following to the Vendor at or prior to Closing:

- (a) the balance of the Purchase Price described in Subsection 5(b);
- (b) the Purchaser's certificate setting out that each of the Purchaser's representations and warranties contained in this Agreement are true as at Closing;
- (c) a general conveyance and assumption of liabilities with respect to Purchased Assets and the Assumed Liabilities;
- (d) an assignment and assumption agreement with respect to the Debtor's right, title and interest in the Permits;
- (e) an assignment and assumption agreement with respect to the Debtor's right, title and interest in any Assumed Contracts;
- (f) the Purchaser's certificate described in Subsection 30(b);
- (g) an undertaking to readjust;
- (h) the indemnity provided for under Subsection 30(c);
- (i) a direction re title to confirm the name in which title to the Purchased Assets will be taken, provided that such direction must be provided to the Vendor no less than two (2) Business Days before the hearing date for the motion to obtain the Approval and Vesting Order;
- (j) the Vendor's Solicitors will prepare the application for vesting order in Teraview in accordance with the Purchaser's direction re title; and
- (k) any other documentation relative to the completion of this Agreement as may reasonably be required by the Vendor or its solicitors.

28. RECEIVER'S CERTIFICATE

The Closing shall be deemed to have occurred upon delivery by Vendor of an executed copy of the Receiver's Certificate to Purchaser.

29. DOCUMENTATION PREPARATION AND REGISTRATION.

The Vendor shall prepare or cause to be prepared all documentation described in Sections 26 and 27 hereof and shall deliver draft documentation to the Purchaser not less than five (5) Business Days prior to Closing. Except as otherwise expressly provided in this Agreement, all such documentation shall be in form and substance satisfactory to the Vendor and the Purchaser, each acting reasonably. The Purchaser shall be responsible for and pay all registration costs incurred in connection with the Transaction. Except as otherwise expressly provided in this Agreement, each of the Vendor and the Purchaser shall be responsible for and pay all legal and other professional/consultant fees and disbursements incurred by it, directly or indirectly, in connection with this Agreement.

30. LAND TRANSFER TAXES.

The Purchaser shall pay all land transfer taxes (as required pursuant to the *Land Transfer Tax Act* (Ontario)) payable in connection with the transfer of the Purchased Assets pursuant to this Agreement.

31. HARMONIZED SALES TAX.

- (a) The Purchaser acknowledges and agrees that the transaction contemplated hereunder shall be subject to the goods and services tax and harmonized sales tax ("**HST**") levied

pursuant to the ETA and that HST shall be in addition to and not included in the Purchase Price and shall be collected and remitted in accordance with the ETA.

- (b) If:
- (i) the Vendor is a non-resident of Canada or the Vendor would be a non-resident of Canada but for Subsection 132(2) of the ETA; and/or
 - (ii) the Purchaser is a "prescribed recipient" under the ETA and/or is registered under the ETA,

then the Purchaser shall deliver, prior to Closing, its certificate in form prescribed by the ETA or, if no such form is prescribed, then in form satisfactory to the Vendor and the Vendor's Solicitors, acting reasonably, certifying that the Purchaser shall be liable for, shall self-assess and shall remit to the appropriate Government Authority all HST payable in respect of the transaction contemplated hereunder. If Subsection (b)(i) hereof shall be applicable, then the Purchaser's certificate shall also include certification of the Purchaser's prescription and/or registration, as the case may be, and the Purchaser's HST registration number. If the Purchaser shall fail to deliver its certificate, then the Purchaser shall tender to the Vendor, at Closing, in addition to the balance otherwise due at Closing, an amount equal to the HST that the Vendor shall be obligated to collect and remit in connection with the said transaction.

- (c) The Purchaser shall indemnify and save harmless the Vendor, its directors, officers, employees, agents and representatives from all claims, liabilities, penalties, interest, costs and legal and other expenses incurred, directly or indirectly, in connection with the assessment of HST payable in respect of the transaction contemplated hereunder.

32. REMEDIES FOR BREACH OF AGREEMENT.

If this Agreement is terminated as a result of any breach of a representation, warranty, covenant or obligation of the Vendor under this Agreement, then the Deposit, with all interest earned thereon and without deduction, shall be returned to the Purchaser forthwith (and, for greater certainty, and notwithstanding any other provision in this Agreement, this shall be the Purchaser's sole right and remedy as a result of the Vendor's breach). If this Agreement is terminated as a result of any breach of a representation, warranty, covenant or obligation of the Purchaser under this Agreement, then the Deposit along with all interest earned thereon shall be forfeited to the Vendor (and, for greater certainty, and notwithstanding any other provision in this Agreement, this shall be the Vendor's sole right and remedy as a result of the Purchaser's breach).

33. TERMINATION IF NO BREACH OF AGREEMENT.

If this Agreement is terminated other than as a result of a breach of a representation, warranty, covenant or obligation of a Party, including but not limited to if (i) the Court does not grant the Approval and Vesting Order for any reason whatsoever (ii) this Agreement is not selected as the Successful Bid and/or (iii) the Closing has not occurred on or before the Outside Date provided, however, that neither Party is in material breach of its obligations under this Agreement, then this Agreement shall be terminated and of no further force and effect and:

- (a) all obligations of each of the Vendor and the Purchaser hereunder shall end completely, except those that survive the termination of this Agreement;
- (b) the Deposit, with all interest earned thereon and without deduction, shall be returned to the Purchaser forthwith; and

- (c) neither Party shall have any right to specific performance, to recover damages or expenses or to any other remedy (legal or equitable) or relief.

The Vendor and Purchaser may terminate the Agreement by mutual written consent.

34. **PLANNING ACT (ONTARIO).**

This Agreement shall be effective to create an interest in the Purchased Assets for the Purchaser only if Part VI of the *Planning Act* (Ontario) is complied with prior to Closing or if a Court orders the completion of the Transaction notwithstanding what would otherwise be non-compliance with Part VI of the *Planning Act* (Ontario).

35. **NOTICE.**

Any notice given hereunder shall be in writing and delivered or communicated by e-mail to:

- (a) in the case of the Purchaser at:

Vantage Acquisition Inc.
c/o Vantage Developments Inc.
30 Adelaide Street East, 12th Floor
Toronto, Ontario M5C 3G8

Attention: Alan Leela / Shamil Jiwani
E-mail: aleela@vantagedevecorp.com / sjiwani@vantagedevecorp.com

- (b) with a copy to the Purchaser's Solicitors;

- (c) and in the case of the Vendor at:

KSV Restructuring Inc.
In its capacity as Receiver and Manager of
98 James South (2022) Inc. and 98 James South (2022) Limited Partnership
220 Bay St., Suite 1300
Toronto, Ontario M5J 2W4

Attention: Jordan Wong
Email: jwong@ksvadvisory.com

- (d) with a copy to the Vendor's Solicitors.

Such notice shall be deemed to have been delivered upon delivery or communicated upon transmission unless such notice is delivered or transmitted outside of usual business hours, in which event the notice shall be deemed to have been delivered or transmitted on the next Business Day. A Party may change its address and/or e-mail address by providing notice in accordance with this Section 34.

36. **WAIVER OF CONDITIONS.**

Except as otherwise provided in this Agreement, all conditions contained herein have been inserted for the benefit of either the Vendor or the Purchaser, as indicated, and are conditions of the obligations of such Party to complete the transaction contemplated hereunder at Closing and are not conditions precedent of this Agreement. Any one or more of the said conditions may be waived, in writing, in whole or in part, by the benefiting Party without prejudice to the benefiting Party's right of termination in the event of the non-fulfilment of any other condition, and, if so waived, this Agreement shall be read exclusive of the said condition or conditions so waived. For greater certainty, the closing of the Transaction by a Party shall be

deemed to be a waiver by such Party of compliance with any condition inserted for its benefit and not satisfied at Closing.

37. SEVERABILITY.

If any provision contained in this Agreement or the application thereof to any Person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Agreement and the application of such provision to such Person or circumstances other than those to whom it is held invalid or unenforceable, shall not be affected thereby and each provision contained in this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

38. DIVISION/HEADINGS.

The division of this Agreement into sections, subsections, paragraphs and subparagraphs and the insertion of headings or captions are for convenience of reference only and shall not affect the construction or interpretation of this Agreement or any part hereof.

39. ENTIRE AGREEMENT.

This Agreement and the Schedules attached hereto constitute the entire agreement between the Vendor and the Purchaser in respect of the Purchased Assets. Each of the Parties acknowledges that, except as contained in this Agreement, there is no representation, warranty, collateral agreement or condition (whether a direct or collateral condition or an express or implied condition) which induced it to enter into this Agreement. Each of the Parties agree that all provisions of this Agreement, and all provisions of any and all documents and security delivered in connection herewith, shall not merge and except where otherwise expressly stipulated herein, shall survive Closing.

40. CUMULATIVE REMEDIES.

No remedy conferred upon or reserved to one or both of the Parties hereto is intended to be exclusive of any other remedy, but each remedy shall be cumulative and in addition to every other remedy conferred upon or reserved hereunder, whether such remedy shall be existing or hereafter existing, and whether such remedy shall become available under common law, equity or statute.

41. INTERPRETATION.

This Agreement shall be read with all changes of gender and number as required by the context.

42. STATUTE AND SECTION REFERENCES.

Except as otherwise provided in this Agreement, references to any statute herein shall be deemed to be a reference to such statute and any and all regulations from time to time promulgated thereunder and to such statute and regulations as amended or re-enacted from time to time. Any reference herein to a specific section or sections, paragraph or subparagraphs and/or clause or clauses of any statute or regulations promulgated thereunder shall be deemed to include a reference to any corresponding provision of future law.

43. TIME OF ESSENCE.

Time shall in all respects be of the essence hereof provided that the time for the doing or completing of any matter referred to herein may be extended or abridged by an agreement, in writing, executed by the Vendor and the Purchaser or their respective solicitors who are hereby expressly appointed for that purpose.

44. CURRENCY AND PAYMENT OBLIGATIONS.

Except as otherwise provided in this Agreement, all dollar amounts referred to in this Agreement are stated in Canadian Dollars ("**Dollars**") and any payment contemplated by this Agreement shall be made by certified cheque, bank draft or wire transfer.

45. TENDER.

Any tender of notices, documents and/or monies hereunder may be made upon the Vendor or the Purchaser or their respective solicitors. Monies may be tendered by wire transfer, a negotiable cheque certified or bank draft drawn on or issued by a Canadian chartered bank.

46. FURTHER ASSURANCES.

Except as otherwise expressed herein to the contrary, each Party shall, without receiving additional consideration therefor, co-operate with and take such additional actions as may be requested by the other Party, acting reasonably, in order to carry out the purpose and intent of this Agreement.

47. CONFIDENTIALITY.

The Purchaser agrees that all information and documents supplied by the Vendor or anyone on its behalf to the Purchaser or anyone on the Purchaser's behalf (including but not limited to information in the schedules hereto) shall, unless and until Closing occurs, be received and kept by the Purchaser and anyone acting on the Purchaser's behalf on a confidential basis and, without the Vendor's prior written consent shall not be disclosed to any Person. If for any reason Closing does not occur, all such documents shall forthwith be returned intact to the Vendor and no copies or details thereof shall be retained by the Purchaser or anyone acting on its behalf. The Purchaser and the Vendor further agree that unless and until the terms of this Agreement become public knowledge in connection with an application to the Court, the Purchaser shall keep such terms confidential and shall not disclose them to anyone except the Purchaser's solicitors, agents or lenders acting in connection herewith and then only on the basis that such Person also keeps such terms confidential as aforesaid.

48. NON-BUSINESS DAYS.

In the event that any date specified or any date contemplated in this Agreement shall fall upon a day other than a Business Day, then such date shall be deemed to be the next following Business Day.

49. GOVERNING LAWS.

This Agreement has been executed in the Province of Ontario and, for all purposes, shall be construed in accordance with and governed by the laws in effect within the Province of Ontario and the laws of Canada applicable therein.

50. ASSIGNMENT.

No Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, the Purchaser shall have the right, until five (5) Business Days before the hearing date for the motion to obtain the Approval and Vesting Order, upon written notice to the Vendor's Solicitors, to assign, in whole or part, its rights to acquire the Purchased Assets herein to any company or companies affiliated (as that term is defined in the Ontario *Business Corporations Act*) with the Purchaser. Upon any such assignment, it is hereby agreed that the Purchaser shall be deemed to have been released from all of its covenants and obligations herein contained upon successful completion of the Transaction. For certainty, and subject to the foregoing time limit and other provisions of this Section 50, the Purchaser shall have the right to direct that title to the Purchased Assets be taken in the name of another person, entity, joint venture, partnership or corporation (presently in existence or to be incorporated) provided that the assignee shall, in writing, agree to assume and be bound by the terms and conditions of

this Agreement (the "**Assumption Agreement**") and a copy of such Assumption Agreement is delivered to the Vendor forthwith after having been entered into. In the event the Purchaser assigns this Agreement in accordance with the provisions hereof, the Vendor covenants and agrees to delivery a full and final release and discharge in favour of the Purchaser.

51. VENDOR'S CAPACITY.

It is acknowledged by the Purchaser that the Vendor is entering into this Agreement solely in its capacity as Court-appointed receiver of the Debtor and that the Vendor shall have no personal or corporate liability under or as a result of this Agreement. Any Liabilities against the Vendor shall be limited to and only enforceable against the property and assets then held by or available to it in its capacity as receiver of the Debtor and shall not apply to its personal property and other assets held by it in any other capacity. The term "Vendor" as used in this Agreement shall have no inference or reference to the present registered owner of the Purchased Assets.

52. SUCCESSORS AND ASSIGNS.

This Agreement shall be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns.

53. COUNTERPARTS AND ELECTRONIC TRANSMISSION.

This Agreement may be executed in any number of original counterparts, with the same effect as if each of the Parties had signed the same document, and will become effective when one or more counterparts have been signed by both of the Parties and delivered to other. All counterparts will be construed together and evidence only one agreement, which, notwithstanding the dates of execution of any counterparts, will be deemed to be dated the first date set out above and accepted on the date of the last signature, and only one of which need be produced for any purpose.

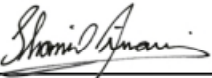
54. IRREVOCABLE.

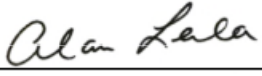
This Agreement shall be irrevocable by the Purchaser.

[remainder of this page intentionally left blank]

DATED as of the date first mentioned above.

VANTAGE ACQUISITION INC.

Per: 
Name: Shamil Jiواني
Title: Director

Per: 
Name: Alan Leela
Title: Director

I/We have authority to bind the Corporation.

The Vendor hereby accepts this Agreement and agrees with the Purchaser to complete the Transaction, subject to and in accordance with the provisions contained herein.

DATED as of the date first mentioned above.

KSV RESTRUCURING INC., in its capacity as Court-appointed receiver of 98 James South (2022) Inc. and 98 James South (2022) Limited Partnership and not in its personal or corporate capacity and without personal or corporate liability

Per: 
Name: Noah Goldstein
Title: Managing Director

I have authority to bind the Corporation.

SCHEDULE "A"
LANDS

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"
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 "C"
ASSUMED CONTRACTS

N/A.

SCHEDULE "D"
SALE PROCEDURES

See attached.

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.

Appendix “E”

Comparative Summary of Break Fees
January 2023 to October 2024

Debtor	Purchaser	Proceeding Type	Trustee	APA date	Jurisdiction	Industry	A Termination Fee	B Expense Reimbursement	C = A + B		Estimated Transaction Value ("TV")	BF as a % of TV
									Total Break Fee ("BF")			
1000093910 Ontario Inc.	2557904 Ontario Inc.	Receivership	KSV	13-Nov-24	Ontario	Real Estate	200,000	50,000	250,000	24,255,000	1.0%	
Heritage Cannabis Holdings Corp.	BJK Holdings Ltd. and HAB Cann Holdings Ltd.	CCAA	KPMG	10-Apr-24	Ontario	Cannabis	400,000		400,000	approximately \$7.7 million to \$11.1 million	3.6-5.19%	
Canadian Overseas Petroleum Limited	Summit Partners Credit Fund II, L.P., Summit Investors Credit III, LLC, and Summit Investors Credit III (UK), L.P.	CCAA	KSV	08-Apr-24	Alberta	Oil & Gas	US\$350,000	reasonable expenses	-	-	-	
Garibaldi at Squamish Limited	Aquilini Development LP, Garibaldi Resort Management Company Ltd. and 1413994 B.C. Ltd.	Receivership	EY	13-Mar-24	British Columbia	Other	500,000	-	500,000	approximately \$80.41 million	0.6%	
Midnight Integrated Financial Inc.	2593054 Alberta Ltd.	CCAA	EY	04-Mar-24	Alberta	Financial Services	-	-	-	11,000,000	-	
BZAM Ltd.	1000816625 Ontario Inc.	CCAA	KSV	01-Mar-24	British Columbia	Cannabis	750,000	100,000	850,000	Unclear	3.6-5.2%	
Humble & Fume Inc.	1000760498 Ontario Inc.	CCAA	Deloitte	23-Jan-24	Ontario	Cannabis	-	-	-	3,700,000	-	
Humble & Fume Inc.	1000760498 Ontario Inc.	CCAA	Deloitte	01-Jan-24	Ontario	Cannabis	-	-	-	3,700,000	-	
Athabasca Minerals Inc.	JMAC Energy Services LLC	NOI	KSV	05-Dec-23	Alberta	Distribution	-	200,000	200,000	13,000,000	1.5%	
Validus Power Corp. et al.	Macquarie Equipment Finance Limited and Far North Power Corp.	CCAA	KSV	19-Oct-23	Ontario	Professional Services	1,260,000	1,000,000	2,260,000	59,000,000	3.9%	
Lighthouse Immersive Inc. and Lighthouse Immersive USA	SCS Finance, Inc.	CCAA	B. Riley Farber	05-Oct-23	Ontario	Other	-	-	-	-	-	
Pathway Health Corp. (TSV: PHC) and Pathway Health Services Corp.	AvonleaDrewry Holdings Inc.	Interim Receivership	KSV	02-Oct-23	Ontario	Healthcare			62,500	1,250,000	5.0%	
Datatax Business Services Limited	2872802 Ontario Inc.	NOI	KPMG	11-Aug-23	Alberta	Professional Services	400,000	-	400,000	40,700,000	1.0%	
Aleafia Health Inc. et al.	RWB (PV) Canada Inc.	CCAA	KSV	10-Aug-23	Ontario	Cannabis	-	500,000	500,000	25,000,000 - 29,000,000	1.72-2%	
Digital Orthodontic Care Inc.	Ortho Studios Express, Inc.	Receivership	Richter	10-Aug-23	Ontario	Healthcare	85,000	-	85,000	\$3 million credit bid	2.8%	
Aereus Technologies Inc.	1000608245 Ontario Inc.	NOI	B. Riley Farber	04-Aug-23	Ontario	Manufacturing	21,600	-	21,600	Credit bid plus assumed liabilities	-	
Free Rein Resources Limited	Invico Diversified Income Limited Partnership	NOI	FTI	01-Aug-23	Alberta	Oil & Gas	-	-	-	-	-	
NextPoint Financial Inc. et al.	Certain lenders to NextPoint	CCAA	FTI	01-Jul-23	British Columbia	Financial Services	700,000	Reasonable expenses also covered	700,000	175,000,000	0.4%	
Fire & Flower Inc. et al.	2707031 Ontario Inc. (the DIP lender)	CCAA	FTI	15-Jun-23	Ontario	Cannabis	650,000	100,000	750,000	Credit bid (release of all obligations owing under DIP loan and bridge loan)	3.4%	
IE CA 3 Holdings Limited	NYDIG ABL LLC	Receivership	PwC	07-Jun-23	British Columbia	Financial Services	USD 630,000	-	USD 630,000	USD 21,000,000	3.0%	
1194038 Alberta Ltd.	2262576 Alberta Ltd.	Receivership	EY	05-Jun-23	Alberta	Real Estate	125,000		125,000	4,375,000	2.8%	
DecisionOne	STC Lender LP	NOI	KPMG	22-May-23	New Brunswick	Technology	-	-	-	US 3,000,000	-	
Edward Collins Contracting Ltd.	92712 Newfoundland & Labrador Inc.	CCAA	Grant Thornton	17-May-23	Newfoundland	Construction	144,800	30,000	144,800	7,240,000	2.4%	
GreenSpace Brands Inc.	2762454 Ontario Inc.	Ontario	PwC	05-Apr-23	Ontario	Food & Accommodation	150,000	-	150,000	~9 million, plus certain assumed liabilities and other amounts	1.7%	
FlexTy Solutions Inc. and FlexTy Holdings Inc.	BHG-BC Holdings Ltd	NOI	Farber	29-Mar-23	Ontario	Technology	-	-	-	11.1 million		
LoyaltyOne Co. (dba AIR MILES*)	BMO	CCAA	KSV	10-Mar-23	Ontario	Other	3 million	1 million	4 million	US 160 million	2.5%	
11157353 Canada Corporation	ReFlourish Capital Limited	NOI	EY	14-Feb-23	Ontario	Cannabis	20,000	25,000	45,000	400,000 euros		
Tehama Inc.	14667913 Canada Inc.	CCAA	Deloitte	07-Feb-23	Ontario	Technology	-	-	-	2.8 million credit bid, plus assumed liabilities, for total consideration of approximately 3 million		

Appendix “F”

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.

TAB 3

**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 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 affidavit of service of ●, sworn on November ●, 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 “F” 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.

Applicant

Respondents

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

SALE PROCESS APPROVAL ORDER

CHAITONS LLP

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

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

MARSHALLZEHR GROUP INC.
Applicant

-and-

98 JAMES STREET (2022) INC., et al.
Respondent

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

**MOTION RECORD
(Returnable November 12, 2024)**

CHAITONS LLP

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

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