

**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 OF THE RESPONDING PARTY,
MARCUS GILLAM**

Date: November 11, 2024

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Capacity as Court-Appointed Receiver

AND TO: **CHAITONS LLP**
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MarshallZehr Group Inc.

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98 JAMES SOUTH (2022) LIMITED PARTNERSHIP
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Respondent

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Court Appointed Receiver

AND TO: **HUE DEVELOPMENTS & INVESTMENTS CANADA INC.**
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Lawyers for Canada Revenue Agency

AND TO: **HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE
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TAB 1

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

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**AFFIDAVIT OF MARCUS GILLAM
(SWORN NOVEMBER 11, 2024)**

I, Marcus Gillam, of the City of Toronto make oath and say as follows:

1. All defined terms have the meanings as set out in the First Report of KSV Restructuring Inc. in its capacity as Court Appointed Receiver. As described in Section 3.0.2 of the First Report, I am one of two guarantors of the Loan.
2. In paragraph 13g of the Notice of Motion seeking approval of the Sale Process and authorizing the Receiver to enter into the Stalking Horse APS, KSV states that in the event the Stalking Horse APS becomes the Successful Bid, the senior secured creditor will suffer a shortfall.
3. I am concerned that the timeline contained for the proposed Sales Process provides insufficient time for the Receiver to properly market the Property and for potential bidders to undertake due diligence sufficient to allow them to submit Qualified Bids, which must be unconditional.

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4. Specifically, the proposed Sales Process only provides potential bidders with 35 calendar days following the Sale Procedure Order to undertake due diligence and submit a Qualified Bid. The expiry of the 35 day period ends just before Christmas. In my experience the real estate property development business largely shuts down the week prior to Christmas and does not actively resume until the second week of January.

5. The Property is a complicated property which, as the Receiver recites in Section 2.0.1 of the First Report, was intended to be developed into a 31 storey, high density, mixed use building with 315 residential condominium units and retail area. Further complicating the Property is the fact that it has been designated by the City as a Heritage Building.

6. In February 2024, Colliers International Realty Advisors Inc. (“Colliers”), provided a draft appraisal of the Property to Hue Developments and Investments Canada Inc. (“Hue”). Hue is the second mortgagee on the Property. According to Colliers, as of January 26, 2024, the Property was valued at significantly more than the Stalking Horse bid. The Colliers appraisal was based on the Property being exposed to the market for a period of between three and six months. In order to protect the Sales Process, I am only attaching the Colliers cover letter dated February 6, 2024, with the current market value as is redacted. Annexed hereto and marked as Exhibit “A” is a true copy of the Colliers appraisal cover letter dated February 6, 2024. I have redacted the purchase price and information relevant to the purchase price in order not to impact the sales process.

7. I recognize that a marketing period of three to six months as recommended by Colliers is likely not acceptable to the Receiver, the secured creditor or the Stalking Horse bidder. Nonetheless, I believe that the current 35 calendar day period for parties to undertake due diligence

and submit Qualified Offers is too short to enable interested parties to be able to undertake the necessary due diligence to be able to submit a Qualified Bid and as a result the strong likelihood is that the Stalking Horse will by default become the only bid.

8. Based on my personal experience in property development, I believe that at bare minimum a 65 day period is necessary to properly exposure the Property to the market and solicit bids. A 65 day period for marketing the Property and soliciting Qualified Bids is still exceedingly short given the complexity of the Property and the intervening Christmas/New Year holiday period, but will at least provide any interested party with additional time to perform its due diligence and still give the Receiver and the Successful Bidder more than a month to complete the sale of the Property by the Outside Date of February 28, 2025 in the Stalking Horse APS.

9. I make this Affidavit in opposition to the approval of the Sales Process Order and for no other or improper purpose.

SWORN by Marcus Gillam of the City of Toronto before me at the City of Toronto, in the Province of Ontario, on November 11, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:
Josie Sabino
EE252BF44EA24DC...

*Josie Sabino, a Commissioner, etc.,
Province of Ontario, for Dentons Canada LLP,
Barristers and Solicitors, Expires: July 5, 2027*

DocuSigned by:
Marcus Gillam
43244D4CCFA64E0...

MARCUS GILLAM

TAB A

THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF MARCUS GILLAM, SWORN
BEFORE ME THIS 11TH DAY OF NOVEMBER,
2024.

DocuSigned by:

Josie Sabino

EE252BF44EA24DC...

*Josie Sabino, a Commissioner, etc.,
Province of Ontario, for Dentons Canada LLP,
Barristers and Solicitors, Expires: July 5, 2027*



Current Narrative Appraisal

Residential Development Site

98 James St S, Hamilton

Hamilton, Ontario

Effective Date: January 26, 2024

Report Date: February 6, 2024

Prepared For

Hoai Nam Le

CEO

Hue Developments and Investments Canada Inc.

Prepared By

Vicente Gamboa, MBA, AACI, P. App

Executive Vice President, Toronto

Valuation & Advisory Services

181 Bay Street
Suite 1400
Toronto, ON M5J 2V1
www.colliers.com

MAIN 416 777 2200
FAX 416 643 3470



Our File: TOR240032

February 6, 2024

Hue Developments and Investments Canada Inc.
3 Snap Dragon Trail
East Gwillimbury, ON, L9N 1G5

**Attention: Hoai Nam Le
CEO**

**Re: Appraisal of Residential Development Site
98 James St S, Hamilton, Ontario**

In accordance with your request, we have inspected the above property and have carried out an Appraisal in order to estimate its current market value as is as at January 26, 2024. Based on our analysis, the current market value as is of the Fee Simple estate of the Subject Property, as of January 26, 2024 is estimated to be:

REDACTED

The Subject Property represents a 0.32-acre site located in 98 James St S, Hamilton. The proposed high-density mixed-use development consists of 315 residential condominium units and 2,500 square feet for commercial area. The total gross floor area is 265,430 square feet. The development has received conditional site plan approval. It has been assumed all conditions will be fulfilled and full approvals will be received.

The above value estimate is based on an exposure period of three to six months, assuming the basis of a transaction involving cash to the vendor, and is subject to the Extraordinary Assumptions, Hypothetical Conditions, Extraordinary Limiting Conditions as detailed beginning on **Page 12** herein, in addition to the Ordinary Assumptions and Limiting Conditions contained in the Addenda. Any alterations to either the information provided or the assumptions in this report may have a material impact on the value contained herein.

This report describes the methods and approaches to value in support of the final conclusions and contains the pertinent data gathered in our investigation of the market. Should you have any questions, we would be pleased to discuss the valuation further.

Yours very truly,

COLLIERS INTERNATIONAL REALTY ADVISORS INC.

181 Bay Street
Suite 1400
Toronto, ON M5J 2V1
www.colliers.com

MAIN 416 777 2200
FAX 416 643 3470



DRAFT

Vicente Gamboa, MBA, AACI, P. App
Executive Vice President, Toronto

DRAFT

Timour Petrov, CFA, AACI, P. App
Director, Toronto



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

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Proceeding Commenced at Toronto

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(SWORN NOVEMBER 11, 2024)**

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PARTY, MARCUS GILLAM**

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