

## STALKING HORSE PURCHASE AGREEMENT

**THIS AGREEMENT** dated the 1<sup>st</sup> 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](mailto:mlungu@cassels.com) / [msassi@cassels.com](mailto:msassi@cassels.com) / [mmukkar@cassels.com](mailto: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, 10<sup>th</sup> Floor, Toronto, Ontario (Attention: Mark Willis-O'Connor), E-mail: [markw@chaitons.com](mailto: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, 12<sup>th</sup> Floor  
Toronto, Ontario M5C 3G8

Attention: Alan Leela / Shamil Jiwani  
E-mail: [aleela@vantagedevecorp.com](mailto:aleela@vantagedevecorp.com) / [sjiwani@vantagedevecorp.com](mailto: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](mailto: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.

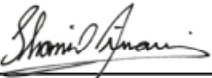
**54. IRREVOCABLE.**

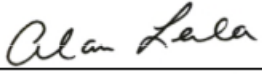
This Agreement shall be irrevocable by the Purchaser.

***[remainder of this page intentionally left blank]***

DATED as of the date first mentioned above.

**VANTAGE ACQUISITION INC.**

Per:   
Name: Shamil Jiwani  
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

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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](mailto:ngoldstein@ksvadvisory.com); [jwong@ksvadvisory.com](mailto:jwong@ksvadvisory.com)

With a copy to the counsel for the Receiver:

[maya@chaitons.com](mailto:maya@chaitons.com); [markw@chaitons.com](mailto:markw@chaitons.com); [harvey@chaitons.com](mailto: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 Auction 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.