



Clerk's Stamp:

COURT FILE NUMBER	2301-10472
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	AVONLEA-DREWRY HOLDINGS INC.
DEFENDANTS	PATHWAY HEALTH CORP., PATHWAY HEALTH SERVICES CORP., PATHWAY HEALTHCARE TECHNOLOGIES CORP., 2563367 ONTARIO LIMITED and SLAWNER ORTHO LTEE.

DOCUMENT **ORDER – APPROVING SALE AND VESTING**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Dentons Canada LLP Bankers Court 15th Floor, 850 - 2nd Street S.W. Calgary, Alberta T2P 0R8 Attention: Derek Pontin Ph. (403) 268-6301 Fx. (403) 268-3100 File No.: 577214-9
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DATE ON WHICH ORDER WAS PRONOUNCED: October 2, 2023

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary Courts Centre, Calgary, AB

NAME OF JUSTICE WHO MADE THIS ORDER: Honourable Associate Chief Justice D.B. Nixon

UPON THE APPLICATION of Avonlea-Drewery Holdings Inc. ("**ADH**") for, among other things, (i) an Order appointing KSV Restructuring Inc. ("**KSV**") as Court-appointed receiver and manager (the "**Receiver**") of the undertakings, property and assets of Pathway Health Corp. and Pathway Health Services Corp. (together, the "**Debtors**"); (ii) an order approving the proposed sale and investment solicitation process (the "**SISP Order**") under and by which the Receiver will market and sell the Debtors' property and undertaking (the "**SISP**"); and an order approving the stalking horse purchase and sale agreement proposed and entered into by ADH (the "**Stalking Horse APA**"), to act as a stalking horse in support of the SISP;

AND UPON HAVING READ the Application of ADH; the Affidavits of Michael Steele dated August 10, 2023, August 29, 2023 and September 25, 2023; the Interim Receivership Order, dated August 10, 2023; the Extension of Interim Receivership Order, dated September 1, 2023 (the "**Interim Receivership**");

Orders"); the First Report of the Interim Receiver, dated August 31, 2023; the Receivership Order dated October 2, 2023 (the "**Receivership Order**"), the Order approving the SISP, dated concurrently with this Order; and such other materials as are filed;

AND UPON HEARING the submissions of counsel for the ADH and the Interim Receiver, and any other counsel in attendance;

IT IS HEREBY ORDERED AND DECLARED THAT:

INTERPRETATION

1. Capitalized terms not otherwise defined in this Order have the meanings given to them in the Reports of KSV in its capacity as the Interim Receiver of the Debtors, the SISP or the SISP Order.

SERVICE

2. Service of notice of the application for this order (the "**Stalking Horse SAVO**") and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this application and time for service of this application is abridged to that actually given.

APPROVAL OF TRANSACTION AND VESTING OF PROPERTY

3. The Receiver is authorized, upon completion of the SISP and upon the Receiver determining in its discretion that ADH, by way of the Stalking Horse APA, is the Successful Bidder (as defined in the SISP), to file with this Court and deliver to ADH (or its nominee, hereafter "**the Purchaser**") a Receiver's certificate substantially in the form set out in **Schedule "1"** hereto (the "**Receiver's Closing Certificate**"), upon which the effect of the delivery of the Receiver's Closing Certificate shall be:
 - (a) the SISP shall be deemed to be completed and terminated;
 - (b) all right, title and interest in and to the property and undertaking described and conveyed in the Stalking Horse APA (the "**Purchased Assets**"), shall vest absolutely in the name of the Purchaser free and clear of and from any and all caveats, security interests, hypothecs, pledges, mortgages, liens, trusts or deemed trusts, reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached

or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, "**Claims**") including, without limiting the generality of the foregoing:

- (i) any encumbrances or charges created by the Interim Receivership Orders or the Receivership Order;
- (ii) any charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta) or any other personal property registry system within Canada or elsewhere;
- (iii) any liens or claims of lien, without limitation including under the *Builders' Lien Act* (Alberta) or *Prompt Payment and Construction Lien Act* (Alberta); and
- (iv) those Claims listed in **Schedule "2"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, caveats, interests, easements, and restrictive covenants listed in **Schedule "3"** (collectively, "**Permitted Encumbrances**")),

and for greater certainty, this Court orders that all Claims including Encumbrances other than Permitted Encumbrances, affecting or relating to the Purchased Assets are hereby expunged, discharged and terminated as against the Purchased Assets;

- (c) upon filing of a certified copy of this Order, together with any applicable registration fees, all governmental authorities including those referred to below in this paragraph (collectively, "**Governmental Authorities**") are authorized, requested and directed to accept delivery of such Receiver's Closing Certificate and certified copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to convey to the Purchaser clear title to the Purchased Assets, subject only to Permitted Encumbrances;
- (d) without limiting the foregoing, the Registrar of the Personal Property Registry of any Province or Territory of Canada (each a "**PPR Registrar**") shall and is hereby directed to forthwith cancel and discharge any registrations at the Personal Property Registry (whether made before or after the date of this Order) claiming security interests (other than Permitted Encumbrances) in the estate or interest of the Debtors and in any of the Purchased Assets;
- (e) all Governmental Authorities are authorized and directed to take such steps as are necessary to give effect to the terms of this Order and the Stalking Horse APA. Presentment of this Order and the Receiver's Closing Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title

or interest and cancel and discharge registrations against any of the Purchased Assets of any Claims including Encumbrances, but excluding Permitted Encumbrances;

- (f) no authorization, approval or other action by, and no notice to or filing with any Governmental Authority or regulatory body exercising jurisdiction over the Purchased Assets is required for the due execution, delivery and performance by the Receiver of the Stalking Horse APA;
- (g) net proceeds from sale of the Purchased Assets under the Stalking Horse APA, shall stand in the place and stead of the Purchased Assets from and after delivery of the Receiver's Closing Certificate and all Claims including Encumbrances (but excluding Permitted Encumbrances) shall not attach to, encumber or otherwise form a charge, security interest, lien, or other Claim against the Purchased Assets and may be asserted against the net proceeds from sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale;
- (h) the Receiver may make distributions of any net proceeds of sale of the Purchased Assets held by the Receiver to creditors of the Debtors without further order of this Court, provided; however, all such distributions will be made only to creditors on the basis of legal priority;
- (i) the amount of the indebtedness owing by the Debtors to ADH under its existing credit facilities and security shall be deemed to be reduced by the amount of the credit offset given by ADH as consideration for the purchase of the Purchased Assets under the Stalking Horse APA;
- (j) the Purchaser shall not, by completing its acquisition under the Stalking Horse APA, have liability of any kind whatsoever in respect of any Claims against the Debtors, including as a successor employer, notwithstanding the Alberta *Employment Standards Code*;
- (k) the Debtors and all persons who claim by, through or under the Debtors in respect of the Purchased Assets, and all persons or entities having any Claims of any kind whatsoever in respect of the Purchased Assets, save and except for persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely and forever barred, estopped and foreclosed from and permanently enjoined from pursuing, asserting or claiming any and all right, title, estate, interest, royalty, rental, equity of redemption or other Claim whatsoever in respect of or to the Purchased Assets, and to the extent that any such persons or entities remain in the possession or control of any of the Purchased Assets, or any artifacts,

certificates, instruments or other indicia of title representing or evidencing any right, title, estate, or interest in and to the Purchased Assets, they shall forthwith deliver possession thereof to the Purchaser;


- (l) the Purchaser shall be entitled to enter into and upon, hold and enjoy the Purchased Assets for its own use and benefit without any interference of or by the Debtors, or any person claiming by, through or against the Debtors; and
 - (m) immediately upon closing of the purchase and sale under the Stalking Horse APA, holders of Permitted Encumbrances shall have no claim whatsoever against the Receiver.
4. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada) and section 20(e) of the *Alberta Personal Information Protection Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Debtor's records pertaining to the Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use (of such information) to which the Debtors were entitled.

MISCELLANEOUS MATTERS

5. Notwithstanding:
- (a) the pendency of these proceedings and any declaration of insolvency made herein;
 - (b) the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (the "**BIA**"), in respect of the Debtors, and any bankruptcy order issued pursuant to any such applications;
 - (c) any assignment in bankruptcy made in respect of the Debtors; and
 - (d) the provisions of any federal or provincial statute:

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

6. The Receiver, the Purchaser and any other interested party, shall be at liberty to apply for further advice, assistance and direction as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the purchase and sale under the Stalking Horse APA.
7. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, 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 order and to provide such assistance to the Receiver, as an officer of the 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.
8. Service of this Order shall be deemed good and sufficient by:
 - (a) serving the same on the persons who were served with notice of this Application; and
 - (b) posting a copy of this Order on the Receiver's website at: www.ksvadvisory.com/experience/case/pathway-healthand service on any other person is hereby dispensed with.
9. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.


November 2, 2023
Associate Chief Justice of the Court of King's Bench of Alberta

Schedule "1"

Form of Receiver's Certificate

COURT FILE NUMBER	2301-10472
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	AVONLEA-DREWRY HOLDINGS INC.
DEFENDANT	PATHWAY HEALTH CORP., PATHWAY HEALTH SERVICES CORP., PATHWAY HEALTHCARE TECHNOLOGIES CORP., 2563367 ONTARIO LIMITED and SLAWNER ORTHO LTEE.
DOCUMENT	RECEIVER'S CLOSING CERTIFICATE

Clerk's Stamp

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

RECITALS

- A. Pursuant to an Order of the Honourable Justice **[Name]** of the Court of King's Bench of Alberta, Judicial District of Calgary (the "**Court**") dated October 2, 2023, KSV Restructuring Inc. was appointed as the receiver (the "**Receiver**") of the undertakings, property and assets of Pathway Health Corp. and Pathway Health Services Corp. (the "**Debtors**").
- B. Pursuant to an Order of the Court dated October 2, 2023, the Court approved a sale and investment solicitation process under and by which the Receiver marketed the Debtors' property and undertaking (the "**SISP**") by way of a stalking horse bid process.
- C. Pursuant to an Order of the Court dated October 2, 2023, the Court approved the agreement of purchase and sale made as of **[Date of Agreement]** (the "**Stalking Horse APA**") between the Receiver and Avonlea-Drewry Holdings Inc. ("**ADH**", or its nominee, in either case the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtors' right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the cash component of the Purchase Price for the Purchased Assets (if any); (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the

Receiver and the Purchaser; and (iii) the purchase and sale as contemplated under the Stalking Horse APA has been completed to the satisfaction of the Receiver.

THE RECEIVER CERTIFIES the following:

1. The Receiver has carried out the SISP procedures and the Purchaser, further to the Stalking Horse APA, was and is the Successful Bidder, as that term is defined in the SISP.
2. The Purchaser has paid and the Receiver has received the sum equivalent to the cash component, if any, of the purchase price to be paid by the Purchaser under the Stalking Horse APA.
3. By delivery of this Certificate, the amount of the indebtedness owing by the Debtors to ADH under its existing credit facilities and security is deemed to be reduced by \$_____, being the amount of credit offset given by ADH as consideration for the purchase price under the Stalking Horse APA.
4. The conditions to closing as set out in the Stalking Horse APA have been satisfied or waived by the Receiver and the Purchaser.
5. The purchase and sale as contemplated under the Stalking Horse APA has been completed to the satisfaction of the Receiver.
6. This Certificate was delivered by the Receiver at **[Time]** on **[Date]**.

KSV Restructuring Inc., in its capacity as Receiver of the undertakings, property and assets of Pathway Health Corp. and Pathway Health Services Corp., and not in its personal capacity.

Per: _____

Name:

Title:

Schedule "2"
Encumbrances

Schedule “3”**Permitted Encumbrances**

- \$170,000 advanced by Aphria Inc. to the Receiver pursuant to the financing term sheet dated August 31, 2023; and
- Security interest granted by PHSC to Royal Bank of Canada as reflected by the financing statement registration number 20211130 0951 1532 0181 registered under the *Personal Property Security Act* (Ontario).