

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE  
ACT*, R.S.O 1990 C. C.43, AS AMENDED**

**B E T W E E N:**

**CALLIDUS CAPITAL CORPORATION**

**Applicant**

**and**

**JD NORMAN CANADA, ULC**

**Respondent**

**APPLICATION RECORD**

February 10, 2021

**DICKINSON WRIGHT LLP**  
Barristers & Solicitors  
199 Bay Street  
Suite 2200, P.O. Box 447  
Commerce Court Postal Station  
Toronto, Ontario, M5L 1G4

**JOHN D. LESLIE (29956P)**  
Tel: (416) 646-3801  
Email: jleslie@dickinsonwright.com

**LISA S. CORNE (27974M)**  
Email: lcorne@dickinsonwright.com  
Tel: (416) 646-4608

Lawyers for the Applicant

TO: **JD NORMAN CANADA, ULC**  
6845 Hawthorne Drive  
Windsor, Ontario N8T 3B8  
**Attention: President**

AND **ATTACHED SERVICE LIST**  
TO:

## SERVICE LIST

TO:	<b>CIT FINANCIAL LTD.</b> 5035 South Service Road Burlington, Ontario L7R 4C8 Tel: 905.633.2400
AND TO:	<b>TOYOTA INDUSTRIES COMMERCIAL FINANCE CANADA, INC.</b> 630 - 401 The West Mall Toronto, Ontario M9C 5J5  Tel: 416.621.5522 Email: info@toyotacf.ca
AND TO:	<b>BANK OF AMERICA, N.A.</b> Suite 925, 135 South Lasalle Street Chicago, Illinois 60603 USA
AND TO:	<b>MCMILLAN</b> TD Canada Trust Tower, Suite 1700 421 7th Avenue S.W. Calgary, Alberta T2P 4K  <b>Adam C. Maerov</b> Tel: 403.215.2752 Email: <a href="mailto:adam.maerov@mcmillan.ca">adam.maerov@mcmillan.ca</a>  Lawyers for JD Norman Canada, ULC
AND TO:	<b>NORTON ROSE FULBRIGHT CANADA LLP</b> 222 Bay Street, Suite 3000 Toronto, Ontario M5K 1E7  <b>Evan Cobb</b> Tel: 416.216.1929 Email: <a href="mailto:evan.cobb@nortonrosefulbright.com">evan.cobb@nortonrosefulbright.com</a>  Lawyers for Bank of America
AND TO:	<b>UNIFOR LOCAL 195</b> 3400 Somme Avenue Windsor, ON N8W 1V4  <b>CHRIS TAYLOR</b> Tel: 519.253.1107 Email: <a href="mailto:Chris.taylor@unifor.org">Chris.taylor@unifor.org</a>  Local Union Representative

<p>AND TO:</p>	<p><b>DEPARTMENT OF JUSTICE</b>  The Exchange Tower  130 King Street West  Suite 3400, P.O. Box 36  Toronto, ON M5X 1K6</p> <p><b>DIANE WINTERS</b>  Tel: (416) 973-3172  Fax: (416) 973-0810  Email: diane.winters@justice.gc.ca</p>
<p>AND TO:</p>	<p><b>MINISTRY OF FINANCE (ONTARIO)</b>  Legal Services Branch  33 King Street West, 6th Floor  Oshawa, ON L1H 8H5</p> <p><b>KEVIN J. O'HARA</b>  Tel: (905) 433-6934  Fax: (905) 436-4510  Email: unit@ontario.ca</p>
<p>AND TO:</p>	<p><b>KSV RESTRUCTURING INC.</b>  150 King Street West, Suite 2308  Toronto, ON M5H 1J9</p> <p><b>DAVID SIERADZKI</b>  Tel: 416.932.6030  Email: dsieradzki@ksvadvisory.com</p>
<p>AND TO:</p>	<p><b>Osler, Hoskin &amp; Harcourt LLP</b>  100 King Street West  1 First Canadian Place  Suite 6200, P.O. Box 50  Toronto ON M5X 1B8</p> <p><b>MARC WASSERMAN</b>  Tel: 416.862.4908  Email: mwasserman@osler.com</p> <p><b>Lawyers for KSV Restructuring Inc.</b></p>

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE  
ACT*, R.S.O 1990 C. C.43, AS AMENDED**

**B E T W E E N:**

**CALLIDUS CAPITAL CORPORATION**

**Applicant**

**and**

**JD NORMAN CANADA, ULC**

**Respondent**

**INDEX**

<b>Tab</b>	<b>Description</b>	
1.	Notice of Application	
2.	Affidavit of John Ho sworn February 8, 2021	
A.	Exhibit "A" -	Corporate profile report of JD Norman Canada, ULC
B.	Exhibit "B" -	JD Norman Canada, ULC's corporate organization chart
C.	Exhibit "C" -	Collective Agreement dated February 1, 2018 between JDN Canada, Unifor and its local 195
D.	Exhibit "D" -	First Mortgage dated July 10, 2018
E.	Exhibit "E" -	General Security Agreement dated as of July 10, 2018
F.	Exhibit "F" -	Forbearance Agreement dated February 18, 2020

<b>Tab</b>	<b>Description</b>	
G.	Exhibit "G" -	Notice of expiration dated February 2, 2021
H.	Exhibit "H" -	Parcel register
I.	Exhibit "I" -	Inter Creditor Agreement dated July 10, 2018
J.	Exhibit "J" -	<i>PPSA</i> dated February 3, 2021
K.	Exhibit "K" -	<i>Bankruptcy and Insolvency Act</i> Notice
L.	Exhibit "L" -	Acknowledgment and Consent executed by JDN Canada dated February 10, 2021
M.	Exhibit "M" -	Receiver's Consent
3.	Draft Order Appointing Receiver	
4.	Blackline to draft Order Appointing Receiver	

**Tab 1**

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

*(Court Seal)*

CALLIDUS CAPITAL CORPORATION

Applicant

and

JD NORMAN CANADA, ULC

Respondent

**APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O 1990 C. C.43, AS AMENDED**

**NOTICE OF APPLICATION**

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing (*choose one of the following*)

- In person  
 By telephone conference  
 By video conference

at the following location:

Superior Court of Justice, 330 University Avenue, 7th Floor Toronto ON M5G 1R7

*(Courthouse address or telephone conference or video conference details, such as a dial-in number, access code, video link, etc. if applicable)*

on Friday, February 12, 2021, at 11:30 a.m., before a judge presiding over the Commercial List.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer



acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant’s lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant’s lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date \_\_\_\_\_ Issued by \_\_\_\_\_  
Local Registrar

Address of court office: Superior Court of Justice  
330 University Avenue, 8th Floor  
Toronto ON  
M5G 1R7

TO: **JD NORMAN CANADA, ULC**  
6845 Hawthorne Drive  
Windsor, Ontario N8T 3B8  
**Attention: President**

AND **ATTACHED SERVICE LIST**  
TO:

## SERVICE LIST

TO:	<p><b>CIT FINANCIAL LTD.</b>  5035 South Service Road  Burlington, Ontario L7R 4C8  Tel: 905.633.2400</p>
AND TO:	<p><b>TOYOTA INDUSTRIES COMMERCIAL FINANCE CANADA, INC.</b>  630 - 401 The West Mall  Toronto, Ontario M9C 5J5</p> <p>Tel: 416.621.5522  Email: <a href="mailto:info@toyotacf.ca">info@toyotacf.ca</a></p>
AND TO:	<p><b>BANK OF AMERICA, N.A.</b>  Suite 925, 135 South Lasalle Street  Chicago, Illinois 60603 USA</p>
AND TO:	<p><b>MCMILLAN</b>  TD Canada Trust Tower, Suite 1700  421 7th Avenue S.W.  Calgary, Alberta T2P 4K</p> <p><b>Adam C. Maerov</b>  Tel: 403.215.2752  Email: <a href="mailto:adam.maerov@mcmillan.ca">adam.maerov@mcmillan.ca</a></p> <p>Lawyers for JD Norman Canada, ULC</p>
AND TO:	<p><b>NORTON ROSE FULBRIGHT CANADA LLP</b>  222 Bay Street, Suite 3000  Toronto, Ontario M5K 1E7</p> <p><b>Evan Cobb</b>  Tel: 416.216.1929  Email: <a href="mailto:evan.cobb@nortonrosefulbright.com">evan.cobb@nortonrosefulbright.com</a></p> <p>Lawyers for Bank of America</p>
AND TO:	<p><b>UNIFOR LOCAL 195</b>  3400 Somme Avenue  Windsor, ON N8W 1V4</p> <p><b>CHRIS TAYLOR</b>  Tel: 519.253.1107  Email: <a href="mailto:Chris.taylor@unifor.org">Chris.taylor@unifor.org</a></p> <p>Local Union Representative</p>

-4-

<p>AND TO:</p>	<p><b>DEPARTMENT OF JUSTICE</b> The Exchange Tower 130 King Street West Suite 3400, P.O. Box 36 Toronto, ON M5X 1K6</p> <p><b>DIANE WINTERS</b> Tel: (416) 973-3172 Fax: (416) 973-0810 Email: diane.winters@justice.gc.ca</p>
<p>AND TO:</p>	<p><b>MINISTRY OF FINANCE (ONTARIO)</b> Legal Services Branch 33 King Street West, 6th Floor Oshawa, ON L1H 8H5</p> <p><b>KEVIN J. O'HARA</b> Tel: (905) 433-6934 Fax: (905) 436-4510 Email: unit@ontario.ca</p>
<p>AND TO:</p>	<p><b>KSV RESTRUCTURING INC.</b> <b>150 King Street West, Suite 2308</b> <b>Toronto, ON M5H 1J9</b></p> <p><b>DAVID SIERADZKI</b> Tel: 416.932.6030 Email: dsieradzki@ksvadvisory.com</p> <p><b>EMILY KLEIN</b> Tel: 416.932.6259 Email: eklein@ksvadvisory.com</p>
<p>AND TO:</p>	<p><b>OSLER, HOSKIN &amp; HARCOURT LLP</b> 100 King Street West 1 First Canadian Place Suite 6200, P.O. Box 50 Toronto ON M5X 1B8</p> <p><b>MARC WASSERMAN</b> Tel: 416.862.4908 Email: mwasserman@osler.com</p> <p><b>Lawyers for KSV Restructuring Inc.</b></p>

## APPLICATION

1. The Applicant makes application for:
  - (a) if necessary, an Order abridging the time for service and filing of this Notice of Application and the Application Record;
  - (b) an Order, in the form attached hereto as Schedule “A”, appointing KSV Restructuring Inc. as Receiver of the assets, property and undertakings of the Respondent pursuant to section 243 of the *Bankruptcy and Insolvency Act*, RSC 1985, c.B-3 (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43 (the “**CJA**”); and
  - (c) such further and other relief as to this Honourable Court may seem just.
  
2. The grounds for the application are:
  - (a) The Applicant and Respondent are party to a Term Loan Agreement dated July 10, 2018, pursuant to which the Applicant agreed to extend a term loan to the Respondent in the principal amount of \$95,000,000;
  - (b) The Applicant’s loan is secured by a first-ranking mortgage/charge over the real property owned by the Respondent municipally known as 6845 Hawthorne Drive, in Windsor, Ontario, and a security interest in all of the personal property of the Respondent;
  - (c) As of February 8, 2021, the Respondent is indebted to the Applicant in the amount of approximately US\$146 million, plus interest and costs which continue to accrue. The Respondent is in default of its obligations to the Applicant pursuant to the Term Loan Agreement;

-6-

- (d) The Applicant has issued the requisite Notice of Intention to Enforce Security under section 244 of the *BIA*;
  - (e) The Respondent has waived the ten day notice period under section 244 of the *BIA* and consented to the immediate appointment of a receiver;
  - (f) It is just and convenient to appoint a Receiver to take possession and control of the Respondents' assets;
  - (g) Section 243 of the *BIA*, 101 of the *CJA*, and 14.05(3)(d)(e)(f)(g) and (h) of the *Rules of Civil Procedure*; and
  - (h) Such further and other grounds as counsel may advise and this Honourable Court may permit.
3. The following documentary evidence will be used at the hearing of the application:
- (a) The Affidavit of John Ho to be sworn and the Exhibits thereto;
  - (b) The Consent of KSV Restructuring Inc. to act as Receiver; and
  - (c) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

-7-

*(Date of issue)*

**DICKINSON WRIGHT LLP**  
Barristers & Solicitors  
199 Bay Street  
Suite 2200, P.O. Box 447  
Commerce Court Postal Station  
Toronto, Ontario, M5L 1G4

**JOHN D. LESLIE (29956P)**  
Tel: (416) 646-3801  
Email: [jleslie@dickinsonwright.com](mailto:jleslie@dickinsonwright.com)

**LISA S. CORNE (27974M)**  
Email: [lcorne@dickinsonwright.com](mailto:lcorne@dickinsonwright.com)  
Tel: (416) 646-4608

Lawyers for the Applicant

TO: **JD NORMAN CANADA, ULC**  
Respondent

## Schedule "A"

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE	)	FRIDAY, THE 12 <sup>TH</sup> DAY
	)	
JUSTICE HAINEY	)	OF FEBRUARY, 2021

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 C. C.43, AS AMENDED**

B E T W E E N:

**CALLIDUS CAPITAL CORPORATION**

Applicant

- and -

**JD NORMAN CANADA, ULC**

Respondent

**ORDER  
(Appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) appointing KSV Restructuring Inc. as receiver (the “**Receiver**”) without security, of all of the assets, undertakings and properties of the Respondent, JD Norman Canada, ULC (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, was heard this day, via zoom videoconference due to the Covid-19 pandemic.

ON READING the Affidavit of John Ho sworn February 10, 2021 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and Bank of America, N.A., as agent (“**BofA**”), no one else on the service list appearing, although served as appears from the Affidavit of Service of Jennifer Samuels sworn February 10, 2021 and on reading the consent of KSV Restructuring Inc. to act as the Receiver,

### **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and Application Record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

### **APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, KSV Restructuring Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, and all proceeds thereof (the “**Property**”).

### **RECEIVER’S POWERS**

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

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



- (c) to wind up the business of the Debtor, including the powers to enter into any agreements, incur any obligations, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, supplies, or other assets to facilitate the wind up of the Debtor's business or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor other than any indebtedness that is Revolving Loan Priority Collateral (as defined in the Intercreditor Agreement dated as of July 10, 2018 between the Debtor, the Applicant and BofA), which may only be settled, extended or compromised with the consent of BofA;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) with the approval of this Court, to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, and in each such case, notice under subsection 63(4) of the Ontario *Personal Property Security Act* shall not be required;
- (l) without approval of this Court, to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business in respect of any transaction not exceeding \$125,000.00, provided that the aggregate consideration for all such transactions does not exceed \$250,000.00; and
- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.
- (t) and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees (including such employees' representatives or bargaining agents), agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall: (a) forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request; (b) not impede or delay access or egress by the Receiver to or from any Property; and (c) not impede or delay access or egress by the Receiver, or any other Person permitted such access or egress by the Receiver, to or from any of the Debtor's owned or leased premises including, without limitation, by any Person transporting any Property to or from the Debtor's owned or leased premises with the Receiver's permission.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to

make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

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

**NO PROCEEDINGS AGAINST THE RECEIVER**

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver or the Receiver’s employees, officers, directors, agents and representatives acting in such capacity, except with the written consent of the Receiver or with leave of this Court.

**NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY**

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH THE RECEIVER**

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

## **CONTINUATION OF SERVICES**

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

## **RECEIVER TO HOLD FUNDS**

13. THIS COURT ORDERS that, subject to paragraph 25 below, all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

## **EMPLOYEES**

14. THIS COURT ORDERS that all current employees of the Debtor actively providing services on the date hereof shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The employment of all other employees of the Debtor is hereby deemed terminated for all purposes

effective on the date hereof. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

## **PIPEDA**

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## **LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations

thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER’S LIABILITY**

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **RECEIVER’S ACCOUNTS**

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “**Receiver’s Charge**”) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that, subject to paragraph 25, the Receiver’s Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall, subject to paragraph 25, be at liberty from time to time to apply reasonable amounts, out of the



monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

### **FUNDING OF THE RECEIVERSHIP**

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that neither the Receiver’s Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

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

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver’s Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver’s Certificates.

**B of A RECEIVABLES**

25. **THIS COURT ORDERS** that the bank accounts held in the name of the Debtor (including without limitation those accounts that are the subject of any Deposit Account Control Agreement between the Debtor and BofA) into which the proceeds of any Revolving Loan Priority Collateral are paid or to be paid shall continue to operate, and be applied to obligations owing to BofA, in accordance with the terms of the Second Amended and Restated Loan and Security Agreement, dated as of July 10, 2018 between, among others, the Debtor and BofA (the “**BofA Loan Agreement**”) and in accordance with the terms of the Loan Documents (as defined in the BofA Loan Agreement); provided, however, that **\$(insert maximum amount of 81.4 priority claims for employee compensation)** of the current assets of the Debtor shall be segregated and held separate and apart in a trust account by the Receiver pending the determination of the amount of the BIA section 81.4 claims of the Debtor’s employees, on consent of the Receiver and BofA or as otherwise ordered by the Court. In the event that any proceeds from the Revolving Loan Priority Collateral are delivered to an account of the Receiver or an account of the Debtor other than an account of the Debtor at Bank of America, such proceeds shall be delivered to a bank account of the Debtor at Bank of America to be applied in accordance with this paragraph 25 or otherwise as directed by BofA. Those certain existing deposit agreements between the Debtor and BofA (including any deposit account control agreements) shall continue to govern the cash management relationship between the Receiver and BofA, and all of the provisions of such agreements shall remain in full force and effect.

26. **THIS COURT ORDERS** that, except as set out in Paragraph 25 above, BofA shall not be required to process, honor, debit or pay any cheques, drafts, ACH transfers or other withdrawals in connection with the Debtor’s accounts, whether made, drawn or issued prior to or after the date of this Order other than as identified by the Receiver to BofA in writing. BofA may rely on this Order and the representations of the Receiver regarding the foregoing, and BofA shall not have any liability to any party for relying on such representations by the Receiver or terms of this Order.

**SERVICE AND NOTICE**

27. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: [www.ksvadvisory.com/insolvency-cases/case/jd-norman-canada](http://www.ksvadvisory.com/insolvency-cases/case/jd-norman-canada) .

28. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor’s creditors or other interested parties at their respective addresses as last shown on the records of the Debtor’s and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

**GENERAL**

29. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

30. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor’s.

31. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this

Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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

33. THIS COURT ORDERS that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

34. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

---



**SCHEDULE "B"**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties of JD Norman, ULC (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 12<sup>th</sup> day of February , 2021 (the "**Order**") made in an application having Court file number \_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly not in advance on the \_\_\_\_\_ day of each month after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 2021

KSV Restructuring Inc., solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name:

Title:

**CALLIDUS CAPITAL CORPORATION****-and- JD NORMAN CANADA, ULC**

Applicant

Respondent

Court File No.

---

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

PROCEEDING COMMENCED AT  
TORONTO

---

**ORDER**

---

**DICKINSON WRIGHT LLP**

Barristers & Solicitors  
199 Bay Street  
Suite 2200, P.O. Box 447  
Commerce Court Postal Station  
Toronto, Ontario, M5L 1G4

**JOHN D. LESLIE (29956P)**

Email: [jleslie@dickinsonwright.com](mailto:jleslie@dickinsonwright.com)  
Tel: (416) 646-4603

**LISA S. CORNE (27974M)**

Email: [lcorne@dickinsonwright.com](mailto:lcorne@dickinsonwright.com)  
Tel: (416) 646-4608

Lawyers for the Applicant



CALLIDUS CAPITAL CORPORATION  
Applicant

-and- JD NORMAN CANADA, ULC  
Respondent

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**NOTICE OF APPLICATION**

**DICKINSON WRIGHT LLP**

Barristers & Solicitors  
199 Bay Street  
Suite 2200, P.O. Box 447  
Commerce Court Postal Station  
Toronto, Ontario, M5L 1G4

**JOHN D. LESLIE (29956P)**

Tel: (416) 646-3801  
Email: [jleslie@dickinsonwright.com](mailto:jleslie@dickinsonwright.com)

**LISA S. CORNE (27974M)**

Email: [lcorne@dickinsonwright.com](mailto:lcorne@dickinsonwright.com)  
Tel: (416) 646-4608

Lawyers for the Applicant

**Tab 2**

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O 1990 C. C.43, AS AMENDED**

**B E T W E E N:**

**CALLIDUS CAPITAL CORPORATION**

Applicant

- and -

**JD NORMAN CANADA, ULC**

Respondent

**AFFIDAVIT OF JOHN HO**  
*(Sworn February 10, 2021)*

I, **John Ho**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the Chief Financial Officer of Callidus Capital Corporation (“**Callidus**”). I have personal knowledge of the matters to which I hereinafter depose, except those matters expressly stated to be based upon information provided to me by others, in which case I have stated the source of my information and believe the same to be true.

2. I am swearing this Affidavit in support of an application to appoint KSV Restructuring Inc. as receiver of the assets of the Respondent, JD Norman Canada, ULC (“**JDN Canada**” or the “**Debtor**”).

### **Background**

3. JDN Canada is an unlimited liability company incorporated pursuant to the laws of British Columbia. JDN Canada carries on business in the City of Windsor, Ontario, as a manufacturer of highly engineered metal components for the automotive industry. A copy of the corporate profile report of JDN Canada is attached as **Exhibit “A”**.

4. JDN Canada is an affiliate of JD Norman Industries, Inc. (together with its subsidiaries and affiliates, “**JDN**”). JDN is a leading manufacturer of automotive metal components, with operations in Michigan, Illinois, Ontario, and Mexico. A copy of JDN’s corporate organization chart is attached as **Exhibit “B”**.

5. JDN Canada is the registered owner of the property located at 6845 Hawthorne Drive in the city of Windsor, Ontario (the “**Real Property**”). The Real Property is improved with an industrial building of approximately 50,000 square feet (the “**Plant**”). JDN Canada also leases storage space from Maden Industrial Ltd. at 2062 Manning Road, in Tecumseh, Ontario for CA\$2,600 per month, plus HST.

6. I am informed through JDN’s representative and counsel that JDN’s Director of Human Resources that until Friday, February 5, 2021, JDN Canada employed approximately 83 employees in its operations at the Plant, including 72 members of Unifor, and its local 195, and 11 non-unionized employees, including 4 management personnel. A copy of the Collective Agreement dated February 1, 2018 between JDN Canada, Unifor and its local 195 is attached as

**Exhibit “C”**. I am informed through JDN’s representative and counsel that JDN Canada does not have a registered pension plan.

### **The Loan and Security**

7. On or about July 10, 2018, Callidus, as an agent for certain lenders and as a lender itself, entered into a credit agreement and related loan documents with JDN pursuant to which Callidus provided secured term loans to JDN in the aggregate principal amount of \$95 million (collectively, the **“Term Loan”**), with a maturity date of July 10, 2022.

8. As security for the Term Loan, Callidus holds, among other security, a first charge dated July 10, 2018 registered against title to the Real Property (the **“First Mortgage”**), and a general security interest in all of the personal property of JDN pursuant to a General Security Agreement dated as of July 10, 2018 (the **“GSA”**).

9. A copy of the First Mortgage in the principal face amount of \$95,000,000 registered on title to the Real Property is attached as **Exhibit “D”**. A copy of the GSA executed by the Debtor is attached as **Exhibit “E”**.

### **Default and Forbearance**

10. By January 2020, JDN had experienced multiple events of default under the Term Loan. At the request of JDN, Callidus agreed to forbear from enforcing its rights and remedies against JDN upon the terms and conditions set out in a Forbearance Agreement dated February 18, 2020. A copy of the Forbearance Agreement is attached as **Exhibit “F”**.

11. The forbearance period under the Forbearance Agreement expired on December 31, 2020. On February 3, 2021, Callidus, by its counsel, delivered written notice confirming the

expiration of the Forbearance Agreement. A copy of the notice of expiration is attached as **Exhibit “G”**.

### **GM Business Dispute**

12. Until very recently, General Motors (“**GM**”) was a major OEM customer of JDN, accounting for approximately 50% of all of JDN’s business, and 100 % of JDN Canada’s business. Specifically, JDN was GM’s exclusive directed supplier of certain engine connecting rods (the “**GM Business**”).

13. In January 2020, JDN advised GM (and other JDN customers) that JDN was experiencing severe financial difficulty and would be unable to remain in business without obtaining certain financial accommodations and other commitments from GM, Callidus and others. On or about February 18, 2020, GM entered into a Long-Term Supply and Accommodation Agreement (the “**LTSA**”) with JDN, Callidus, and others, pursuant to which GM agreed, among other things, that it would not resource any of the GM Business away from JDN to a different supplier until at least February 18, 2023.

14. In November, 2020, GM claimed that JDN had breached its obligations to GM under the LTSA (a claim which both JDN and Callidus dispute), and GM notified JDN of its intention to resource a substantial portion of the GM Business to a new supplier.

15. However, on information and belief, GM has now resourced, or is in the process of resourcing, all of the GM Business away from JDN.

16. As a result of GM’s resourcing of the GM Business, JDN Canada is no longer in a position to operate as a viable going concern.

17. I am informed through JDN's representative and counsel that, with the exception of three key employees who have been retained to assist in the wind-up of JDN Canada's operations, JDN Canada has terminated all of its employees, effective as of Friday February 5, 2021.

18. I am informed through JDN's representative and counsel that on Monday, February 8, 2021, representatives of the Unifor local 195 barricaded the entrance to the Plant, and prevented removal of any inventory from the Plant. Ensuring final inventory shipments from JDN Canada to GM is integral to completing an orderly wind-down of JDN Canada's business and operations.

### **Other Secured Creditors**

19. As appears from the parcel register in respect of the Real Property, a copy of which is attached as **Exhibit "H"**, the First Mortgage in favour of Callidus is the only encumbrance registered against the Real Property.

20. In addition to the Term Loan, JDN was financed by a separate secured revolving loan agreement between JDN and Bank of America, N.A. ("**Bank of America**"). Pursuant to an Inter Creditor Agreement dated July 10, 2018 among Callidus, Bank of America, and JDN, the security in favour of Callidus ranks in priority to the security of Bank of America over equipment and fixtures, and Bank of America's security ranks in priority over inventory and accounts receivable. A copy of the Inter Creditor Agreement dated July 10, 2018 among Callidus, Bank of America, and JDN is attached as **Exhibit "I"**.

21. Bank of America is supportive of this application for the appointment of KSV Restructuring Inc. as receiver of JDN Canada.

### PPSA Registrations

22. A copy of the search report produced under the *Personal Property Security Act (Ontario)* (“*PPSA*”) Registration System in respect of registrations made against the personal property of JDN Canada is attached as **Exhibit “J”**. As appears from the search report, as of February 3, 2021, in addition to Callidus, the following parties had registered a security interest in the personal property of the Debtor:

Secured Creditor	Date of Registration	Description of Collateral
Bank Of America	2013/06/21	Inventory, Equipment Accounts, Other, Motor Vehicle
CIT Financial Ltd.	2016/07/21	Equipment, Other Photocopiers and related equipment
Toyota Industries Commercial Finance Canada Inc.	2018/07/30	Equipment, Other Forming Equipment

### Notice of Intention to Enforce Security

23. On February 8, 2021, Callidus delivered the requisite Notice of Intention to Enforce Security pursuant to s. 244 of the *Bankruptcy and Insolvency Act* (“*BIA*”). JDN Canada waived the ten day notice period and consented to the immediate appointment of a receiver over its assets, property, and undertakings. A true copy of the *BIA* Notice is attached as **Exhibit “K”**. A true copy of the Acknowledgment and Consent executed by JDN Canada dated February 10, 2021 is attached as **Exhibit “L”**.

24. As of February 8, 2021, JDN Canada remains indebted to Callidus in the amount of approximately US\$146,388,486.77.



**KSV Consent**

25. I am informed by David Sieradzki of KSV Restructuring Inc. (“KSV”) that KSV consents to act as receiver if so appointed by this Honourable Court. A copy of the consent executed by KSV is attached as **Exhibit “M”**.

26. In light of the number of secured creditors, and former JDN Canada employees affected by the insolvency of JDN Canada (including the need to administer the *Wage Earners Protection Program Act* for the benefit of the former employees, including the Union’s members), the Union’s efforts to prevent access to the Plant, and the substantial amounts owing by JDN Canada to the Applicant, and others, I believe it is just, convenient and necessary for the protection of the Applicant, and other creditors of the Respondent, that a Court-supervised officer be appointed to take possession and control of JDN Canada’s assets, conduct an orderly wind-up of its business, market and sell its assets and ensure that the proceeds of sale are distributed to the stakeholders in accordance with their legal priorities, and further order of the Court.

**SWORN** by John Ho at the City of Toronto,  
in the Province of Ontario, before me on  
February 10, 2021 in accordance with  
O. Reg. 431/20, Administering Oath or  
Declaration Remotely.



\_\_\_\_\_  
Commissioner for Taking Affidavits  
(or as may be)



\_\_\_\_\_  
**JOHN HO**

This is Exhibit “A” referred to in the  
**AFFIDAVIT OF JOHN HO**  
sworn this 10<sup>th</sup> day of February, 2021.



---

*Commissioner for Taking Affidavits (or as may be)*



## BC Company Summary

### For JD NORMAN CANADA, ULC

**Date and Time of Search:** February 09, 2021 01:16 PM Pacific Time  
**Currency Date:** October 15, 2020

### ACTIVE

**Incorporation Number:** BC0970611  
**Name of Company:** JD NORMAN CANADA, ULC  
**Recognition Date and Time:** Incorporated on May 22, 2013 01:30 PM Pacific Time  
**Last Annual Report Filed:** May 22, 2019

**In Liquidation:** No  
**Receiver:** No

### REGISTERED OFFICE INFORMATION

**Mailing Address:**  
SUITE 2300, BENTALL 5  
550 BURRARD STREET  
VANCOUVER BC V6C 2B5  
CANADA

**Delivery Address:**  
SUITE 2300, BENTALL 5  
550 BURRARD STREET  
VANCOUVER BC V6C 2B5  
CANADA

### RECORDS OFFICE INFORMATION

**Mailing Address:**  
SUITE 2300, BENTALL 5  
550 BURRARD STREET  
VANCOUVER BC V6C 2B5  
CANADA

**Delivery Address:**  
SUITE 2300, BENTALL 5  
550 BURRARD STREET  
VANCOUVER BC V6C 2B5  
CANADA

### DIRECTOR INFORMATION

**Last Name, First Name, Middle Name:**  
Sullivan, Michael

**Mailing Address:**  
35 EAST 38TH ST., APT 5A  
NEW YORK NY 10016  
UNITED STATES

**Delivery Address:**  
35 EAST 38TH ST., APT 5A  
NEW YORK NY 10016  
UNITED STATES

**Last Name, First Name, Middle Name:**

Wyse, Michael Thomas

**Mailing Address:**

85 BROAD STREET, 18TH FLOOR  
NEW YORK NY 10004  
UNITED STATES

**Delivery Address:**

85 BROAD STREET, 18TH FLOOR  
NEW YORK NY 10004  
UNITED STATES

---

**OFFICER INFORMATION AS AT May 22, 2019**

**Last Name, First Name, Middle Name:**

Norman, Justin Dennis

**Office(s) Held:** (President, Secretary)

**Mailing Address:**

787 WEST BELDEN AVENUE  
ADDISON IL 60101  
UNITED STATES

**Delivery Address:**

787 WEST BELDEN AVENUE  
ADDISON IL 60101  
UNITED STATES

---

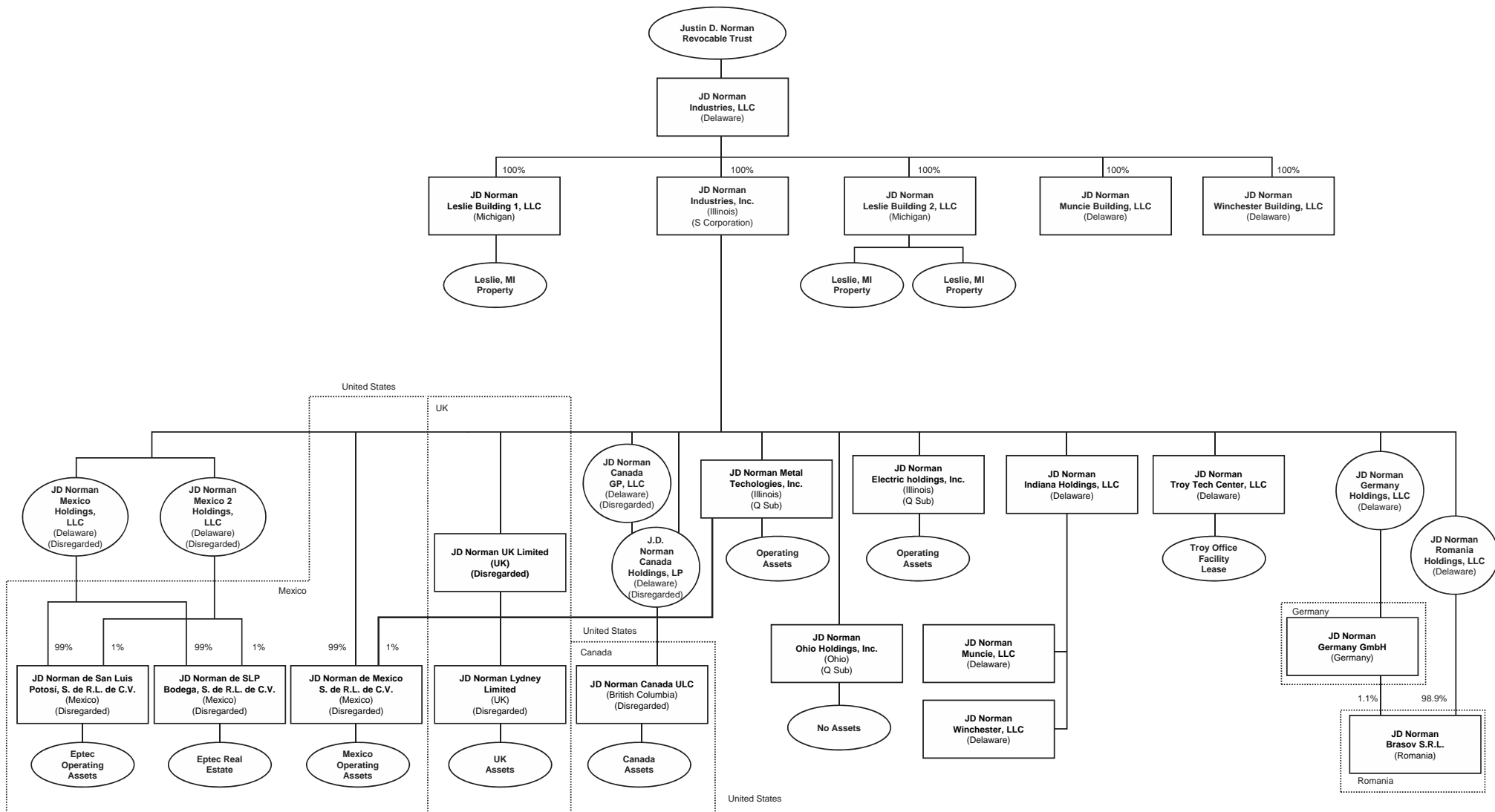
This is Exhibit “B” referred to in the  
**AFFIDAVIT OF JOHN HO**  
sworn this 10<sup>th</sup> day of February, 2021.



---

*Commissioner for Taking Affidavits (or as may be)*

**JD Norman Post-Closing Organizational Structure**



This is Exhibit "C" referred to in the  
**AFFIDAVIT OF JOHN HO**  
sworn this 10<sup>th</sup> day of February, 2021.



---

*Commissioner for Taking Affidavits (or as may be)*

# **COLLECTIVE AGREEMENT**

- between -

**JD NORMAN**

- and -



**AND ITS LOCAL 195**

January, 31<sup>st</sup> 2018 – January 30<sup>th</sup> 2021



Contents

ARTICLE 1 - PURPOSE ..... 4

ARTICLE 2 - RECOGNITION ..... 4

ARTICLE 3 - MANAGEMENT RIGHTS ..... 4

ARTICLE 4 - UNION SECURITY ..... 5

ARTICLE 5 - STRIKES AND LOCKOUTS ..... 6

ARTICLE 6 - NO DISCRIMINATION ..... 6

ARTICLE 7 - DATA TO BE SUPPLIED TO THE UNION ..... 9

ARTICLE 8 - SENIORITY ..... 9

ARTICLE 9 - REPRESENTATION ..... 11

ARTICLE 10 - LAYOFF AND RECALL ..... 12

    10.03 PRODUCTION ..... 12

    10.04 SKILLED TRADES ..... 13

ARTICLE 11 - JOB POSTING ..... 14

ARTICLE 12 - HOURS OF WORK ..... 16

ARTICLE 13 - OVERTIME ..... 17

ARTICLE 14 - GRIEVANCE AND ARBITRATION PROCEDURE ..... 20

ARTICLE 15 - ADMINISTRATION OF DISCIPLINE ..... 24

ARTICLE 16 - REPORT IN PAY ..... 25

ARTICLE 17 - EMERGENCY CALL-BACK PAY ..... 25

ARTICLE 18 - JURY DUTY ..... 26

ARTICLE 19 - BEREAVEMENT LEAVE ..... 26

ARTICLE 20 - PAY DAY ..... 27

ARTICLE 21 - LEAVES OF ABSENCE ..... 27

ARTICLE 22 - BULLETIN BOARDS ..... 28

ARTICLE 23 - LUNCHROOM, WASHROOM & FIRST AID ..... 28

ARTICLE 24 - TUITION FEES AND BOOK REFUND ..... 29

ARTICLE 25 - NEW EMPLOYEE ORIENTATION ..... 29

ARTICLE 26 - PROTECTIVE CLOTHING ..... 29

ARTICLE 27 - INCAPACITATED EMPLOYEES ..... 30

ARTICLE 28 - HEALTH AND SAFETY ..... 30

ARTICLE 29 - NATIONAL DAY OF MOURNING ..... 31

ARTICLE 30 - TECHNOLOGICAL CHANGE ..... 31

ARTICLE 31 - SUBSTANCE ABUSE ..... 32

ARTICLE 32 - HOLIDAYS ..... 32

ARTICLE 33 - VACATION ..... 33

ARTICLE 34 - BENEFITS ..... 34

ARTICLE 35 - R.R.S.P. CONTRIBUTIONS ..... 35

ARTICLE 36 - NOTICE OF CLOSURE ..... 36

ARTICLE 37 - TOOL ALLOWANCE ..... 36

ARTICLE 38 - WAGES ..... 37

ARTICLE 39 - DURATION OF AGREEMENT ..... 37

APPENDIX A - SKILLED TRADES ..... 38

SKILLED TRADES APPRENTICES ..... 39

Letter of Understanding: Temporary Employees ..... 42

Letter of Understanding: Representation ..... 44

Letter of Understanding: Classification Review Committee ..... 44

Letter of Understanding: Pay Equity ..... 44

Letter of Understanding: Paid Education Leave ..... 45  
 Letter of Understanding: Training ..... 45  
 Letter of Understanding: Shutdown ..... 45  
 Letter of Understanding: Heat Relief ..... 46  
 Letter of Understanding: Shift Change Rotation ..... 46  
 Letter of Understanding: Temporary Part-Time Employees (TPT) ..... 46  
 Letter of Understanding: Job Classification & Descriptions ..... 48  
 Additional Items ..... 49

**ARTICLE 1 - PURPOSE**

1.01 It is the intent and purpose of the parties that this Agreement will provide improved industrial, economic, and Collective Bargaining Relations and set forth herein the basic Agreement covering wages, rates of pay, hours of work and other conditions of employment, for all employees who are subject to the provisions of this agreement.

Further to co-operate in every reasonable way to promote orderly and peaceful relations and set forth a procedure for the prompt and equitable disposition of grievances which may arise.

**ARTICLE 2 - RECOGNITION**

2.01 The Company recognizes that Unifor and its Local 195 (hereinafter referred to as the Union) is the sole and exclusive bargaining agent for all employees of J.D. Norman in the County of Essex, save and except supervisors, those above the rank of supervisors, office, clerical, sales and engineering departments, co-op placements, or salaried contract employees.

2.02 Supervisors and other employees excluded from the Bargaining Unit will not perform any work normally performed by employees in the Bargaining Unit, except in the case of emergency or for the purpose of instructing employees or for experimentation or tryout. The Company agrees that this article will not be used to circumvent the overtime opportunities or cause the layoff of Bargaining Unit employees. The Company agrees to notify the committee person present prior to work being performed, the nature and extend of work to be performed and the reason thereof. Emergency is defined as a sudden, unexpected occurrence to protect product, equipment or personnel.

2.03 The Company agrees to notify the Plant Chairperson of any changes to rules and/or regulations before such are communicated to Bargaining Unit employees. In addition the Company agrees to provide a copy of all postings to the Union.

**ARTICLE 3 - MANAGEMENT RIGHTS**

3.01 The Union recognizes that the Company reserves and retains, solely and exclusively, all of the authority, powers and inherent rights to manage the business, except those specifically limited, abridged, granted or modified by the collective bargaining process and incorporated into this Agreement.

- 3.02 The Union further recognizes the right of the company to make and alter, from time to time, reasonable rules and regulations to be observed by the employees. These rules and regulations will not be inconsistent with the provisions of this Agreement. Prior to the implementation of a new rule or regulation, the Union Committee will be given an opportunity to discuss such rule with the Company. Prior to posting of said rule a copy will be provided to the Plant Chairperson.
- 3.03 The Company's not exercising any right hereby reserved to it or its exercising any right in a particular way, shall not be deemed a waiver of any such right or preclude the Company from exercising the same in some other way not in conflict with the express terms of this Agreement.

#### ARTICLE 4 - UNION SECURITY

- 4.01 a) The employer and the Union agree that all employees covered by this Agreement will be required to continue to be members of the Union as a condition of employment with the Company.
- b) The employer agrees that all new employees included in the Bargaining Unit as per Article "2" shall become members of the union within thirty (30) calendar days from the start of employment, and remain members during the life of this Agreement, as a condition of their employment with the Company.
- c) The employer agrees, when authorized in writing by the Union to deduct monthly, from the wages of the employees within the Bargaining Unit, the equivalent of one months dues, initiation fees and other assessments authorized by the Constitution and bylaws of the Union.
- d) By the tenth (10<sup>th</sup>) of the following month, the employer will remit by cheque to the Financial Secretary of Unifor Local 195 the total of the deduction made together with a list of those from whom deductions are made. The company will also supply a list of those members who did not have Union Dues deducted and the reason why no deduction took place.
- e) The Union agrees to indemnify and hold harmless the employer against any and all liability which may arise by reason of the check off by the employer of such deductions from employee's wages in accordance with this Agreement.
- f) The company agrees to include the Union dues paid by the employee on his/her T-4 slips annually.

- g) Re: Union Dues, Initiation Fees, and Other Assessments  
The monies referred to in this Article are to be held in trust by the Company until such time as they are remitted to the Union in accordance with this Collective Agreement. These monies cannot be used in any fashion by the Company or its agents or any agents acting on behalf of it's creditors.

- 4.02 The company has committed to pursue all opportunities to maximize the full production opportunities in the plant and will provide the Union Chairperson with a monthly copy of the Company's Business Operating System Review (BOSR) metrics. The Union recognizes the competitive nature of the business and has committed to the following; should J.D Norman bring forward a new business plan for the Windsor operations that includes identified product and volumes of such product, the Union will agree to re-open the Collective Agreement for the purpose of coming to agreement on a new wage progression for new hires on a go forward basis. The parties agree that any such agreement will not affect the wages of anyone hired prior to the re-opening of discussions for said new product.

#### ARTICLE 5 - STRIKES AND LOCKOUTS

- 5.01 The Union will not cause or condone its members, nor will any member take part in a sit-down, stay-in, slow-down or any curtailment of work or interference with production. The Union will not cause, nor will any employee in the Bargaining Unit take part in any strike, stoppage of work or any other interference of work during the term of this Agreement. Any employee who engages in any form of conduct or activity as set forth in this article may be subject to disciplinary action up to and including discharge. Any employee so disciplined shall have recourse to the grievance procedure.
- 5.02 The Company agrees during the term of this Agreement there shall be no lock-outs.
- 5.03 The word "strike" and the word "lock-out" will be as defined in the Labour Relations Act.

#### ARTICLE 6 - NO DISCRIMINATION

- 6.01 The Company and the Union agree that there shall be no discrimination, interference, restriction or coercion exercised or practised with respect to any employee by reason of age as defined in the Human Rights Code, marital status, sex, race, creed, colour, national origin, political or religious affiliation, handicap

as defined in the Human Rights Code, sexual orientation nor by reason of Union membership or position of the Union.

6.02 The Union and the Company recognize that sexual racial or violent harassment is a cruel and destructive behaviour against others that can have devastating effects.

- a) Sexual harassment is any unwanted attention of a sexual nature such as remarks about appearance or personal life, offensive written or visual actions like graffiti or degrading pictures, physical contact of any kind, or sexual demands;
- b) Racial harassment is any action, whether verbal or physical that expresses or promotes racial hatred in the workplace such as racial slurs, written or visually offensive actions, jokes or other unwanted comments or acts;
- c) Violent harassment includes any form of attempted, threatened, actual conduct or physical force of a person/ employee that causes or is likely to cause injury, and includes any threatening statement or behaviour that gives an employee reasonable cause to believe that the employee is at risk of injury.

Harassment is in no way to be construed as properly discharged supervisory responsibilities, including dispatch and processing of fares and the assessment of discipline or any conduct that does not undermine the dignity of the individual.

### 6.03 FILING A COMPLAINT

If any employee believes that they have been harassed and/or discriminated against on the basis of any prohibited grounds of discrimination, there are specific actions that may be taken to put a stop to it.

First, request a stop of the unwanted behaviour.

Inform the individual that is doing the alleged harassing or the discriminating against you that the behaviour is unwanted and unwelcome.

It is advisable to document the events complete with times, dates, location, witnesses and details. However, it is also understood that some victims of discrimination or harassment are reluctant to confront their alleged harasser or they may fear reprisals from the alleged harasser, lack of support from their fellow employee or disbelief by their supervisor.

In all instances, the incident should be brought to the attention of a Human Resources and/or Supervisor representative. A Union Representative may also be made aware.

### 6.04 INVESTIGATION

Upon receipt of the complaint that is based on a prohibited ground, the Human Resources Representative/ Supervisor/ Union Representative contacted will immediately inform the Union/Company representative.

Together the Human Resources Representative and/or Supervisor and/or Union Representative will then interview the employee and advise the employee if the complaint can be resolved immediately or if the complaint should be formally submitted to Human Resources and Chairperson. If required, each party shall appoint an additional representative to assist with the investigation. In the event of a complaint involving sexual harassment, the investigation, if possible, will be comprised of at least one (1) female for each party.

A formal investigation of the complaint will then begin. It may include interviewing the alleged harasser, witnesses and other persons named in the complaint. Any related documents may also be reviewed.

### 6.05 RESOLUTION

If a joint investigation confirms that harassment has occurred, immediate action will be taken to put an end to the harassment. The Company will take appropriate action against anyone found in violation of the Human Rights Code, up to and including termination of employment.

6.06 This article is not intended to restrict any employee's right under the Ontario Human Rights Code nor restrict Management's right to take appropriate disciplinary action.

6.07 The parties agree to cooperate to the extent necessary to provide a harassment free workplace regarding improper comments or actions that are demeaning and degrading to employees. Even though these comments or actions may not be covered by article 26, the parties agree to cooperate to the extent necessary to provide a harassment free work place.

6.08 The Company agrees that the Union will post notices, in mutually agreed locations, to raise awareness regarding the issue of violence towards women.

**ARTICLE 7 DATA TO BE SUPPLIED TO THE UNION**

- 7.01 (a) The Company will supply to the Union Committee the following information at the end of every month and send a copy to the local union office:
1. Employees on Sickness & Accident and Compensation on the date of occurrence.
  2. Employees on a leave of absence exceeding (30) days.
  3. Layoffs and recalls.
  4. Employees who are discharged.
  5. A copy of the updated overtime list on a weekly basis.
- (b) The Company will supply to the Union Committee the following information every three months and send a copy to the local union office:
1. Employees who acquire seniority by rate and classification.
  2. Employees transferred into or out of the Bargaining Unit.
  3. Employees who have lost seniority.
  4. Names, addresses, phone numbers, postal codes of all retired and active employees.
- (c) Upon request, the Company will supply the Union with an updated training matrix every six (6) months.

**ARTICLE 8 SENIORITY**

- 8.01 The fundamental rules respecting seniority are designed to give employees an equitable measure of security based on length of service with the Company.
- 8.02 Seniority will be established and maintained for all employees in the Bargaining Unit on a plant-wide basis.
- 8.03 A person employed within the Bargaining Unit of this Agreement will be considered on probation and will not be placed on the seniority list until they have completed a total of ninety (90) working days within any period of twelve (12) consecutive months. Following successful completion of the probationary period, the employee will be given a seniority date which is that employee's last date of hire. Should a probationary employee be reduced and subsequently rehired during the initial twelve (12) consecutive months of hire, their working days experience will remain intact and count toward their seniority. Should an employee fail to meet their ninety (90) working days experience within the initial twelve (12) consecutive month period, or are absent from work for any reason

longer ninety (90) days, their time will be reset and the above language will apply once again. A probationary employee may be discharged by the Company at any time during the probationary period for any reason. Individuals discharged during the probationary period will not have the right to lodge a grievance, unless alleged to be discriminatory based on a prohibited ground of the human rights code.

- 8.04 The company will post and maintain a seniority list indicating the names and classifications of the seniority employees employed within the Bargaining Unit along with their respective seniority date. A separate seniority list for skilled trades and production by classification will also be maintained. The Company will revise the seniority list every three (3) months. A copy of the seniority lists will be given to the Plant Chairperson.
- 8.05 If two (2) of more employees are hired on the same day and they subsequently acquire seniority as herein provided, their names will appear on the seniority list based on their employee number with the lowest number given a higher seniority ranking. Employees hired on the same day will be given employee numbers based on the initial of their last name, whereas an employee with an initial "A" will be given higher seniority.
- 8.06 The appointment, selection or promotion of any employee to a position not subject to the provisions of this Agreement is not covered by this Agreement. If a seniority employee is appointed, selected or promoted to a position which is not subject to the provisions of this Agreement and is transferred back to a position within the Bargaining Unit within sixty (60) working days, such employee will return to the Bargaining Unit with all of the seniority which that employee had at the time of his/her appointment, selection or promotion. Any employee covered under this article will not be permitted to issue any discipline to bargaining members.
- 8.07 Seniority will be lost and employment will be terminated if an employee:
- a) Quits, resigns or retires.
  - b) Fails to report for work or fails to notify the Company for three (3) consecutive work days without supplying a reason satisfactory to the Company for such failure.
  - c) With less than twelve (12) months seniority is laid off for a period in excess of twelve (12) months, or if an employee with twelve (12) months or more seniority is laid off for a period in excess of thirty (30) months.
  - d) If the employee fails to report to work in accordance with a notice of recall, or within five (5) calendar (Monday-Friday) days of the registered mailing date of such notice, whichever is later, unless a reason satisfactory to the Company is given. A copy will be supplied to the Union on date of mailing.

- e) Is discharged and not reinstated pursuant to the provisions of the grievance and/or arbitration procedures contained herein.
- f) Overstays a leave of absence granted by the Company without notifying the Company and without supplying a reason satisfactory to the Company for such failure.
- g) Engages in gainful employment while on leave of absence from the company.

#### ARTICLE 9 - REPRESENTATION

- 9.01 The Company will recognize a Plant Committee of four (4) members elected or appointed by the Union, one of whom will act as Chairperson, for the purpose of representation of the employee matters arising from this Agreement on all matters relating to their employment for negotiations for renewal of the Collective Agreement. The four (4) members shall be comprised of:
- 1) Chairperson
  - 2) Committee Person / Vice Chair
  - 3) Committee Person
  - 4) Skilled Trades Committee Person
- 9.02 In addition to the above and in the event that job rotations leave a shift without Committee representation, the Company will recognize one (1) alternate Committee person on that affected shift who will act as a representative. Also, the Company agrees to recognize an alternate Committee person whenever a Committee person is absent. Members of the Committee and alternates will have at least one (1) year seniority. Alternate Committee persons will not be part of the Bargaining Committee. However, should the population within the Company reach one hundred (100) or more bargaining unit employees the Union will appoint and management will recognize a Committee person who will be considered as an addition to the Bargaining Committee
- 9.03 The Chairperson will be assigned to work a steady day shift at the plant from which their job originates. The Chairperson will continue in their current position. The Chairperson will be allowed up to five (5) hours per week for the purpose of conducting union business. The Chairperson will ask for permission to leave their job to deal with Union business before leaving their floor duties.
- 9.04 The Union agrees to supply the Company with the names of the Committee and alternates and keep such lists up-to-date at all times. The Union will notify the Company in writing if and when any changes occur in the representation.

- 9.05 It is acknowledged that the Committee persons have their regular duties to perform as employees and that such duties must be performed in the same manner and to the same extent as other employees. When an employee requests Union Representation, the Union Representative will be notified as soon as reasonably possible. A Committee person will not leave his regular duties without receiving permission from his supervisor. The supervisor will not unreasonably refuse to grant a Committee person permission to leave his regular duties for a reasonable length of time, without loss of pay, in order to perform any of the duties required. This permission will be granted within one (1) hour of the request unless mutually agreed otherwise.
- 9.06 The Committee and the Company representatives shall meet monthly providing there is business for their joint consideration at such times as may be mutually agreed upon. A request for a meeting will be indicated by a letter or note from either party to the other party containing an agenda of subjects to be discussed. The Committee will be paid for attendance at such meetings.
- 9.07 The Company will pay each of the three (3) members of the Negotiating Committee at straight time hourly rates for a maximum of eight (8) hours per day for three (3) days to prepare for negotiations and a maximum of ten (10) days for time spent in negotiations.
- 9.08 The National Representative or Representatives of the Union shall be entitled to meet with the Chairperson and Committee person (if necessary) for a reasonable period of time not to exceed one (1) hour prior to the final step grievance meeting with no loss of wages. An officer of the Union may be present and participate in any meeting with management.
- 9.09 In cases when the Chairperson is absent the Company will recognize one of the Committee persons that the Chairperson appoints as alternate Chairperson.

#### ARTICLE 10 - LAYOFF AND RECALL

- 10.01 The Company will provide forty-eight (48) hours notice in the event of layoff, whenever possible and provide notice to the Chairperson.
- 10.02 For layoffs longer than two (2) work days, 11.03 and 11.04 will apply.

#### 10.03 PRODUCTION

In the event that production (Machine Operators, Inspectors, Material Handlers/Custodians, Lead hands, Utility) employees are to be laid off or recalled, the following procedure will apply:

- a) All probationary employees (FT) shall be laid off first & in order of inverse seniority. Probationary employees have no recall rights.
- b) The classification within which employees are to be laid off will be identified.
- c) Full-time seniority employees subject to layoff will have the right, which must be exercised within five (5) work days of the date of the layoff, to displace a less senior production employee. This process herein will be recognized as a "bump". A thirty (30) day training period must be given to those employees who are bumping another employee. This new position will be held until they are recalled to their last previously owned position, should that occur or be accepted.
- e) Seniority employees who are laid off will be recalled in reverse order of layoff within the specific classification. Probationary employees have no recall rights.
- f) Should a lay-off affect a Leader, the company may post the opening, for the Leader as per Article 12. The Company may elect to canvass for volunteers to replace the leader in the interim during the posting and selection process.

#### 10.04 SKILLED TRADES

In the event that employees in any skilled trade classification (Millwright and/or Electrician) are laid off or recalled, the following factors will apply:

- a) The classification within which employees are to be laid off will be identified.
- b) Probationary employees employed within that classification will be laid off prior to any senior employee being laid off.
- c) If, after all probationary employees within that classification have been laid off, seniority employees employed as apprentices within that classification will be laid off in inverse order of seniority.
- d) If, after all apprentices within that classification have been laid off, further employees are to be laid off, the following factors will apply:
  - (a) Skill, ability and qualification
  - (b) Seniority

When skill, ability and qualifications are relatively equal, then factor (b) will govern.

- e) Seniority employees who are laid off pursuant to this sub-article will have the right, which must be exercised within two (2) work days of the date of the layoff, to displace the least senior employee who has less seniority than the employee in another skilled trades classification, in which the employee has the skill, ability and qualifications to perform the work.
- f) Apprentices subject to layoff will have the right, which must be exercised within two (2) work days of the date of the layoff, to exercise their total plant seniority, to displace the least senior employee in a non-skilled trades classification who has less seniority than the employee, in which the employee has the skill, ability and qualifications to perform the work.

10.05 Employees who are laid off in the skilled trades classification will be recalled in the reverse order of layoff provided that any employee who is recalled must, as a condition of recall, be immediately qualified and able to satisfactorily perform all of the work to be done. Probationary employees have no recall rights.

10.06 In all cases of layoff (i.e. Production and Skilled Trades) Plant Committee members will be the last to be laid off and the first to be recalled provided that the employee is qualified and able to satisfactorily perform all of the work to be done.

#### ARTICLE 11 - JOB POSTING

11.01 When a new job is created or a permanent vacancy occurs within the Bargaining Unit; the Company will, if it decides to fill the vacancy, post notice of the vacancy for a period of three (3) working days in order to allow seniority employees to apply. Should the Company decide not to post a vacancy, the vacated job will not be covered with overtime nor shall the Company transfer anyone to cover the vacated position without prior discussion with the Union and mutual agreement. The Company and the Union will meet before the posting of a job to discuss any job requirements. The Union may file an application on behalf of an absent employee. The Company reserves the right to stipulate in the posting of a job any reasonable requirements which will be needed by the applicants, including rate of pay, shift and will stipulate the expected start date of the position. The Company will provide the Union with a copy of the job postings.

11.02 If no applications are received from seniority employees or if none of the applicants are awarded the posted vacancy, the Company may then fill the vacancy as follows:

- a) The company will recall the next seniority employee from lay-off.
- b) If there is no one on lay-off, the vacancy they will be awarded to the most junior seniority employee not holding a bid position.
- c) If all employees are holding bided positions, the company may then hire.

### 11.03 SKILLED TRADES

The most senior applicant who possesses the required skill and ability will be awarded the job. The successful applicant for the job posting will be notified of their selection within five (5) working days of the end of the posting period and will not be eligible to apply for another posted position for a period of ninety (90) working days; one (1) year for Skilled Trades. Upon transfer their seniority shall be immediate. Upon transfer to another classification, the employee will receive the rate of pay for the classification they transferred to. If the company determines upon reasonable grounds, after a thirty (30) working day period that an employee cannot satisfactory perform the duties of the classification, the employee will be returned to their last previously held classification, seniority permitting and will receive the rate of pay associated to that classification.

- 11.04 Should a new classification be established by the Company, the proposed wage rate & job description must be reviewed and agreed upon between both the Union Committee & appropriate Company representatives prior to job being posted.
- 11.05 An employee may be temporarily transferred from one classification to another for a maximum period of thirty (30) days upon the discretion of the Company. The temporary transfer will be offered in a seniority order being highest to lowest. If no one accepts the temporary offer to transfer, the company may force the lowest seniority person not holding a posted position. The employee who is transferred either by volunteering or by forcing will receive the highest rate of pay from either their previously held position or the highest rate of the job that they were transferred too. If the transferred job is to extend past thirty (30) days, the job will be posted as a permanent position as per Article 12. Once the job has been posted, the employee who was transferred will be required to remain on the job until the new successful applicant is awarded the position. If no one bids on the job, the lowest seniority person not holding a posted position will be placed on the job.
- 11.06 Where the Company decides to designate a Lead hand within any classification, the position will be posted. The Company reserves the right to select the person for the Lead Hand position through an appropriate evaluation process. Where the Company no longer requires a Lead Hand within a classification, it may cancel the designation upon the provision of one weeks notice. The Company

recognizes the importance of seniority in a leadership role. Once the evaluation is complete, seniority will prevail if all evaluations are equal.

- 11.07 Should either the Lead Hand and/or Company determine that a Lead Hand is not a right fit for the position, either party can remove them from the role upon two (2) weeks notice. The affected Leader will be transferred back to the classification they held prior to becoming a Leader, seniority permitting.

### ARTICLE 12 - HOURS OF WORK

- 12.01 The normal work week for employees will be eight (8) hours per day, Monday to Friday. The normally scheduled hours of work at the time of ratification is as follows:
 

Midnights	11:00 p.m. to 7:00 a.m.
Days	7:00 a.m. to 3:00 p.m.
Afternoons	3:00 p.m. to 11:00 p.m.
- 12.02 Supervisors must authorize overtime work in advance of the actual work taking place.
- 12.03 Each Monday, the Company will post the following weeks schedule by 3pm. The Company reserves the right to change the established shift hours provided the change is communicated to all employees and to the Plant Chairperson forty-eight (48) hours prior to implementation.
- 12.04 Employees will be allowed a ten (10) minute rest period, with pay, during each half shift. The Company shall provide a paid twenty (20) minute lunch period per shift. The times for breaks and lunch shall be designated by the Company. Employees scheduled to work twelve (12) or more hours will be entitled to a third ten (10) minute rest period, with pay, after ten (10) hours of work.
- 12.05 The Company agrees to provide a system for employees to switch shifts, providing two (2) or three (3) employees are performing the same job functions within the same classification on different shifts. The employees switching shifts will work the job of the employee with whom they switch. Managements approval must be given prior to any switch and reserves the right to cancel upon one (1) weeks' notice. All switches must begin on the first day of the weekly pay period. If, for any reason, either employee cannot perform the required work, the switch will be cancelled. Employees wishing to switch will complete and sign the appropriate form at least five (5) working days prior to the date of the switch and submit the form to their respective supervisors.



The Company will post the shift change the Wednesday prior to the shift change.

- a) The Company agrees to consider requests made by employees to switch shifts for one day. These requests must be made at least 24 hours of the switch and must be approved by the supervisor.
1. Midnights – Sunday will be the first day of the workweek
  2. Afternoons
  3. Days
- 12.06 Employees scheduled to work on an afternoon and/or midnight shift will receive a shift premium of \$1.20 per hour for every hour worked.
- 12.07 If an employee is unable to attend their scheduled shift, they will be required to call their Supervisor directly no later than one (1) hour prior to the start of their scheduled shift.
- 12.08 It is an expected responsibility that all Team Leaders, based on the Companies direction, work either 10 minutes prior to or 10 minutes after their scheduled shift. This ten (10) minutes of additional time will be paid at time and one half (1 ½) of their regular hourly wage. It is agreed that this paid time will not count towards the total accumulated hours of work for the purpose of mandatory overtime on Saturdays.

#### ARTICLE 13 OVERTIME

- 13.01 Any hours in excess of the normal work week per 12.01 will be classified as overtime for the purpose of overtime assignment.
- 13.02 For seniority employees, all hours worked in each work week over and above forty-eight (48) hours will be deemed voluntary. Also, all hours of work on a Sunday and/or holiday shall be deemed voluntary. Any voluntary shift(s) accepted by an employee will be deemed scheduled.
- 13.03 Overtime for seniority employees will be calculated as follows:
- a) All hours worked in excess of eight (8) hours in a work day will be paid at the rate of time and one-half (1 ½) the employee's base rate of pay.
  - b) Any work performed in excess of ten (10) hours will be paid at two times the employee's base hourly rate of pay.

- c) All hours worked on a Saturday will be paid for at time and one-half (1 ½) the employee's base hourly rate.
- d) All hours worked in excess of eight (8) hours on a Saturday and all hours worked on a Sunday will be paid for at the rate of two (2) times the employee's base rate of pay.
- e) An employee who works on a statutory holiday, as listed in Article "33", will receive eight (8) hours holiday pay plus two (2) times the employee's base rate for all hours worked on the holiday.
- f) An employee who works on a non-statutory holiday, as listed in Article "33", will receive eight (8) hours holiday pay plus one and one half (1 ½) times the employee's base rate for all hours worked on the holiday.

13.04 The Company will equalize overtime among seniority employees in the same classification and shift as follows:

- a) In the event of overtime scheduling the lowest hour overtime employee who volunteers will be asked, provided the employee is immediately capable of doing the work unless a skilled trades employee is critical to the completion of the assignment.
- b) Employees shall be charged for overtime on the basis of hours paid (i.e. eight (8) hours at one and one half (1 ½) will equal twelve (12) hours charged, eight (8) hours at double time equals sixteen (16) hours charged.) for hours worked.
- c) Employees absent for any reason will be charged for the hours providing that they would have been asked to work on that day. An exception to this would be overtime offered to an employee less than one (1) hour prior to the end of their shift, will not be charged as hours refused.
- d) A seniority employee who successfully posts into a classification or returns from a leave of absence of ten (10) days or longer will be credited with the average overtime hours of all employees in the group or their hours on the equalization record, whichever is higher. All overtime hours will be zeroed-out as of January 1<sup>st</sup> and July 1<sup>st</sup> of each year for the purpose of overtime equalization.
- e) The Company agrees to post the overtime equalization list on a weekly basis.

- f) A copy of the overtime volunteer sheets and overtime acceptance sheets will be made available to the union to view through the Supervisor on that shift.

In the event where an employee works in their equalized shift/classification and there are lower hour employees who choose not to work in said shift/classification, the lower hour employees will be charged.

When employees work off shift only that employee will be charged.

**13.05 SATURDAY OVERTIME (SENIORITY EMPLOYEES):**

- a) The Company will offer overtime on Saturday by utilizing a voluntary basis within each classification required. In the event there is an insufficient number of volunteers, the Company will have the right to utilize part-time employee first, to cover the need. Should a need still exist, the Company will then have the right to assign it as mandatory thereby forcing the employee with the lowest overtime hours to work by shift. Employees, who would have been mandated to work, will be charged the applicable hours.
- b) For employees who agree to work overtime on Saturday or Sunday but fail to report or complete their shift, they will be charged double for hours on Saturday and triple hours for Sunday.

The Company will not mandate the Saturday after the Good Friday Holiday, the Saturday prior to the Labour Day Holiday and the Canada Day Holiday

If business needs change the Company has the right to adjust which three (3) Holiday weekends (Saturday) that will be affected by this. The Company will advise the Union of these Holiday weekend (Saturday) by February 28<sup>th</sup> of each calendar year.

- c) Employees who have an approved Friday off, will not be mandated to work the following Saturday, in the case of emergency the Company may revoke Saturday with prior notification.

13.06 For off-shift workers, unless otherwise agreed upon, the shift which commences on the evening of the holiday shall be considered as the shift for that holiday.

13.07 This article shall be amended under changes to legislations should it affect this article.

13.08 For both the Statutory and Non Statutory holidays identified within this agreement, employees who volunteer to work will be offered by seniority being highest to lowest.

**ARTICLE 14 - GRIEVANCE AND ARBITRATION PROCEDURE**

14.01 A grievance is defined as a dispute or difference between the Company and an employee, the Company and a group of employees, or between the Company and the Union, over the interpretation, application, administration or alleged violation of this Agreement. To be considered timely, a grievance must be presented to the Company within three (3) workdays of the event giving rise to the dispute, or three (3) workdays after the employee became aware of or ought to have become aware of the event giving rise to the dispute. Any and all grievances shall be processed as outlined under this Article. The parties shall make an earnest effort to adjust grievance as expeditiously as possible in the following manner:

14.02 Step 1. An earnest effort shall first be made to settle the complaint or grievance informally between the Department Supervisor and employee. The employee may request the presence of a committee person during step 1. The request will be allowed within a reasonable time. The Supervisor shall give his answer as soon as possible but within two (2) workdays from receipt of the dispute.

14.03 Step 2. If the matter is not resolved under the preceding step, then within two (2) workdays of receiving the Supervisor's step 1 response, the grievance will be reduced to writing and presented to the Manufacturing Manager or designate. A meeting will be held within three (3) workdays of the date the grievance was presented to the Manufacturing Manager or designate. Normally, a Committee person and the Manufacturing Manager will meet to discuss the grievance, and then members of Management and the Union may be required to attend. The Company will respond in writing to the grievance two (2) workdays following the above-mentioned meeting.

14.04 Step 3. If the matter is not satisfactorily resolved at Step 2, the Chairperson may, within three (3) additional workdays from receipt of the Company's Step 2 response, present the grievance to the Human Resources Manager. The Chairperson or designate, Committee person involved, National Representative or designate and any other management representatives will meet within ten (10) workdays from the date of the appeal from Step 2. The Company will have five (5) workdays from the date of the Step 3 meeting to give its Step 3 answer in writing.

14.05 Step 4. If the Step 3 answer is unsatisfactory to the Union, the Plant Chairperson will notify the Company, in writing within ten (10) workdays of the Step 3 answer of its intent to refer the grievance to arbitration.

14.06 The Plant Chairperson may file a policy grievance with management. A policy grievance is defined and limited to one which alleges misinterpretation or violation of the provisions of this Agreement and which could not otherwise be resolved at a lower step of the grievance procedure because of the nature and scope of the subject matter of the grievance.

A policy grievance will be referred to step 3 of the grievance procedure.

14.07 All grievances reduced to writing should contain the following information:

- a) Article(s) and/or Section(s) or applicable rule(s) alleged to have been violated.
- b) A statement of the grievance, giving facts, dates, and times of events, if known, and adjustment desired.
- c) Signature of aggrieved employee(s) and date signed.
- d) Signature of the Union Committeeman and date signed.

14.08 The time limits set forth in the grievance and arbitration provisions herein may be extended by the mutual agreement of the Union and Company. Such agreement shall be in writing and signed by both parties.

However, if the Company or Union fail to meet the time limits set out in this Article, the grievance will be deemed ruled in favour of the other party. Such deemed ruling shall be non-precedent setting.

14.09 The aggrieved employee may be required by either the Union or the Company to be in attendance at any step of this grievance procedure.

14.10 The term workdays when used in this Agreement for the response time in the grievance and arbitration procedure shall exclude Saturdays, Sundays, and Holidays as defined herein and plant shutdown periods.

#### Arbitration

14.11 Any grievance which alleges the violation of any provision of this Agreement and not satisfactorily settled through the grievance procedure may be appealed to an arbitrator; provided written notice of the Union's intention to refer the dispute to an arbitrator is given to the Company within fifteen (15) workdays after the receipt of the company's last decision at step 3.

14.12 ~~dkdke~~ (5) workdays of the giving of written notice, both parties will exchange lists of three (3) proposed arbitrators. In the event that the parties cannot agree on an arbitrator, either party may within ten (10) workdays after the lists have been exchanged, request the Minister of Labour to appoint an Arbitrator and will provide the other party a copy of such request.

14.13 An arbitrator may hear no more than one (1) grievance at a time unless the presentation of more than one (1) grievance is mutually agreed to in writing by the company and the union.

14.14 An Arbitrator shall not have the jurisdiction to alter or change any of the provisions of this Agreement, or to substitute any new provisions in lieu thereof, nor to give any decision inconsistent with the terms and provisions of this Agreement.

The arbitrator, however, in respect of a grievance involving a penalty shall be entitled to modify such penalty.

14.15 In the event that an arbitrator orders back pay in a case involving discharge or suspension, the Union and/or the affected employee shall provide written documentation to the Company of all interim earnings, including unemployment compensation, during the period for which back pay is ordered. Such interim earnings shall be offset against any back pay award. Compensation already in effect at the time of discipline shall not be counted against any back award.

14.16 It shall be the duty of any arbitrator under this Agreement to justify each award by written decision, explaining the rationale of said award, within thirty (30) calendar days following the conclusion of the hearing or the deadline for submission of briefs, whichever is later.

14.17 The arbitrator's decision shall be binding on the parties. The cost of the Arbitrator shall be shared equally by both parties.

14.18 The parties agree to make available a grievance commissioner grievance resolution process as outlined hereinafter.

- (a) Commissioner System: As an alternative to the regular arbitration procedure provided for herein, the parties may agree in writing, to refer a grievance for final and binding arbitration to a Grievance Commissioner, selected by mutual agreement of the parties.

The Grievance Commissioner shall have the same powers and be subject to the same limitations as an arbitrator appointed pursuant to the regular arbitration procedures provided for herein.

- (b) Through the Grievance Commissioner, the parties desire an expeditious means for the effective disposition of grievances which the parties have agreed may be handled in a summary manner.

The rules governing the summary proceedings of the Grievance Commissioner are set out as follows:

The decision of the Grievance Commissioner shall be confined to the grievance referred to him or her. Such decision must be consistent with the provisions of this Agreement, and the Grievance Commissioner shall have no power to alter, modify or amend any part of this Agreement;

The decision of the Grievance Commissioner shall only apply to the case before him or her and shall not constitute a precedent or be used by either party as a precedent in any future cases.

However, with respect to the case in question, the Grievance Commissioner's decision shall be final and binding upon the Company, the Union and the employees represented by the Union;

The Union and the Company shall each be responsible for one half of any fees or expenses charged by the Grievance Commissioner;

The parties shall meet at least thirty days prior to the scheduled hearing date set by the Grievance Commissioner in order to determine what facts can be agreed upon. All such facts will be put together in a Joint Agreed Statement of Fact by the parties;

In addition, a joint Statement of Evidence will be prepared by the parties which will outline all facts and assertions that cannot be agreed upon that each party considers relevant and intends to call evidence in respect of at the hearing of the case.

Both the Agreed Statement of Fact and the Statement of Evidence will be signed by both the Company and the Union and will be provided to the Grievance Commissioner at least ten (10) days before the commencement of the grievance hearing;

The purpose of the hearing is to clarify the issues or facts in dispute, and to obtain a speedy decision with respect to same. At the hearing, the parties may make such further representations or adduce such evidence as the Grievance Commissioner may permit or require, but the Grievance Commissioner shall not be obligated to conform to the rules of evidence.

The Grievance Commissioner shall be required to render his decision, in writing, together with brief written reason, within seven (7) days of the conclusion of the hearing.

- (c) It is understood and agreed that no grievance will be referred to a Grievance Commissioner without the mutual agreement, in writing, of the Company and the Union.

In the absence of such mutual agreement, all grievances will be referred for final and binding determination pursuant to the regular arbitration procedure set out in this Agreement.

- (d) It is understood and agreed that any grievance that is mutually agreed to be referred to a Grievance Commissioner cannot be unilaterally withdrawn by the Company or the Union from that process and referred to arbitration pursuant to the regular arbitration procedure contained in this Agreement, either before a decision has been rendered by the Grievance Commissioner or at any time thereafter.

#### ARTICLE 15 - ADMINISTRATION OF DISCIPLINE

- 15.01 When an employee is called to an interview by a member of supervision and the subject of the interview is discipline, the employee will be so informed before the interview and will be advised of their right to have a Union representative present. If so requested, the interview will not proceed until Union representation is present. A copy of all discipline issued will be given to the Plant Chairperson.
- 15.02 When discipline (Verbal warning, written warning, suspension and discharge) is to be imposed by the Company, the discipline cannot be imposed later than five (5) working days of the infraction or the date the infraction came to the attention of the Company.
- 15.03 When an employee is called to a meeting with the Company and the subject is for discipline of suspension for more than three (3) working days or discharging an employee, the employee may have a Union representative present and one other committee member or designate in attendance for the purpose of taking minutes provided the second committee member is an employee from that shift.

- 15.04 A claim by an employee that he/she has been disciplined, discharged or suspended without just cause may be treated as a grievance. Discharges or suspensions of five (5) days or more shall commence at the third (3<sup>rd</sup>) step of the grievance procedure as provided in this Agreement.
- 15.05 Effective January 31, 2018, no written disciplinary action will be used in the progressive disciplinary process if the disciplinary action is older than eighteen (18) months.
- 15.06 Last Chance Agreements are null and void unless a Unifor Local full time officer or a Unifor National Representative is present during the meeting.
- 15.07 All disciplinary investigations / meetings will be treated as confidential by all parties.
- 15.08 When disciplinary action is taken, management will make every reasonable attempt to handle prior to the completion of an employee's shift.

#### ARTICLE 16 - REPORT IN PAY

- 16.01 Except in circumstances beyond the control of the Company, in the event that an employee reports for work for which he/she has been scheduled, without having been previously advised not to report to work, he/she will be given three (3) hours of work. If no work is available, he/she will be paid the greater of three (3) hours pay at his/her base hourly rate of pay or the pay to which the employee is otherwise entitled for the hours worked. As a condition of payment, the employee will perform any available work which he/she is capable of performing and which he/she is requested to perform.

#### ARTICLE 17 - EMERGENCY CALL-BACK PAY

- 17.01 If an employee who has completed his/her shift and left the plant is then called back within eight (8) hours after the end of their shift to work on overtime, he/she will be paid the applicable rate of pay for all hours worked. In any event, the employee shall receive three four (4) hours pay. If a full four (4) hours work is not available, the employee will be paid four (4) hours pay at the applicable rate of pay. As a condition of payment, the employee will perform any available work within the employee's regular classification which he/she is requested to perform.

#### ARTICLE 18 - JURY DUTY

- 18.01 The term jury duty, when used in this Article will include being subpoenaed to attend a hearing in a criminal prosecution.
- 18.02 Any seniority employee who is called to and reports for jury duty will be paid by the Company for each day partially or wholly spent in performing jury duty, if the employee otherwise would have been scheduled to work for the Company and does not work, an amount equal to the difference between (1) the employee's regular straight time base hourly rate of pay for the number of hours, up to eight (8) hours, that the employee otherwise would have been scheduled to work, and (2) the daily jury duty fee paid by the court (not including travel allowances or reimbursement of expenses).
- 18.03 In order to receive payment, an employee must give the Company prior notice that he/she has been summoned for jury duty and must furnish satisfactory evidence that jury duty was performed on the days for which the employee claims such payment.
- 18.04 The provisions of this Article are not applicable to an employee who, without being summoned, volunteers for jury duty.

#### ARTICLE 19 - BEREAVEMENT LEAVE

- 19.01 When the death of a seniority employee's spouse or child occurs, the Company will pay the employee for five (5) days of bereavement or seven (7) days if out of province. The company will pay seniority employees up to a maximum of three (3) days of bereavement or five (5) days if out of province where there is a death in their immediate family. Employees who wish to take time off due to bereavement should notify their immediate supervisor immediately. Bereavement pay will only apply to regularly scheduled working days and, therefore, will exclude Saturdays, Sundays, and holidays. Bereavement pay is calculated based on an eight hour day at the base pay rate at the time of absence and does not include shift premium.
- 19.02 The company defines "immediate family" as the employee's spouse, mother, mother-in-law, step mother, step father, step sister, step brother, step son, and step daughter, father, father-in-law, grandparents, grandparents in-law, children, grandchildren, sons or daughter-in-law, brothers and sisters. One day of bereavement leave will be permitted for the death of an employee's sister/brother-in-law and great-grandparents. Bereavement pay does not apply to aunts, uncles, cousins, or nieces/nephews.

- 19.03 The Company will recognize a common-law relationship provided the employee has supplied the Company with a written record of the common-law relationship. It is recognized that same sex spouse as defined by the Family Law Reform Act will be included in the immediate family.
- 19.04 In order to assist in monitoring the validity of this leave, management may request that the employee provide a copy of the newspaper death announcement or other valid evidence of death.
- 19.05 If a death occurs during an employee's approved vacation, the employee will notify the Company of the death and date of the funeral and will be allowed to re-schedule up to (5) days off with pay at a future date pending approval by the Company.
- 19.06 Should an employee request a leave of absence from the employer for additional time off in the event of a death in immediate family, the employer may agree to grant such leave without pay for up to five (5) days.

#### ARTICLE 20 - PAY DAY

- 20.01 Pay day will be once per week on Thursday in the p.m. For off shift employees, the Company will continue the practice of making pay stubs available Wednesday night prior to the end of the shift, unless unforeseen circumstance occur which prevents this.
- 20.02 All pay shortages through no fault of the employee, four (4) hour's pay or more will be paid on Friday for shortages on that week's pay.

#### ARTICLE 21 - LEAVES OF ABSENCE

- 21.01 A leave of absence is a written approval by the Company for an employee's absence from work for a specified period of time, which is outside of the Employment Standards Act. For legitimate reasons accepted by the Company, employees taking a leave of absence will have their seniority protected.
- 21.02 Leaves will be granted in accordance with the Employment standards act. Should an employee exhaust their job protected leave(s) for the calendar-year, the following requirements must be met:
- An employee must have seniority to be eligible for a leave of absence.
  - A request for a leave of absence must be in writing on a form supplied by the Company.

- Except as expressly provided elsewhere in this Article, initial leaves will not be granted for a period longer than thirty (30) calendar days. Extensions may be granted at the company's discretion in increments not to exceed thirty (30) days.
- The company may, at any time, require verification of the reason and necessity for a leave of absence.
- An employee wishing to return early from a leave of absence will be returned to work no later than the Monday following notice to the Company, provided the Company receives such notice at least two (2) days in advance and provided that the employee is physically capable of returning to work.
- All leaves of absence shall be without pay and without loss of seniority except as expressly stated otherwise in this agreement.

- 21.03 Upon written request to the employer by the Union, the employer will grant a leave of absence without pay and without loss of seniority to an employee acting as a representative of the Union in connection with other Union activities. Such request shall be given to the employer seven (7) calendar days prior to the commencement of said leave.

#### 21.04 Pregnancy/Parental/Adoption Leaves:

An employee will be granted a pregnancy/parental/adoption leave in accordance with the provisions of the Employment Standards Act.

#### ARTICLE 22 - BULLETIN BOARDS

- 22.01 The Company will provide one (1) locked bulletin board in each plant for the exclusive use of the union. All materials must be submitted to the Human Resources Manager for approval, except for Union meetings; Union social, recreational activities; educational activities; Union elections and results thereof.

#### ARTICLE 23 - LUNCHROOM, WASHROOM & FIRST AID

- 23.01 The Company shall provide for all employees a proper lunchroom facility that will have coffee and soft drink machines, microwave ovens, and a refrigerator.
- 23.02 Clean Sanitary washrooms shall be maintained.

- 23.03 The Company agrees to supply first-aid supplies, along with qualified first-aid attendants on site who available when employees are at work
- 23.04 One (1) locker will be provided for each employee with seniority.

#### ARTICLE 24 - TUITION FEES AND BOOK REFUND

- 24.01 The Company recognizes that the skills and knowledge of its employees are critical to the success of the organization. The Company will provide educational assistance to all eligible employees who have completed one (1) year of service.
- 24.02 Individual course or courses that are part of a degree, license, formal academic training courses or certification program must be related to the employee's current job duties or a foreseeable-future position in the organization in order to be eligible for educational assistance. The Company will determine whether a course relates to an employee's current job duties or a foreseeable-future position. If a course is approved by the Company, the employee is responsible to pay the course fees. Once the employee completes and passes the course, reimbursement for the course fees (100%). The Company in cooperation with the Union representative will be as flexible as possible in shift assignments to maximize class attendance.

#### ARTICLE 25 - NEW EMPLOYEE ORIENTATION

- 25.01 Union Information for New Employees:  
The Company agrees to acquaint new employees with the fact that a Collective Agreement is in effect and with the conditions of employment set out in Articles dealing with Union security and Dues Check-Off, a new employee will be advised of the name and location of his/her Union Representative. The employee's immediate supervisor will introduce him/her to his/her Union Representative who will provide the employee with a copy of the Collective Agreement. The Company agrees that a Union Representative will be given an opportunity to meet with new employees within regular working hours, without loss of pay, for fifteen (15) minutes sometime during the first five (5) working days of employment for the purpose of acquainting the new employees with the benefits and duties of Union membership and the employee's responsibilities and obligations to the Company and the Union.

#### ARTICLE 26 - PROTECTIVE CLOTHING

- 26.01 Employees will be required to wear Company uniforms if supplied by the Company. Skilled trades will be allowed to exchange two (2) uniforms for

coveralls. During the months of May, June, July, August and September, employees will be allowed to wear t-shirts provided they are a solid color with no logo.

- 26.02 Safety Shoe Allowance: All employees purchasing approved steel-toed safety shoes will receive an annual reimbursement of \$115.00 paid out in January of each calendar year during the course of this Agreement. The Company will reimburse the Material Handler/ Custodian the purchase of a second pair of safety shoes every six (6) months. Qualified employees must submit a copy of the safety boot invoice to Human Resources for approval.
- 26.03 Safety glasses and hearing protection will be provided by the Company.

#### ARTICLE 27 - INCAPACITATED EMPLOYEES

- 27.01 Where an employee becomes medically unfit to perform their job, the Company and the Union will cooperate in endeavoring to place an employee in a job that the employee is capable of performing. The Company will not be required to create a job.

#### ARTICLE 28 - HEALTH AND SAFETY

- 28.01 The Company will make adequate provisions for the safety and health of all employees during the hours of employment, and the Company will make every effort to comply in a timely manner with all applicable legislation pertaining to occupational health and safety. The Company shall comply with the Occupational Health and Safety Act and its regulations in place as of October 1, 1999 as a minimum standard.
- 28.02 The Company and the Union jointly agree to promote measures to assure the health and safety of all employees.
- 28.03 The parties agree to set up a Health and Safety Committee. One (1) employee representative will be trained at the expense of the Company to become a certified Health and Safety Representative as per the Ontario Legislation. The second employee representative will be trained at the expense of the Company to become a Certified Health and Safety Representative after serving on the committee for one (1) year.
- 28.04 The Joint Health and Safety Committee will consist of at least three (3) members representing workers selected by the union and three (3) members representing management selected by the Company.

The Health and Safety Committee will have co-chairpersons, one (1) co-chairperson elected or appointed by the Union representing workers, and another elected or appointed by the members representing management. The co-chairperson representing workers will be granted reasonable necessary time to attend his/her health and safety duties and responsibilities.

During any absence of the Union co-chairperson, the Company will recognize the alternate Union co-chairperson who will be selected by the Union. The alternate must be a member of the Joint Health and Safety Committee.

- 28.05 The Health and Safety Committee shall develop and recommend to the Company, guidelines for employee health and safety training and education.
- 28.06 The Joint Health and Safety Committee will meet on a monthly basis.
- 28.07 Employees of the Company shall have the right to refuse work deemed unsafe or hazardous in accordance with the provision of The Occupation Health and Safety Act and Regulations in force as of October 1, 1999.

**ARTICLE 29 - NATIONAL DAY OF MOURNING**

- 29.01 The Company agrees to allow employees one (1) minute silence at 11:00 a.m. on April 28<sup>th</sup> of each year in observance of those killed on the job.

**ARTICLE 30 - TECHNOLOGICAL CHANGE**

- 30.01 Technological change means the introduction by the Company of new equipment, processes, or work methods substantially different in nature or type than previously utilized by the Company, that affects the working conditions of the employees.
- 30.02 Prior to the decision to implement new technology, the Company will meet with the Union Committee to advise and discuss the nature of the technological change, the approximate date the Company proposes to effect the change and approximate number of employees likely to be affected by the technological change and the effect the technological change may have on the working conditions and conditions of employment.
- 30.03 Where the job of an employee is affected by these circumstances, the Company will provide the job training to enable the affected employee to perform his/her new job functions as affected by the technological change.

- 30.04 Flowing from technological change, if an employee becomes redundant or fails to be able to perform his/her previous job functions as affected by the technological change under sub-article 31.03, or is displaced by a more senior employee, he/she will have the right to fill any job posting for which he/she has the skill and ability to meet the normal requirements of the work to be done. If there are no job postings for which he/she can apply, he/she will have the right to exercise their seniority rights in accordance with the layoff provisions.

**ARTICLE 31 - SUBSTANCE ABUSE**

- 31.01 Substance Abuse is recognized to be a serious medical and social problem that can affect employees. The Company and the Union have a strong interest in encouraging early treatment and full rehabilitation. Both parties encourage employees to seek help with either union or company representatives.

**ARTICLE 32 - HOLIDAYS**

- 32.01 The Company will pay for holiday time off to all seniority employees, eight (8) hours pay at the employees straight time hourly rate (as of the date of the holiday) per the following schedule:

Holidays	2018	2019	2020	2021
New Year's Day	1-Jan	1-Jan	1-Jan	2-Jan
Good Friday	30-Mar	19-Apr	10-Apr	
Victoria Day	21-May	20-May	18-May	
Canada day	2-July	1-July	1-July	
Civic holiday	6-Aug	5-Aug	3-Aug	
Labour day	3-Sep	2-Sep	7-Sep	
Thanksgiving Day	8-Oct	14-Oct	12-Oct	
Christmas eve	24-Dec	24-Dec	24-Dec	
Christmas day	25-Dec	25-Dec	25-Dec	
Boxing day	26-Dec	26-Dec	28-Dec	
New Year's Eve	31-Dec	31-Dec	1-Jan	
Float #1	21-Dec	23-Dec	23-Dec	
Float #2	27-Dec	27-Dec	29-Dec	
Float #3	28-Dec	30-Dec	30-Dec	

- 32.02 In order to qualify for the aforementioned holiday pay, an employee must work a full shift on his/her last regularly scheduled workday preceding the day of observance of the holiday and a full shift on his/her first regularly scheduled workday after the day of observance of the holiday, unless:
  - a) the employee has received permission from his/her supervisor to be off preceding or following a paid holiday
  - b) the employee is on vacation approved by the Company



- c) the employee is on an approved short-term sick leave
- 32.03 If a holiday falls during an eligible employee's absence from work (excluding short term sick leave and vacation), the employee will be ineligible for holiday pay.
- 32.04 Seniority employees laid off within thirty (30) days of a holiday will be eligible for paid holiday pay.
- 32.05 Should any of the holidays occur during the vacation of any employee, the employee shall be entitled to an alternate unpaid vacation day off as approved by the Company.

**ARTICLE 33 - VACATION**

- 33.01 Vacation leave is available to eligible employees to provide opportunities for rest, relaxation and personal pursuits.
- 33.02 The amount of paid vacation employees receive each year increases with the length of employment as follows:

<u>Years of service</u>	<u>Vacation Leave</u>	<u>Vacation Pay Rate</u>
< 1 year	As Per ESA	4%
1 year < 5 years	2 weeks	4%
5 years < 10 years	3 weeks	6%
10 years < 20 years	4 weeks	8%
20 years +	4 weeks	9%

Eligibility for vacation and pay enhancement is based upon the employee's hire date. Thus the 6%, 8%, 9% vacation pay enhancement will commence, accruing subsequent to the employee's 5<sup>th</sup>, 10<sup>th</sup>, or 20<sup>th</sup> year anniversary of their date of employment.

- 33.03 The vacation year for the purpose of calculating vacation pay and for taking vacation entitlement is from January 1st to December 31st each calendar year.
- 33.04 Vacation leave can be used in weekly or daily increments, and must be approved by Management. For the duration of this contract, the Company will post a notice of vacation request by November 1st of each year prior to the effective vacation year. Employees are required to turn in vacation requests by November 15th of each year in order to apply for the initial vacation request period. Vacation requests will be granted by seniority within each classification.

- 33.05 Vacation requests outside of the posting procedure will be reviewed on a first-come, first-serve basis inclusive of other determining factors, such as business needs and staffing requirements. Where two or more employees apply for the same vacation and they cannot be allowed on vacation at the same time, the higher seniority employee will be given preference.
- 33.06 Vacation pay will be provided to employees upon request, provided vacation pay is available and provided the vacation time is taken. The balance of accrued vacation pay will be paid out on the regular pay day following December 31st.
- 33.07 Employees eligible for two weeks or more vacation must take two weeks of vacation each vacation year. All vacation time not used by December 31<sup>st</sup> in any year will be forfeited. The Company will allow 15% (rounding up) of the workforce to be off per day based on classification.
- 33.08 Employees entitled to vacations shall make their requests to their Supervisor not later than ten (10) days prior to the time desired for such vacations.
- 33.09 Upon receipt of a vacation request the Company will respond within five (5) working days. The Company will not force more than one (1) week vacation at shutdown.
- 33.10 Employees who have an approved vacation day for a Friday or Monday, will not be mandated to work the following/prior Saturday if request. In the event of an emergency, business need or due to violation of this agreement, the Company may revoke the Saturday off request.

**ARTICLE 34 - BENEFITS**

- 34.01 The employer guarantees the following benefits to all seniority employees and their dependants. The cost of the benefits below, including any and all premiums, shall be paid one hundred percent (100%) by the employer.
  - Life insurance - \$100,000.00
  - AD&D - \$100,000.00
  - Sickness and accident - 66 2/3 of average weekly earnings; maximum weekly benefit equal to \$525.00 maximum coverage twenty-six (26) weeks.
  - Drug plan – Mandatory Generic with a \$9.00 dispensing cap fee for each prescription for drugs covered under plan

- Vision care - \$200.00 per year (either one pair of safety prescription glasses or one pair of regular prescription glasses per year).
  - \$75.00 paid for eye exam/calendar year
  - \$150 per life of contract (safety prescription glasses).
- Dental plan – Class I – 100% paid maximum \$1,350.00/calendar year
  - Class II – 80% paid maximum \$1,350.00/calendar year
  - Class III – 50% paid maximum \$1,350.00/lifetime
- Extended Health Services - \$25.00 single/\$50.00 family deductible
  - Chiropractor; osteopath; naturopath; podiatrist; physiotherapist; speech therapist; masseur – Limited to \$20.00 per visit
  - Out of province
- Voluntary term life - \$10,000 units, maximum 5x annual earnings or \$500,000.00 (lesser of)
  - Spousal \$5,000 units, maximum 50% of employee amount or \$250,000.00 (lesser of)

The Company agrees to continue to provide during the term of this Agreement, through a carrier of its choice or otherwise, the same benefits, coverage with the same conditions and limitations with respect to life, accidental death and dismemberment, weekly accident and sickness, hospital-surgical-medical, prescription drug and dental services as in effect, and subject to the same conditions and limitations, on the effective date of this Agreement.

In the event that an employee is deemed inactive (i.e.: workers compensation, pregnancy leave, parental leave), the Company shall make available the benefits specified above to these employees and their dependents per the Employment Standards Act.

**ARTICLE 35 - R.R.S.P. CONTRIBUTIONS**

- 35.01 In order to encourage long-term employment with the company, J.D. Norman will contribute to an employee's R.R.S.P. dependent upon the number of years of service and position of the employee within the Company. Employees become eligible after 1 year of service as of December 31<sup>st</sup>. The contribution schedule is as follows:

Years of Service	December 31, 2018	December 31, 2019	December 31, 2020
1	\$800.00	\$800.00	\$800.00
2	\$950.00	\$950.00	\$950.00
3	\$1,100.00	\$1,100.00	\$1,100.00
4	\$1,250.00	\$1,250.00	\$1,250.00
5	\$1,400.00	\$1,400.00	\$1,400.00
	In increments of \$150	In increments of \$150	In increments of \$150

The R.R.S.P. payment is paid out in February of the following year and years of eligible service are calculated as of December 31<sup>st</sup> of the current year. Only eligible individuals who are employees of J.D. Norman on December 31<sup>st</sup> will receive an R.R.S.P. payment on the following February.

**ARTICLE 36 - NOTICE OF CLOSURE**

- 36.01 The Company shall advise the Union at least six (6) months in advance of any contemplated shutdown of operations that will affect the employees. Such notice shall be in writing and indicate the reason for the action. Transitional support will be given by the Company to those affected employees wishing to seek support. Additionally, the Employment Standards Act guidelines will apply.
- 36.02 The Union and the Company will meet immediately to discuss the contemplated shutdown.

**ARTICLE 37 - TOOL ALLOWANCE**

- 37.01 a) Within one year from the completion of an apprenticeship program with the Company, an employee will be granted a tool allowance of \$500.00. Qualified employees must submit a copy of the tool purchase invoice to Human Resources for approval.
- a) The Company will grant an annual tool allowance of \$150.00 to all skilled trade employees. The skilled trades employees will have the option to use up to \$450.00 as necessary over the life of the agreement. Employees must submit a copy of the tool purchase invoice to Human Resources for approval prior to payment.

**ARTICLE 38 - WAGES****WAGE SCHEDULE FOR EMPLOYEES HIRED BEFORE JANUARY 31ST 2018**

Classification	31-Jan-18	31-Jan-19	31-Jan-20	Department
Electrician	\$34.56	\$35.06	\$35.66	Maintenance
Millwright	\$31.01	\$31.51	\$32.11	Maintenance
Machine Operator - Start (75%)	\$16.25	\$16.62	\$17.07	Production
Machine Operator Full	\$21.66	\$22.16	\$22.76	Production
Machine Operator Lead Hand	\$23.16	\$23.66	\$24.26	Production
Inspector - Start (75%)	\$16.62	\$17.00	\$17.45	Production
Inspector - Full	\$22.16	\$22.66	\$23.26	Production
Inspector Lead Hand	\$23.66	\$24.16	\$24.76	Production
Material Handler/Custodian - Start (75%)	\$17.00	\$17.37	\$17.82	Production
Material Handler/Custodian - Full	\$22.66	\$23.16	\$23.76	Production
Utility	\$22.66	\$23.16	\$23.66	Production

After Five (5) Months of the last date of hire (seniority date) = %100

\*\*\*Roch Labelle to be red circled, Roch Labelle will receive lump sum payments equal to the negotiated hourly wage increase until the remainder of the Millwright classification achieves his current hourly wage and at such time he will progress in wages equal to the Millwright increases. Therefore, Roch will receive the following lump sum payments during the second pay period in February of 2018 & first pay period in 2019:

- Roch Labelle to receive a lump sum payment in 2018 of = \$1,248 (48x52x.50)
- Roch Labelle to receive a lump sum payment in 2019 of \$124.80 (48x52x.05)

**ARTICLE 39 - DURATION OF AGREEMENT**

39.01 The Agreement shall be effective from the 31<sup>st</sup> day of January 2018 to and including the 30<sup>th</sup> day of January 2021. Either party, as provided in the Labour Relations Act, shall be entitled to give notice in writing to the other party of its desire to bargain, with a view to the renewal of the expiring Collective Agreement, at any time within a period of ninety (90) days before the expiration date of the Agreement. Following such notice to bargain, the parties shall meet within fifteen (15) days of the notice or within such further period as mutually agreed upon by both parties.

39.02 It is agreed that during the course of bargaining, it shall be open to the parties to agree in writing to extend this Agreement beyond the expiration date of the 30<sup>th</sup> day of January 2021 for any stated period acceptable to the parties and in accordance with the Labour Relations Act.

**APPENDIX A - SKILLED TRADES**

Skilled trades for the purpose of this Agreement shall be those trades and classifications listed below:

Electrician  
Millwright

The term "Journeyman/Women" as used in this Agreement shall mean any person:

- who presently holds a journeyman/women classification in a skilled trades occupation as listed in one above, or
- who has served a bona fide apprenticeship of four (4) years – 8000 hours or (5) five years – 9000 hours and holds a certification which substantiates his/her claim of such service, or
- who has eight (8) years of practical experience in the skilled trade or classification in which he/she, Journeyman's designation and can prove same. A Unifor Journeyman/Women card will be accepted as proof.
- Any further employment in the skilled trades occupations as listed above, after signing of this Agreement, shall be limited to journeyman/women and apprentices.
- Seniority in the skilled trades shall be by non-interchangeable occupations or trades within the Company. Seniority lists shall be by basic trades or classifications.
- Future employees entering a trade shall have date of entry seniority in the skilled trades as listed above.
- Production workers will not carry their Company seniority into the skilled trades nor will the skilled trades workers exercise their Company seniority into the general production or non-production groups except where a classification or trade listed above is discontinued or eliminated.

Such employee will then exercise his/her total Company seniority for the purpose of displacing the junior employee in the classification or trade for which he/she is qualified, or shall exercise all of his/her Company seniority in the general production, or non-production groups under the Agreement.

Should a skilled trades employee become permanently medically unfit and unable to follow his/her skilled trade, both the Company and the Union will cooperate in endeavoring to place such an employee on a job he/she is capable of performing taking their total seniority with them. However, if placed in a non-skilled classification he/she shall then forfeit all rights within the skilled trades.

The Company agrees to deduct Canadian Skilled Trades Council dues as adopted by the Canadian Skilled Trades Council, one-half hour per year.

This first such dues deduction will be made from employee's first pay following completion of their probationary period. Thereafter, dues deductions will be made in January of each succeeding year or upon completion of one month's work in the calendar year. These deductions along with the names of the employees shall be remitted to the financial secretary of the local Union.

## SKILLED TRADES APPRENTICES

### GENERAL

1. The purpose of this Appendix is to define the provisions governing registration, education, seniority, and all other matters peculiar to skilled trades apprenticeships.
2. Provisions of the Collective Agreement shall apply to all skilled trades apprentices.
3. A Joint Apprenticeship Committee shall be composed of an equal number of members, two from management and two from the skilled trades classification, one of which will be the skilled trades committee person.

The function of this committee shall be to advise on all phases of the Apprenticeship Training Program. This Committee shall meet quarterly and as required.

### REGISTRATION

4. All apprentices will be registered with the Ontario Department of Labour and the Ontario Training Adjustment Board. All apprentices will sign a written Apprenticeship Agreement with the Company.

### INITIAL EDUCATION REQUIREMENTS

5. An Apprentice will be required to have all Ontario Academic Credits (Grade 12) or equivalent. Exception to these requirements may be made by the Apprenticeship Committee. All employees applying for admission to the program will be required to pass an aptitude test as approved by the Committee. The Company will decide on the minimum passing grade.

### SCHOOL ATTENDANCE

6. Apprentices will be required to attend classes for related instruction. The Company reserves the right to approve all class scheduling. Any time spent in the Classroom instruction will be paid for by the Company if the apprentice loses time from his/her regular work schedule as a result of school attendance. The Apprenticeship Committee will establish a related progressive training schedule for the apprentices similar to that recommended by the Unifor Apprenticeship Standards, offering full exposure to all aspects of the apprentices trade. The Company at any time may inquire about apprentices' classroom attendance.

### COMPLETION OF APPRENTICESHIP

7. An apprentice, upon completion of his/her apprenticeship, and upon receiving their certificate of qualification in their respective trade, shall receive the journeyman's classification. No certificate will be issued by the Apprenticeship Branch, Ontario Department of Labour, unless approved by the Joint Apprenticeship Committee.

### SENIORITY

8. The apprentices will exercise their seniority in their own classification. (For example, if there are four (4) apprentices in the Electrical Trade and a reduction in this number is required due to lack of work, the first hired shall be the last laid off and the last laid off shall be the first to be reinstated).

Upon satisfactory completion of the Apprenticeship Program, the apprentice will obtain skilled trades seniority as of the starting date of the apprenticeship, minus any time spent on layoff or in production due to exercising bumping rights due to layoff. Accumulation of production seniority is frozen and excludes time served in apprenticeship.

Employees who enter the Apprenticeship Training Program shall retain their relative plant seniority until such time as they complete their apprenticeship when the regular apprenticeship seniority rule shall apply. The apprentice will exercise their relative plant seniority at a time of layoff from the apprenticeship.

**APPLICATIONS**9. Seniority Employees (Restricted Pool)

- a) Notice of apprenticeship openings will be posted on the Company's Bulletin Board.
- b) Applications for apprenticeship will be accepted by the Human Resources Department from seniority employees (employees within the Bargaining Unit) who consider themselves eligible under this program of training.
- c) A numbered blank application will be filled out and each applicant will sign a register noting that he/she received and filed an application.
- d) Applicants meeting the minimum requirements as per #5 will be turned over to the joint Apprenticeship Committee for approval or disapproval.

10. Credit for Previous Experience

Credit for previous related experience in an apprentice training program, or a skilled trade in any plant, may be given up to the time required on any phase of the apprentice shop training or related training schedules. Credit for such previous experience shall be given to the apprentice at the time he/she has satisfactorily demonstrated that he/she possesses such previous experience and is able to do the job. Related training credit shall be given the apprentice at the time that he/she is requesting credit under the related training schedule. At the time such credit is given, the apprentice's wage rate shall be correspondingly adjusted within the apprentice rate schedule based on the amount of credit given toward completion of the shop training schedule.

11. Discipline

The Committee shall have the authority to discipline an apprentice and to cancel the apprenticeship agreement of the apprentice at any time for cause pertaining to his apprenticeship such as:

- (a) Inability to learn
- (b) Unsatisfactory work
- (c) Lack of interest in his/her work or education

Such discipline by the Apprenticeship Committee will not be subject to the Grievance Procedure.

This shall not limit the right of the Company to discipline an apprentice for cause for matters not related to his/her training as an apprentice. Such discipline by the Company shall be subject to the Grievance Procedure.

**PROBATIONARY PERIOD**

12. The first five hundred (500) hours of employment for every apprentice shall be a probationary period and during this period the apprenticeship agreement with an apprentice may be cancelled with the Company and such employee shall remain in the Bargaining Unit, if seniority in the Bargaining Unit is established.

**APPRENTICES**

Apprentices in each of the Trades covered shall be paid a progressively increasing schedule of wages as follows:

- 1<sup>st</sup> 1000 hours not less than 50% of the Entry Level Journeyman's rate
- 2<sup>nd</sup> 1000 hours not less than 55% of the Entry Level Journeyman's rate
- 3<sup>rd</sup> 1000 hours not less than 60% of the Entry Level Journeyman's rate
- 4<sup>th</sup> 1000 hours not less than 65% of the Entry Level Journeyman's rate
- 5<sup>th</sup> 1000 hours not less than 70% of the Entry Level Journeyman's rate
- 6<sup>th</sup> 1000 hours not less than 75% of the Entry Level Journeyman's rate
- 7<sup>th</sup> 1000 hours not less than 80% of the Entry Level Journeyman's rate
- 8<sup>th</sup> 1000 hours not less than 85% of the Entry Level Journeyman's rate

A new hire placed directly into an apprenticeship will begin at 50% of the Journeyman's rate and progress according to the apprentice wage schedule.

The Corporation agrees to pay, on behalf of apprentices covered by this Agreement, for books, registration fees and/or tuition required in connection with related training under the apprentice program provided the apprentice receives a grade of "C" or better.

**Letter of Understanding: Temporary Employees**

The Company will have the ability to hire temporary employees as follow:

1. Company will be permitted to hire additional personnel (~~i.e. students~~) to work on Friday, Saturday, Sunday, (in addition Monday, Tuesday, Wednesday and Thursday only with the prior approval of the union ) in all classifications, including Skilled Trades after offering the overtime in accordance with Article 14 of the collective agreement. They will be used for the following:

- a) Absenteeism
- b) Approved LOA (not to exceed 89 days)
- c) Vacations and Holidays
- d) Training & Schooling
- e) S&A and WSIB related claims (not to exceed 89 days)

Any employee who works two hundred (200) days in a twelve (12) month period will gain seniority and be added to the seniority list with a seniority date retroactive two hundred (200) days from the two hundredth day worked.

2. Such additional employees shall be classified as temporary part-time (TPT) and will not be entitled to the provisions of the collective agreement unless otherwise provided herein.
3. TPT's will not be permitted to gain seniority status.
4. TPT employees shall be required to pay union dues and initiation fees according to the Union Constitution.
5. New hire TPT employees shall receive an hourly rate that being seventy-five (75%) of the classifications top rate, in which they are working in.
6. New hire TPT employees working in the trades classification shall receive an hourly rate that being one hundred percent (100%) of the classifications top rate, in which they are working in.
7. TPT employees shall be eligible to be paid overtime rates in accordance with the Employment Standards Act.
8. TPT employees shall be the first employees to be sent home if a work shortage occurs in accordance with Article 11.
9. If a layoff occurs, TPT employees will be the first employees laid off.
10. If seniority employees are on layoff, they will be allowed to become a TPT employee under this article, until recalled to full time duties. The laid off member will have working preference and offered work prior to any part time employees.
11. The number of TPT employees working shall not exceed at any time the number of employees absent on the shift. However, in the event additional TPT employees are required, the Company shall schedule such employees with the mutual agreement of the Union. The Company agrees TPT employees will not be used to circumvent regular employment.

12. Current employees' children shall have special hiring preference when the company is hiring TPT(s).
13. The Company and / or the Union may cancel the TPT program ninety (90) days after written notice has been submitted by either party and after a prior due diligence meeting has taken place.
14. The work will be evenly distributed among all TPT's who are employed by the company. The company will make every attempt to even the hours of work out amongst all TPT's. The Company will provide the hours worked to the Union chairperson upon request.
15. TPT's will not be used to displace employees on disciplinary suspension and/or leaders.
16. TPT employees will not be eligible for any company provided benefits unless covered under item 10 of this letter.

#### Letter of Understanding: Representation

The Company agrees to forward to the Plant Chairperson or Committee persons all messages when phone calls are received for them relating to Union Business.

The Company agrees to provide the Plant Chairperson with an office, a desk, chair, filing cabinet, in basket and access to a photocopy and fax machine.

#### Letter of Understanding: Classification Review Committee

The Parties agree that within sixty (60) days after ratification, the Company and the Union agree to meet to develop an assessment process to review the classifications of skilled trades employees who wish to have their classification reviewed. The Company agrees to ensuring that one member of the Classification Review Committee is a Bargaining Unit employee from skilled trades. The parties agree that within ninety (90) days after ratification, the Company and Union agree to meet to review the Leader and Inspector classification.

#### Letter of Understanding: Pay Equity

During negotiations, it was agreed by both parties that, within 6 months of ratification, the parties would meet and review each classification in the Agreement in view of the Pay Equity Act.

**Letter of Understanding: Paid Education Leave**

The Employer agrees to pay into a special fund, one cent (\$0.01) per hour per employee for all compensated hours for the purpose of providing paid education leave. Said Paid Education Leave will be for the purpose of upgrading the employee's skills in all aspects of Trade Union functions.

Such monies to be paid on a quarterly basis into a trust fund established by the National Union, Unifor, and sent by the Employer to the following address: Unifor Paid Education Leave Program, Box 897, Port Elgin, Ontario, N0H 2C0.

The Employer further agrees that members of the Bargaining unit, selected by the Union to attend such courses, will be granted a leave of absence for the twenty (20) days of class time, plus travel time where necessary, said leave of absence to be interment over a twelve (12) month period from the first day of leave. Employee's on said leave of absence will continue to accrue seniority and benefits during such leave.

The Employer further agrees to supply the Union with the following information when each contribution is sent to the Paid Education Leave Program: the Local Union number, the Bargaining Unit (s) covered, the number of employees, the number of hours used in the payment calculation, and the period of time covered.

**Letter of Understanding: Training**

Based on concerns of the Company and the Union regarding cross training during negotiations, the parties had extensive discussions concerning the need to cross-train employees to promote quality and flexibility in the workplace. The Company will be diligent in its efforts to cross-train employees in each classification. The Company will endeavor to train employees at the beginning of a shift change insofar as it will not interrupt production requirements.

A copy of the Phase III sign off sheet will be made available upon request, by the employee to the Human Resource Manager.

**Letter of Understanding: Shutdown**

During a shutdown period the Company will ask for volunteers. Employees with the highest seniority within their classification will be awarded the opportunity to work the shutdown provided they are immediately capable of performing the work.

**Letter of Understanding: Heat Relief**

The Joint Health and Safety committee will be given the task as an action item to develop policies and procedures with regards to Heat Relief in accordance with the Occupational Health and Safety Act.

The policy and procedure will be implemented no later than May 1, 2015.

**Letter of Understanding: Shift Change Rotation**

The Company agrees to allow the Bargaining Unit to conduct a vote to change the length of each shift rotation from two (2) weeks or four (4) weeks based on the outcome. The vote will take place within sixty (60) days after January 31, 2015. The outcome of the vote will remain for the duration of the agreement. If required, the new shift rotation will be implemented no later than one (1) month after notification to the Company by the Union.

**Letter of Understanding: Temporary Part-Time Employees (TPT)**

The Company will have the ability to hire temporary part-time employees as follows:

1. The Company will hire Temporary Part Time employees. These employees will be J.D Norman employees and not employed from an outside third party.
2. TPT's may be utilized to cover full time production employees only as follows:
  - (a) Daily Absenteeism: The company may utilize TPT's to cover daily absences only after all overtime opportunities have been exhausted for the full time production members as per article 14.
  - (b) Weekend Opportunities: The company may utilize TPT's for weekend coverage only after all fulltime production members have been exhausted for the weekend opportunities as per article 14.
  - (c) Planned Absence: The company may utilize TPT's to cover planned absences which shall be Vacation and approved Leaves of Absences.
  - (d) Statutory and Non-Statutory Holidays: the Company may utilize TPT's for coverage of the above Holidays only after all eligible full time employees have been offered as per article 14.07.

- (e) Daily Overtime: TPT's will not be offered daily overtime until all Full time employees have been exhausted as per article 14.
3. TPT's will have a starting wage equal to seventy five percent (75%) of the full wage in accordance of the classification that they are replacing. The TPT wage will progress to eighty-five percent (85%) after one (1) year of service, ninety-five percent (95%) after two years and to one hundred percent (100%) after three (3) years of service. Once a TPT has surpassed four (4) years of service, seniority will be gained.
  4. Any TPT employee who works two hundred (200) days in any twelve (12) consecutive month period starting from their original date of hire will gain seniority and have their name added to the seniority list with a seniority date retroactive two hundred (200) days from the two hundredth day worked. The hours worked in the twelve month period will zero out on the anniversary date of their original hire.
  5. It is agreed that TPT's will not be utilized to replace any employee who refused a job under the Occupational Health and Safety Act. It is further agreed that TPT's cannot be used to cover an employee who is off for disciplinary reasons and/or Leaders.
  6. TPT's shall be required to pay Union dues and initiation fees according to the Unifor Constitution.
  7. All TPT's will be eligible for Holiday pay as per the Employment Standards Act.
  8. All TPT's without seniority will be ineligible to receive the overtime rates as per article 14. Should a TPT gain seniority, they will then be eligible.
  9. During lay-offs, TPT's will not be permitted to cover planned or approved absences of 40 hours or more Monday through Friday. They may be utilized for coverage under number 2 (a), (b), and (d) in this article.
  10. Any seniority production employee may upon lay-off or any time during lay-off, opt into the TPT program. A laid-off employee who opts. into the TPT program will maintain the highest rate of pay for the classification in which they are replacing.

11. If a lay-off occurs and TPT's are at work, they will be the first to be laid off.
12. Should a work shortage occur, full-time employees who volunteer will be offered to go home first. Should a need still exist, then TPT's will be the first employees sent home.
13. The company will make consideration for full time employees children.
14. The Company and or Union may cancel the TPT program ninety (90) days after serving written notice to do so. The parties agree that they will meet prior to serving the notice to attempt to solve the issues and ensure the abuses are true and uncorrectable.
15. The Company will attempt to evenly distribute hours amongst the TPT's who are employed by the company. Upon request, the Company agrees to supply the Union Chairperson with the up to date TPT worked hours of all TPT's.
16. TPT's will not be eligible for any company provided benefits unless covered under item 10 of this letter.

#### Supplemental Skilled Trade Crew (STC)

17. It is understood that the Company may utilize an STC during the weekend & holiday periods. Furthermore, it is understood that all full-time skilled trades would be offered any overtime before an STC is utilized. Additionally, it is further agreed upon that an STC shall be required to pay Union dues and initiation fees according to the Unifor Constitution. Lastly, an STC will be eligible to receive overtime & holiday rates as a seniority employee would, as per Article 14 & 33 of this agreement, due to their specialized skill set.

#### Letter of Understanding: Job Classification & Descriptions

The parties agree to meet immediately following ratification of the new agreement to discuss and come to mutual agreement on the job descriptions for Leaders and Utility classifications. The parties recognize the importance of these two positions and the flexibility that these classifications will bring to the operations. The parties further agree to have these new descriptions in place no later than three (3) months following ratification of the agreement. Current employees in the leader classification will be asked if they want to stay in the classification thereby accepting the new roles and




responsibilities. Should they opt. out of the Leader role, they will be placed back into the classification that they held prior to becoming a leader, seniority permitting. It is further agreed that the current employees in the Leaders classifications will be asked if they will accept the change to the Leaders hours of work (reporting ten minutes prior to or staying ten minutes after their regular scheduled shift). If a Leader does not accept the new schedule they will be transferred back to the classification they held prior to becoming a leader, seniority permitting.

**Additional Items**


- SIGNING BONUS = \$500
- ROLLBACK 1 discipline (not including last chance agreement or terminated employees)

DATED IN WINDSOR, ONTARIO THIS 1 DAY OF FEBRUARY, 2018

FOR THE COMPANY

  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

FOR THE UNION

  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

tlcpe343

This is Exhibit “D” referred to in the  
**AFFIDAVIT OF JOHN HO**  
sworn this 10<sup>th</sup> day of February, 2021.



---

*Commissioner for Taking Affidavits (or as may be)*

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 2

**Properties**

PIN 01379 - 0091 LT Interest/Estate Fee Simple  
 Description PT BLK E PL 1644 WINDSOR PTS 2 & 3 12R12466; WINDSOR  
 Address 6845 HAWTHORNE DRIVE  
 WINDSOR

**Chargor(s)**

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name JD NORMAN CANADA, ULC  
 Address for Service 6845 Hawthorne Drive  
 Windsor, ON N8T  
 3B8

I, Justin Dennis Norman, President, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

**Chargee(s)**

Capacity

Share

Name CALLIDUS CAPITAL CORPORATION  
 Address for Service 181 Bay Street, Suite 4620, P.O. Box 792  
 Bay Wellington Tower, Brookfield Plance  
 Toronto, ON M5J 2T3

**Provisions**

Principal \$95,000,000.00 Currency CDN  
 Calculation Period  
 Balance Due Date  
 Interest Rate  
 Payments  
 Interest Adjustment Date  
 Payment Date  
 First Payment Date  
 Last Payment Date  
 Standard Charge Terms 200033  
 Insurance Amount Full insurable value  
 Guarantor

**Additional Provisions**

This Charge is given to secure amounts owing under a Credit Agreement dated July 10, 2018 among JD Norman Canada, ULC and others as borrower, and the Chargee, as lender.

**Signed By**

Lynn Yves Lee 5000 Yonge Street, 10th Floor acting for Signed 2018 07 10  
 Toronto Chargor(s)  
 M2N 7E9

Tel 416-222-8888

Fax 416-218-1860

I have the authority to sign and register the document on behalf of the Chargor(s).

**Submitted By**

CHAITONS LLP 5000 Yonge Street, 10th Floor 2018 07 10  
 Toronto  
 M2N 7E9

Tel 416-222-8888

Fax 416-218-1860

The applicant(s) hereby applies to the Land Registrar.

<b>Fees/Taxes/Payment</b>
---------------------------

Statutory Registration Fee	\$63.65
Total Paid	\$63.65

This is Exhibit "E" referred to in the  
**AFFIDAVIT OF JOHN HO**  
sworn this 10<sup>th</sup> day of February, 2021.



---

*Commissioner for Taking Affidavits (or as may be)*

**GENERAL SECURITY AGREEMENT**

**THIS SECURITY AGREEMENT** is dated July 10, 2018 and made between:

- (1) **JD NORMAN CANADA, ULC**, a British Columbia unlimited liability company (together with its successors and permitted assigns, the “**Corporation**”); and
- (2) **CALLIDUS CAPITAL CORPORATION**, an Ontario corporation (together with its successors and assigns), as collateral and administrative agent for the Lenders (as defined in the Loan Agreement) and on its own behalf, as lender (collectively, the “**Lender**”)

**RECITALS:**

(A) The Lender has agreed to make certain credit facilities available to, *inter alios*, JD Norman Industries, Inc., the Corporation and the other borrowers party thereto (collectively, the “**Borrowers**”) upon the terms and conditions contained in a term loan agreement among, *inter alios*, the Borrowers, the Corporation and the Lender dated June 7, 2018 (such term loan agreement as it may at any time or from time to time, be amended, supplemented, restated or replaced, the “**Loan Agreement**”).

(B) The Corporation has agreed to execute and deliver this security agreement to and in favour of the Lender as security for the payment and performance of the Corporation’s obligations to the Lender under the Loan Agreement and the other Loan Documents (as defined in the Loan Agreement).

**NOW THEREFORE**, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Corporation and the Lender agree as follows:

**Article 1 - Security**

**1.1 Definitions**

In this security agreement, the following terms have the following meanings:

“**ULC**” shall mean any unlimited liability company or unlimited liability corporation existing under the laws of any province or territory of Canada and any successor to any such unlimited liability company or unlimited liability corporation.

“**ULC Laws**” means the *Companies Act* (Nova Scotia), the *Business Corporations Act* (Alberta), the *Business Corporations Act* (British Columbia) and any other present or future laws governing ULCs.

“**ULC Shares**” shall mean any Security or other investment property subject to a charge hereunder which constitute capital stock, membership interests, limited partnership interests or other equity interests of a ULC.

## 1.2 Statutory and Other References

Terms defined in the *Personal Property Security Act* (Ontario) (the “PPSA”) and used in this security agreement have the same meanings. Any reference to the **STA** is a reference to the *Securities Transfer Act, 2006* (Ontario) or, to the extent applicable, similar legislation of any other jurisdiction, as amended from time to time. Where a reference is made to the Lender, it includes, as applicable, any nominee appointed by the Lender to hold or otherwise take possession of the Collateral.

## 1.3 Grant of Security

The Corporation grants to the Lender a security interest in, and assigns (except in the case of ULC Shares), mortgages, charges, hypothecates and pledges to the Lender all the property and undertaking of the Corporation now owned or hereafter acquired (collectively, the “Collateral”) including, without limitation, any and all of the:

- (a) inventory of the Corporation including goods held for sale, lease or resale, goods provided or to be provided to third parties under contracts of lease, consignment or service, goods which are raw materials or work in process, goods used in or procured for packing and materials used or consumed in the business of the Corporation;
- (b) equipment, machinery, furniture, fixtures, vehicles and other goods of every kind and description of the Corporation and all licences and other rights and all records, files, charts, plans, drawings, specifications, manuals and documents relating thereto;
- (c) accounts due or accruing due to the Corporation and all agreements, books, invoices, documents and papers recording, evidencing or relating thereto;
- (d) money, documents of title, chattel paper, instruments, securities, investment property and all other financial assets of the Corporation;
- (e) securities accounts of the Corporation and all of the credit balances, security entitlements, other financial assets and items or property standing to the credit of the Corporation from time to time in such securities accounts;
- (f) intangibles of the Corporation including all security interests, goodwill, choses in action, contracts and contractual rights, licences and benefits;
- (g) all trade marks, trade mark registrations and pending trade mark applications, patents and pending patent applications, copyrights, proprietary and non-public business information, trade and business names, web names and worldwide web addresses and other intellectual property and industrial property of the Corporation (collectively, the “Intellectual Property”) including the Intellectual Property described in Schedule A;
- (h) all authorizations, permits, approvals, grants, licenses, consents, rights, franchises, privileges, orders, awards or the like issued or granted by law or by rule or regulation of any public body issued or granted to the Corporation;
- (i) substitutions and replacements of, and increases, additions and, where applicable, accessions to, the property described in Sections 1.3(a)-(h) inclusive; and

- (j) proceeds in any form derived directly or indirectly from any dealing with all or any part of the property described in Sections 1.3(a)-(i) inclusive or the proceeds of such proceeds.

#### 1.4 Obligations Secured

The security interest, assignment, mortgage, charge, hypothecation and pledge granted hereby (collectively, the “**Security Interest**”) secures the payment and performance of:

- (a) the Obligations of the Corporation; and
- (b) all expenses, costs and charges incurred by or on behalf of the Lender in connection with this security agreement, the Security Interest or the realization of the Collateral, including all legal fees, court costs, receiver’s or agent’s remuneration and other expenses of, or of taking or defending any action in connection with, taking possession of, repairing, protecting, insuring, preparing for disposition, realizing, collecting, selling, transferring, delivering or obtaining payment of the Collateral or other lawful exercises of the powers conferred by the Loan Agreement and the other Loan Documents are payable on demand and shall be added to and form a part of the Corporation’s Obligations.

#### 1.5 Attachment, Perfection, Possession and Control

- (a) The Corporation acknowledges that (i) value has been given, (ii) it has rights in the Collateral or the power to transfer rights in the Collateral to the Lender (other than after-acquired Collateral), (iii) it has not agreed to postpone the time of attachment of the Security Interest, and (iv) it has received a copy of this security agreement.
- (b) The Corporation shall promptly inform the Lender in writing of the acquisition by the Corporation of any personal property which is not adequately described in this security agreement, and the Corporation shall execute and deliver, from time to time, at its own expense, amendments to this security agreement and its schedules or additional security agreements or schedules as may be required by the Lender in order to preserve, protect and perfect its Security Interest in such personal property.
- (c) If the Corporation acquires Collateral consisting of chattel paper, instruments or negotiable documents of title (collectively, “**Negotiable Collateral**”), the Corporation shall, immediately upon receipt thereof, deliver to the Lender the Negotiable Collateral and shall, at the request of the Lender (i) endorse the same for transfer in blank or as the Lender may direct, (ii) cause any transfer to be registered wherever, in the opinion of the Lender, such registration may be required or advisable, and (iii) deliver to the Lender any and all consents or other documents which may be necessary or desirable to transfer the Negotiable Collateral.
- (d) If the Corporation has or hereafter acquires Collateral consisting of certificated securities it shall immediately deliver (except in the case of ULC Shares) to the Lender any and all certificates representing such Collateral (the “**Pledged Certificated Securities**”) and other materials (including effective endorsements) as may be required from time to time in the opinion of the Lender, to provide the Lender with control over



all Pledged Certificated Securities in the manner provided under Section 23 of the STA, and at the request of the Lender, will cause all Pledged Certificated Securities to be registered in the name of the Lender or as it may direct.

- (e) If the Corporation has or hereafter acquires Collateral consisting of uncertificated securities it shall deliver to the Lender any and all such documents, agreements and other materials as may be required from time to time in the opinion of the Lender, to provide the Lender with control over all such Collateral in the manner provided under Section 24 of the STA.
- (f) If the Corporation has or hereafter acquires Collateral consisting of security entitlements or creates Collateral consisting of one or more securities accounts it shall deliver to the Lender any and all such documents, agreements and other materials as may be required from time to time in the opinion of the Lender, to provide the Lender with control over all such Collateral in the manner provided under Section 25 and 26 of the STA and Section 1(1.1)(c) of the PPSA.
- (g) If the Corporation has or hereafter acquires Collateral consisting of an interest in a partnership or limited liability company (including but not limited to ULC Shares), it shall take all steps necessary in the opinion of the Lender, to ensure that such property is and remains a security for the purposes of the STA.
- (h) Except in the case of ULC Shares, the Corporation shall not cause or permit any Person other than the Lender to have control (as defined in the STA) of any investment property constituting part of the Collateral, other than control in favour of a depository bank or securities intermediary which has subordinated its lien to the lien of the Lender pursuant to documentation in form and substance satisfactory to the Lender.
- (i) The Security Interest is intended to operate as a fixed and specific charge of all of the Collateral presently existing, and with respect to all future Collateral, to operate as a fixed and specific charge of such future Collateral.

## **1.6 Scope of Security Interest**

- (a) The Security Interest with respect to the trade-marks constitutes a security interest in, and a charge, hypothecation and pledge of, such Collateral in favour of the Lender, but does not constitute an assignment or mortgage of such Collateral to the Lender. Until the Security Interest becomes enforceable, the grant of the Security Interest in the Intellectual Property will not affect in any way the Corporation's rights to commercially exploit it or defend or enforce the Corporation's rights in it or with respect to it.
- (b) The Security Interest does not extend to consumer goods.
- (c) The Security Interest does not extend or apply to the last day of the term of any lease or sublease or any agreement for a lease or sublease, now held or hereafter acquired by the Corporation in respect of real property, but the Corporation shall stand possessed of any such last day upon trust to assign and dispose of it as the Lender may direct.

- (d) Nothing in this security agreement shall constitute an assignment or attempted assignment of any contract or agreement to the extent that such contract or agreement is not assignable or requires the consent of a third party to its assignment unless such consent has been obtained, due to (a) its provisions (other than a contract or agreement that is the whole of an account or chattel paper for money due or to become due), or (b) applicable law. In each such case, the Corporation shall, unless the Lender otherwise agrees in writing, promptly, upon written request by the Lender, attempt to obtain the consent of any necessary third party to its assignment under this security agreement and to its further assignment by the Lender to any third party as a result of the exercise by the Lender of remedies after demand. Upon such consent being obtained or waived, this security agreement shall apply to the applicable contract or agreement without regard to this section and without the necessity of any further assurance to effect such assignment. Unless and until the consent to assignment is obtained as provided above, the Corporation shall, to the extent it may do so at law or pursuant to the provisions of the contract or interest in question hold all benefit to be derived from such contracts or agreements in trust for the Lender (including, without limitation, the Corporation's beneficial interest in any contract or agreement which may be held in trust for the Corporation by a third party), as additional security for the payment of the Obligations and shall deliver up all such benefit to the Lender, promptly upon demand by the Lender.

### **1.7 Care and Custody of Collateral**

- (a) The Lender has no obligation to keep Collateral in their possession identifiable.
- (b) The Lender shall exercise in the physical keeping of any Negotiable Collateral or securities, only the same degree of care as it would exercise in respect of its own such property kept at the same place.
- (c) The Lender may, after the Security Interest has become enforceable, (i) notify any person obligated on an account, chattel paper or instrument to make payments to the Lender whether or not the Corporation was previously making collections on such accounts, chattel paper or instruments, and (ii) assume control of any proceeds arising from the Collateral.

### **1.8 Amalgamation**

In the event the Corporation amalgamates with any other corporation or corporations, it is the intention of the parties that the Security Interest will (a) extend to all of the property and assets that (i) any of the amalgamating corporations own, or (ii) the amalgamated corporation thereafter acquires, and (b) secure the payment and performance of all debts, liabilities and obligations, present or future, direct or indirect, absolute or contingent, matured or unmatured, at any time or from time to time due or accruing due and owing by or otherwise payable by any of the amalgamating corporations and the amalgamated corporation to the Lender in any currency. The Security Interest will attach to the property and assets of the amalgamating corporations not previously subject to this security agreement at the time of amalgamation and to any property or assets thereafter owned or acquired by the amalgamated corporation when same becomes owned or is acquired. Upon any such amalgamation, the defined term

“**Corporation**” means, collectively, each of the amalgamating corporations and the amalgamated corporation, the defined term “**Collateral**” means all of the property, assets, undertaking and interests described in (a) above, and the defined term “**Obligations**” means the obligations described in (b) above.

## **Article 2 - Enforcement**

### **2.1 Enforcement**

The Security Interest shall be and become enforceable against the Corporation upon the occurrence and during the continuance of an Event of Default (as defined in the Loan Agreement).

### **2.2 Remedies**

Whenever the Security Interest becomes enforceable, the Lender may, in its sole discretion, realize upon the Collateral and enforce its right by:

- (a) entering onto any premises where Collateral consisting of tangible personal property may be located;
- (b) entering into possession of the Collateral by any method permitted by law;
- (c) selling or leasing all or any part of the Collateral;
- (d) holding, storing or keeping idle or operating all or any part of the Collateral;
- (e) collecting any proceeds arising in respect of the Collateral;
- (f) collecting, realizing, selling, or otherwise dealing with, the accounts;
- (g) issuing any instructions or entitlement orders to an issuer or securities intermediary;
- (h) instructing a financial institution to transfer funds held by it to an account maintained by the Lender;
- (i) appointing by instrument in writing a receiver (which term as used in this security agreement includes a receiver and manager) or agent of all or any part of the Collateral and removing or replacing from time to time any receiver or agent;
- (j) instituting proceedings in any court of competent jurisdiction for the appointment of a receiver of all or any part of the Collateral;
- (k) instituting proceedings in any court of competent jurisdiction for sale or foreclosure of all or any part of the Collateral;
- (l) filing proofs of claim and other documents to establish claims to the Collateral in any proceeding relating to the Corporation; and

- (m) exercising any other remedy or proceeding authorized or permitted under the PPSA or otherwise by law or equity.

### **2.3 Additional Rights**

In addition to the remedies set forth in Section 2.2, the Lender may, in its sole discretion, either directly or through its agents or nominees, whenever the Security Interest has become enforceable:

- (a) require the Corporation, at the Corporation's expense, to assemble the Collateral at a place or places designated by notice in writing and the Corporation agrees to so assemble the Collateral;
- (b) require the Corporation, by notice in writing, to disclose to the Lender the location or locations of the Collateral and the Corporation agrees to make such disclosure when so requested;
- (c) repair, process, modify, complete or otherwise deal with the Collateral and prepare for the disposition of the Collateral, whether on the premises of the Corporation or otherwise;
- (d) carry on all or any part of the business of the Corporation and, to the extent permitted by law to the exclusion of all others including the Corporation, enter upon, occupy and use all or any of the premises, buildings, and other property of, or used or occupied by, the Corporation, free of charge, and the Lender is not liable to the Corporation for any act, omission or negligence in so doing or for any rent, charges, depreciation or damages incurred in connection with, or resulting from, such action;
- (e) borrow for the purpose of carrying on the business of the Corporation or for the maintenance, preservation or protection of the Collateral and grant security interests in the Collateral, whether or not in priority to the Security Interest, to secure repayment;
- (f) commence, continue or defend any judicial or administrative proceedings for the purpose of protecting, seizing, collecting, realizing or obtaining possession or payment of the Collateral, and give good and valid receipts and discharges in respect of the Collateral and compromise or give time for the payment or performance of all or any part of the accounts or any other obligation of any third party to the Corporation; and
- (g) at any public or private sale, bid for and purchase any or all of the Collateral offered for sale and upon compliance with the terms of such sale, hold, retain and dispose of such Collateral without any further accountability to the Corporation or any other person with respect to such holding, retention or disposition, except as required by law.

### **2.4 Concerning a Receiver**

- (a) Any receiver appointed by the Lender shall be vested with all rights and remedies which could have been exercised by the Lender in respect of the Corporation or the Collateral and such other powers and discretions as are granted in the instrument of appointment

and any supplemental instruments. The choice of receiver and its remuneration are within the sole and unfettered discretion of the Lender.

- (b) Any receiver appointed by the Lender shall act as agent for the Lender for the purposes of taking possession of the Collateral, but otherwise and for all other purposes (except as provided below), as agent for the Corporation. The receiver may sell, lease, or otherwise dispose of Collateral as agent for the Corporation or as agent for the Lender as the Lender may determine in its discretion. The Corporation agrees to ratify and confirm all actions of the receiver acting as agent for the Corporation, and to release and indemnify the receiver in respect of all such actions.
- (c) The Lender, in appointing or refraining from appointing any receiver, shall not incur any liability to the receiver, the Corporation or otherwise and is not responsible for any misconduct or negligence of such receiver.

## **2.5 Exercise of Remedies**

Any remedy may be exercised separately or in combination and is in addition to, and not in substitution for, any other rights or remedies the Lender may have, however created. The Lender is not bound to exercise any right or remedy, and the exercise of rights and remedies is without prejudice to any other rights of the Lender in respect of the Obligations including the right to claim for any deficiency.

## **2.6 Appointment of Attorney**

The Corporation irrevocably appoints the Lender (and its officers) as attorney of the Corporation (with full power of substitution) to do, make and execute, in the name of and on behalf of the Corporation all such further acts, documents, matters and things which the Lender may deem necessary or advisable to accomplish the purposes of this security agreement including the execution, endorsement and delivery of documents and any notices, receipts, assignments or verifications of the accounts. All acts of the attorney are hereby ratified and approved, and the attorney shall not be liable for any act, failure to act or any other matter or thing, except to the extent caused by its own gross negligence or wilful misconduct. This power of attorney is irrevocable, is coupled with an interest, has been given for valuable consideration (the receipt and adequacy of which is acknowledged) and survives, and does not terminate upon, the bankruptcy, dissolution, winding up or insolvency of the Corporation. This power of attorney extends to and is binding upon the Corporation's successors and permitted assigns. The Corporation authorizes the Lender to (a) delegate in writing to another person any power and authority of the Corporation under this power of attorney as may be necessary or desirable in the opinion of the Lender, and (b) revoke or suspend such delegation.

## **2.7 Dealing with the Collateral**

- (a) The Lender is not obliged to exhaust their recourse against the Corporation or any other person or against any other security they may hold in respect of the Obligations before realizing upon or otherwise dealing with the Collateral in such manner as the Lender considers desirable.

- (b) The Lender may grant extensions or other indulgences, take and give up security, accept compositions, grant releases and discharges and otherwise deal with the Corporation and with other persons, guarantors, sureties or security as they may see fit without prejudice to the Obligations, the liability of the Corporation or the rights of the Lender in respect of the Collateral.
- (c) The Lender is not (i) liable or accountable for any failure to collect, realize or obtain payment in respect of the Collateral, (ii) bound to institute proceedings for the purpose of collecting, enforcing, realizing or obtaining payment of the Collateral or for the purpose of preserving any rights of any persons in respect of the Collateral, (iii) responsible for any loss occasioned by any sale or other dealing with the Collateral or by the retention of or failure to sell or otherwise deal with the Collateral, or (iv) bound to protect the Collateral from depreciating in value or becoming worthless.
- (d) To the extent that applicable law imposes duties on the Lender to exercise remedies in a commercially reasonable manner, and without prejudice to the ability of the Lender to dispose of the Collateral in any such manner, the Corporation acknowledges and agrees that it is not commercially unreasonable for the Lender to, and the Lender may, in its discretion (i) incur expenses reasonably deemed significant by the Lender to prepare the Collateral for disposition, (ii) exercise collection remedies directly or through the use of collection agencies, (iii) dispose of Collateral by way of public auction, public tender or private contract, with or without advertising and without any other formality, (iv) dispose of Collateral to the Lender or to a customer or client of the Lender, (v) contact other persons, whether or not in the same business as the Corporation, for expressions of interest in acquiring all or any portion of the Collateral, (vi) hire one or more professional auctioneers to assist in the disposition of the Collateral, whether or not the Collateral is of a specialized nature, (vii) establish an upset or reserve bid or price in respect of the Collateral, and (viii) establish such terms as to credit or otherwise as the Lender may determine.
- (e) The Corporation acknowledges that the Lender may be unable to complete a public sale of any or all of the Collateral consisting of investment property by reason of certain prohibitions contained in applicable securities laws or otherwise. In connection therewith, it may be compelled to resort to one or more private sales to a restricted group of purchasers who will be obliged to agree, among other things, to acquire the Collateral for their own account for investment and not with a view to the distribution or resale thereof. Any such private sale may result in prices and other terms less favourable to the seller than if such sale were a public sale and, notwithstanding such circumstances, the Corporation agrees that any such private sale shall not be deemed to have been made in a commercially unreasonable manner by reason of it being a private sale. The Lender is under no obligation to delay a sale of any or all of the Collateral for the period of time necessary to permit the issuer thereof to register such Collateral for public sale under applicable securities law or otherwise, even if the issuer agrees to do so.

## 2.8 ULC Shares

The Corporation acknowledges that certain investment property constituting part of the Collateral may now or in the future consist of ULC Shares, and that it is the intention of the Lender and Corporation that neither the Lender, nor any other beneficiary should under any circumstances prior to realization thereon be held to be a “member” or a “shareholder”, as applicable, of a ULC for the purposes of any ULC Laws. Therefore, notwithstanding any provisions to the contrary contained in this security agreement, or any Loan Document, where the Corporation has granted a security interest hereunder in any ULC Shares, the Corporation will remain the sole registered and beneficial owner of such ULC Shares until such time as such ULC Shares are effectively transferred into the name of the Lender, or any other beneficiary, or any other Person on the books and records of the applicable ULC. Accordingly, the Corporation shall be entitled to receive and retain for its own account any dividend on or other distribution, if any, in respect of such ULC Shares (except for any dividend or distribution comprised of investment property constituting part of the Collateral of the Corporation, which is required to be delivered to the Lender to hold as investment property constituting part of the Collateral hereunder, which shall be so delivered) and shall have the right to vote such ULC Shares and to control the direction, management and policies of the applicable ULC to the same extent as the Corporation would if such ULC Shares were not pledged to the Lender pursuant hereto. Nothing in this security agreement, or any Loan Document is intended to, and nothing in this security agreement, or Loan Document shall, constitute the Lender, or any other beneficiary, or any other Person other than the Corporation, a member or shareholder of a ULC for the purposes of any ULC Laws (whether listed or unlisted, registered or beneficial), until such time as notice is given to the Corporation, and further steps are taken pursuant hereto or thereto so as to register the Lender, or any other beneficiary, or such other Person, as specified in such notice, as the holder of the ULC Shares. To the extent any provision hereof would have the effect of constituting the Lender, or any other beneficiary as a member or a shareholder, as applicable, of any ULC prior to such time, such provision shall be severed herefrom and shall be ineffective with respect to ULC Shares which are investment property constituting part of the Collateral of the Corporation without otherwise invalidating or rendering unenforceable this security agreement or invalidating or rendering unenforceable such provision insofar as it relates to investment property constituting part of the Collateral of the Corporation which is not ULC shares. Except upon the exercise of rights of the Lender to sell, transfer or otherwise dispose of ULC Shares in accordance with this security agreement, or any Loan Document, shall not cause or permit, or enable an issuer of investment property constituting part of the Collateral that is a ULC to cause or permit, the Lender or any other beneficiary to: (a) be registered as a shareholder or member of such issuer; (b) have any notation entered in its favour in the share register of such issuer; (c) be held out as a shareholder or member of such issuer; (d) receive, directly or indirectly, any dividends, property or other distributions from such issuer by reason of the Lender holding the security interests over the ULC Shares; or (c) act as a shareholder of such issuer, or exercise any rights of a shareholder including the right to attend a meeting of shareholders of such issuer or to vote the ULC Shares of such issuer.

## 2.9 Application of Proceeds

Any and all moneys realized by the Lender pursuant to this security agreement shall be applied by the Lender to such part of the Obligations as set forth in the Loan Agreement.

### **2.10 No Waiver**

No delay or omission by the Lender, at any time or times, to require strict performance by the Corporation of any provision of this security agreement waives, affects or diminishes any right of the Lender thereafter to demand strict compliance and performance therewith.

### **2.11 Dealings by Third Parties**

- (a) No person dealing with the Lender or an agent or receiver is required to determine (i) whether the Security Interest has become enforceable, (ii) whether the powers which such person is purporting to exercise have become exercisable, (iii) whether any money remains due to the Lender by the Corporation, (iv) the necessity or expediency of the stipulations and conditions subject to which any sale or lease is made, (v) the propriety or regularity of any sale or other dealing by the Lender with the Collateral, or (vi) how any money paid to the Lender has been applied.
- (b) Any purchaser of Collateral shall hold the Collateral absolutely, free from any claim or right of any kind whatever, including any equity of redemption, of the Corporation. The Corporation waives (to the fullest extent permitted by law) as against any such purchaser, all rights of redemption, stay or appraisal which the Corporation has or may have under any rule of law or statute now existing or hereafter adopted.

### **2.12 Corporation Liable for Deficiency**

The Corporation is liable to the Lender for any deficiency after the proceeds of any sale or other disposition of Collateral are received by the Lender.

## **Article 3 - General**

### **3.1 Notices**

Any notice, consent, waiver or other communication given under this security agreement must be in writing and delivered in accordance with the provisions of the Loan Agreement.

### **3.2 Capitalized Terms**

- (a) Capitalized terms used in this security agreement and not otherwise defined have the respective meanings given to them in the Loan Agreement.
- (b) Except as otherwise provided in this security agreement, any reference to this security agreement, the Loan Agreement or any other Loan Document refers to this security agreement or such Loan Agreement or other Loan Document as the same may have been or may from time to time be amended, modified, extended, renewed, restated, replaced or supplemented.

### **3.3 Discharge**

The Security Interest will be discharged upon, but only upon, (a) full and indefeasible payment and performance of the Obligations, (b) the Lender having no obligations under the Loan



Agreement and the other Loan Documents, and (c) at the request and expense of the Corporation. In that connection, the Lender will execute and deliver to the Corporation such releases and discharges as the Corporation may reasonably require.

### **3.4 Amendment**

This security agreement may only be amended, supplemented or otherwise modified by written agreement of the Lender and the Corporation.

### **3.5 Waivers, etc.**

- (a) No consent or waiver by the Lender in connection with this security agreement is binding unless made in writing and signed by an authorized officer of the Lender. Any consent or waiver given under this security agreement is effective only in the specific instance and for the specific purpose for which it was given. No waiver of any of the provisions of this security agreement constitutes a waiver of any other provision.
- (b) A failure or delay on the part of the Lender in exercising a right or remedy under this security agreement does not operate as a waiver of, or impair, any rights or remedies of the Lender however arising. A single or partial exercise of a right or remedy on the part of the Lender does not preclude any other or further exercise of that right or remedy or the exercise of any other rights or remedies by the Lender.

### **3.6 No Merger**

This security agreement shall not operate by way of merger of any of the Obligations and no judgment recovered by the Lender will operate by way of merger of, or in any way affect, the Security Interest, which is in addition to, and not in substitution for, any other security now or hereafter held by the Lender in respect of the Obligations.

### **3.7 Further Assurances**

The Corporation shall from time to time, whether before or after the Security Interest has become enforceable, do all acts and things and execute and deliver all transfers, assignments and agreements as the Lender may reasonably require for (a) protecting the Collateral, (b) perfecting the Security Interest, (c) obtaining control of the Collateral, (d) exercising all powers, authorities and discretions conferred upon the Lender, and (e) otherwise enabling the Lender to obtain the full benefits of this security agreement and the rights and powers herein granted. The Corporation shall, from time to time after the Security Interest has become enforceable, do all acts and things and execute and deliver all transfers, assignments and agreements as the Lender may require for facilitating the sale or other disposition of the Collateral in connection with its realization.

### **3.8 Supplemental Security**

This security agreement is in addition to and without prejudice to all other security now held or which may hereafter be held by the Lender.

### **3.9 Successors and Assigns**

This security agreement is binding upon the Corporation, its successors and assigns, and enures to the benefit of the Lender and its successors and assigns. This security agreement and all rights of the Lender are assignable without the consent of, or notice to the Corporation, and in any action brought by an assignee to enforce this security agreement or any right or remedy, the Corporation will not assert against the assignee any claim or defence which the Corporation now has or hereafter may have against the Lender. Neither this security agreement nor any rights, duties or obligations under this security agreement are assignable or transferable by the Corporation.

### **3.10 Waiver of Delivery**

To the extent permitted by applicable law, the Corporation waives its right to receive a copy of any financing statement or financing change statement registered by or on behalf of the Lender, or any verification statement with respect to any financing or financing change statement registered by or on behalf of the Lender.

### **3.11 Severability**

If any provision of this security agreement is determined by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall be severed from this security agreement and the remaining provisions will continue in full force and effect.

### **3.12 Conflict**

In the event of any conflict between the provisions of this security agreement and the provisions of the Loan Agreement which cannot be resolved by both provisions being complied with, the provisions contained in the Loan Agreement will prevail to the extent of such conflict.

### **3.13 Governing Law and Submission to Jurisdiction**

- (a) This security agreement is governed by and is to be interpreted, construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, without regard to conflict of law principles.
- (b) The Corporation irrevocably and unconditionally (i) submits to the non-exclusive jurisdiction of the courts of Ontario, (ii) agrees that all claims in respect of any suit, action or proceeding may be heard and determined in such court, (iii) waives, to the fullest extent permitted by law, any objection which it may have based upon doctrines of venue or *forum inconveniens*.

### **3.14 Counterparts**

This security agreement may be executed in any number of separate counterparts (including by facsimile or other electronic means) and all such signed counterparts will together constitute one and the same agreement. To evidence its execution of an original counterpart of this security agreement, a party may send a copy of its original signature on the execution page hereof to the other parties by facsimile or other means of recorded electronic transmission and such transmission with an

acknowledgement of receipt shall constitute delivery of an executed copy of this security agreement to the receiving party.

*[signature page to follow]*

**IN WITNESS WHEREOF** the Corporation has executed and delivered this security agreement as of the date first written above.

**JD NORMAN CANADA, ULC**

By:

\_\_\_\_\_  
Name: Justin D. Norman  
Title: President

By:

\_\_\_\_\_  
Name: Justin D. Norman  
Title: President

(General Security Agreement)

**Schedule A**  
**Intellectual Property**

None.

This is Exhibit “F” referred to in the  
**AFFIDAVIT OF JOHN HO**  
sworn this 10<sup>th</sup> day of February, 2021.



---

*Commissioner for Taking Affidavits (or as may be)*

## FORBEARANCE AGREEMENT

This FORBEARANCE AGREEMENT (this “Agreement”) dated as of February 18, 2020 (the “Effective Date”), among JD NORMAN INDUSTRIES, INC., an Illinois corporation, JD NORMAN METAL TECHNOLOGIES, INC., an Illinois corporation, JD NORMAN OHIO HOLDINGS, INC., an Ohio corporation, JD NORMAN ELECTRIC HOLDINGS, INC., an Illinois corporation, JD NORMAN LESLIE BUILDING 1, LLC, a Michigan limited liability company, JD NORMAN LESLIE BUILDING 2, LLC, a Michigan limited liability company, JD NORMAN INDIANA HOLDINGS, LLC, a Delaware limited liability company, JD NORMAN MUNCIE, LLC, a Delaware limited liability company, JD NORMAN WINCHESTER, LLC, a Delaware limited liability company, JD NORMAN MUNCIE BUILDING, LLC, a Delaware limited liability company, JD NORMAN WINCHESTER BUILDING, LLC, a Delaware limited liability company, JD NORMAN CANADA, ULC, a British Columbia unlimited liability company (collectively, the “Borrowers”, and each, individually, a “Borrower”), the other Loan Parties identified on the signature pages to this Agreement (collectively with the Borrowers, the “Forbearance Parties”), and Callidus Capital Corporation, as administrative agent and collateral agent for the Lenders (in such capacity, the “Agent”), and as Lender (in such capacity, “Lender”).

### RECITALS:

WHEREAS, Agent and Borrowers have entered into certain financing arrangements pursuant to that certain Credit Agreement, dated as of July 10, 2018, among the Agent, Borrowers, the other Loan Parties from time to time party thereto, and the Lenders from time to time party thereto (as amended hereby, and as the same may have heretofore been or may hereafter be further amended, modified, supplemented, extended, renewed, restated, replaced or otherwise modified, the “Term Loan Agreement”);

WHEREAS, as of the Effective Date, multiple Events of Default under the Term Loan Agreement and the other Loan Documents have occurred and are continuing;

WHEREAS, the Agent has previously given notice to the Loan Parties pursuant to that certain Notice of Exercise of Irrevocable Proxies, dated as of June 18, 2019 (the “2019 Notice of Proxy”) that the Agent, at the direction of the Lenders, has exercised certain of the Irrevocable Proxies (as defined in the Security Agreement) granted to the Agent by the Loan Parties and removed the existing directors or managers of each of the Subsidiaries of the Parent as of the date of the 2019 Notice of Proxy and appointed Michael T. Wyse and Michael T. Sullivan as directors or managers, as applicable, of each of the Subsidiaries of Parent (such exercise of the Irrevocable Proxies, collectively with the removal and appointment of directors or managers pursuant thereto, the “Prior Governance Right Exercise”);

WHEREAS, Forbearance Parties have requested that, subject to the terms and conditions of this Agreement, the Secured Parties forbear from exercising their rights against the Forbearance Parties and their property as a result of such Events of Default, which are continuing; and

WHEREAS, the Secured Parties are willing to agree to forbear from exercising certain of their rights and remedies solely for the period and on the terms and conditions specified herein.

NOW, THEREFORE, in consideration of the foregoing, and the respective agreements, warranties and covenants contained herein, the parties hereto agree as follows:

## SECTION 1. DEFINITIONS

1.1. **Interpretation.** All capitalized terms used herein (including the recitals hereto) will have the respective meanings ascribed thereto in the Term Loan Agreement or the LTA Agreement (as defined below), as applicable, unless otherwise defined herein. The foregoing recitals, together with all exhibits attached hereto, and the LTA Agreement are incorporated by this reference and made a part of this Agreement. Unless otherwise provided herein, all section and exhibit references herein are to the corresponding sections and exhibits of this Agreement.

1.2. **Additional Definitions.** As used herein, the following terms will have the respective meanings given to them below:

(a) “Existing Defaults” means, collectively, the Events of Default identified on Schedule 1 hereto.

(b) “Forbearance Period” shall mean the period commencing on the Effective Date and ending on the earliest of (1) the expiry of the Term (as defined in the LTA Agreement), (2) the occurrence of an Event of Default under Section 9.1(f) or Section 9.1(g) of the Term Loan Agreement (except for those Events of Default in connection with Insolvency Proceedings related to JD Norman Germany GmbH and JD Norman Lydney Limited), (3) the occurrence of a Supplier Termination Event (as defined in the LTA Agreement) as to all Customers (as defined in the LTA Agreement), (4) the occurrence of a Term Loan Termination Event, (5) at the election of the Agent, the occurrence of an Event of Default as set forth in Section 3.4, (6) the breach by any party other than the Agent, Lender or Catalyst Capital Group, Inc. (“Catalyst”) of the LTA Agreement which entitles any party thereto to terminate the LTA Agreement in accordance with its terms, (7) any contest or challenge or the support of any other Person in contesting or challenging, whether in writing or otherwise, in any action or proceeding (including any Insolvency Proceeding), by any Subsidiary or Affiliate of any Loan Party, of any Secured Party’s Governance Rights and the exercise thereof (including the Prior Governance Right Exercise) and (8) the expiration or termination of the “Forbearance Period” under and as defined in the Revolving Loan Forbearance Agreement (as defined below) (except when such expiration or termination of the Forbearance Period under and as defined in the Revolving Loan Forbearance Agreement occurs in connection with, or related to, the ABL Lenders being refinanced out of the Revolving Loan Agreement, such transaction shall not constitute an expiration or termination of the Forbearance Period under this Agreement).

(c) “Governance Rights” shall mean any and all rights, and the exercise thereof (including providing any notice thereof), granted to the Secured Parties (as defined in the Term Loan Agreement) pursuant to the Loan Documents (including the Security Agreement) and under applicable law with respect to corporate or other organizational governance rights, including, without limitation, by the exercise of any Irrevocable Proxies or otherwise, to appoint and remove directors, members or other Persons with rights and powers to control, directly or indirectly, whether through



the ability to exercise voting power, by contract or otherwise, to direct or cause direction of the management or policies of any Loan Party or Subsidiary or Affiliate of any Loan Party.

(d) “LTA Agreement” means that certain Long-Term Supply and Accommodation Agreement, dated as of the Effective Date, by and among the Forbearance Parties party thereto, the Customers, the Agent, ABL Agent and Catalyst.

(e) “Permitted Enforcement Action” means (i) any enforcement action or exercise of remedies in respect of any Equity Interest of any Loan Party constituting Collateral granted or pledged by such Loan Party to any Secured Party pursuant to any Loan Document, including, without limitation, any sale, transfer, realization (including, without limitation, the right to receive dividends, distributions, interest and other payments in respect of such Equity Interests and the right to exercise any and all rights of conversion, exchange or subscription in respect of such Equity Interest, whether in connection with a merger, consolidation, reorganization or recapitalization of such Loan Party or otherwise), assignment, hypothecation, mortgage or pledge thereof, under the Loan Documents and applicable law (including Part 6 of Article 9 of the UCC), (ii) any exercise of Governance Rights by any Secured Party, or (iii) any action or undertaking by any Secured Party to prepare, market, sell, transfer or realize the Collateral granted to such Secured Party by the applicable Loan Party pursuant to the Loan Documents by contract or under applicable law (including Part 6 of Article 9 of the UCC), including, without limitation, (1) the retention of brokers, advisors and other professionals, (2) the formation of one or more special purpose entities for the purpose of acquiring, possessing or controlling such Collateral, whether by sale, auction, credit bidding or otherwise and (3) any enforcement action or exercise of remedies (including by foreclosure or other realization of any Collateral granted to any Secured Party) under the Loan Documents and applicable law (including Section Part 6 of Article 9 of the UCC) in connection the effectuation of a merger, consolidation, reorganization or recapitalization of any Loan Party, whether by contract or otherwise, and (iv) the declaration of all or any portion of the Loans then outstanding to be due and payable and terminate the Term Loan Commitments, if any, in connection with any of the foregoing clauses of this definition.

(f) “Prior Enforcement Action” shall mean any and all enforcement action and exercise of remedies (including in each case the giving of notice thereof) under the Loan Documents and applicable law commenced by any Secured Party prior to the Effective Date (whether or not such enforcement action or exercise of remedies are in progress or have been completed) against or in respect of any of the Loan Parties, any Obligations or any Collateral, including, without limitation, the Prior Governance Right Exercise and giving of the 2019 Notice of Proxy.

(g) “Term Loan Termination Event” means the initiation of any action by any Forbearance Party, any Releasing Party or any other person to invalidate or limit the enforceability of any of the acknowledgments set forth in Sections 2, the releases set forth in Section 6.6 or the covenant not to sue set forth in Section 6.7.

## **SECTION 2. ACKNOWLEDGMENTS**

2.1. **Acknowledgment of Security Interests.** Each Forbearance Party hereby acknowledges, confirms and agrees that the Agent has, and will continue to have, valid, enforceable and perfected first-priority continuing liens upon and security interests in the Collateral heretofore

granted to Term Loan Agent, for the benefit of the Secured Parties, pursuant to the Term Loan Agreement and the Loan Documents or otherwise granted to or held by the Agent, for the benefit of Secured Parties, subject only to the Intercreditor Agreement and Permitted Liens that are expressly allowed to have priority over the Agent's Liens.

**2.2. Binding Effect of Documents.** Each Forbearance Party hereby acknowledges, confirms and agrees that: (a) notwithstanding anything to the contrary in the Term Loan Agreement, this Agreement constitutes a "Loan Document" under the Term Loan Agreement, (b) each of the Term Loan Agreement and the other Loan Documents to which it is a party has been duly executed and delivered to Agent by such Forbearance Party, and each is and will remain in full force and effect as of the Effective Date except as modified pursuant hereto, (c) the agreements and obligations of each Forbearance Party contained in such documents and in this Agreement constitute the legal, valid and binding obligations of such Forbearance Party, enforceable against it in accordance with their respective terms (except as enforceability may be limited by bankruptcy, insolvency, or similar law affecting the enforcement of creditors' rights generally or principles of equity), and such Forbearance Party has no valid defense to the enforcement of such obligations, (d) the Secured Parties are and will be entitled to the rights, remedies and benefits provided for under the Term Loan Agreement and the other Loan Documents and applicable law and (e) each Forbearance Party shall comply with all limitations, restrictions or prohibitions that would otherwise be effective or applicable under the Term Loan Agreement or any of the other Loan Documents during the continuance of any "Event of Default" under the Term Loan Agreement, and except to the extent expressly provided otherwise in this Agreement, any right or action of such Forbearance Party set forth in the Term Loan Agreement or the other Loan Documents that is conditioned on the absence of any Event of Default may not be exercised or taken as a result of the Existing Defaults.

### **SECTION 3. FORBEARANCE IN RESPECT OF EXISTING DEFAULTS**

**3.1. Acknowledgment of Default.** Each Forbearance Party hereby acknowledges and agrees that the Existing Defaults have occurred and are continuing, each of which constitutes an "Event of Default" under the Term Loan Agreement and entitles the Secured Parties to exercise their rights and remedies under the Term Loan Agreement and the other Loan Documents, applicable law or otherwise. Each Forbearance Party represents and warrants that as of the Effective Date, no "Events of Default" under the Term Loan Agreement exist other than the Existing Defaults. Each Forbearance Party hereby acknowledges and agrees that the Secured Parties have the exercisable right to declare the Obligations to be immediately due and payable under the terms of the Term Loan Agreement and the other Loan Documents. Each Forbearance Party hereby acknowledges and agrees that the Existing Defaults shall be deemed to exist at all times during the period commencing on the date that such Existing Defaults first occurred (or occur) to the date on which such Existing Default is expressly waived in writing pursuant to the Term Loan Agreement.

#### **3.2. Forbearance.**

(a) In reliance upon the representations, warranties and covenants of the Forbearance Parties contained in this Agreement, and subject to the terms and conditions of this Agreement (including Section 3.2(c)) and any documents or instruments executed in connection herewith, the Secured Parties agree to forbear during the Forbearance Period from exercising their rights and remedies described in Section 9.1 of the Term Loan Agreement in respect of the Existing

Defaults solely against the Forbearance Parties and their property; provided however, notwithstanding the foregoing, any limitations, restrictions or prohibitions on the rights of the Secured Parties set forth in any other section of the Term Loan Agreement or any other Loan Document that are conditioned on the absence of an Event of Default will continue to not be applicable to the Secured Parties as a result of the Existing Defaults; and provided further, notwithstanding the foregoing, the Secured Parties have not agreed to forbear from exercising their rights and remedies under the Term Loan Agreement and the other Loan Documents against any other Loan Party (excluding the Forbearance Parties), and the Term Loan Secured Parties reserve the right in their discretion to exercise their rights and remedies under the Term Loan Agreement and the other Loan Documents against all other Loan Parties (excluding the Forbearance Parties).

(b) Upon the expiration or termination of the Forbearance Period, the agreement of the Secured Parties to forbear will automatically and without further action terminate and be of no force and effect, it being expressly agreed that the effect of such termination will be to permit the Secured Parties to exercise immediately all rights and remedies under the Term Loan Agreement and the other Loan Documents and applicable law, including, but not limited to, accelerating all of the Obligations under the Term Loan Agreement and the other Loan Documents, in all events, without any further notice to Supplier, passage of time or forbearance of any kind.

(c) Notwithstanding anything to the contrary set forth herein, the forbearance granted in Section 3.2(a) shall not apply to any Prior Enforcement Action (or any other action or undertaking by any Secured Party in connection with any Prior Enforcement Action still in progress) or to any Permitted Enforcement Action.

### **3.3. No Waivers; Reservation of Rights.**

(a) The Secured Parties have not waived, are not by this Agreement waiving, and have no intention of waiving, any Events of Default which may be continuing on the Effective Date or any Events of Default which may occur after the Effective Date (whether the same or similar to the Existing Defaults or otherwise), and the Secured Parties have not agreed to forbear with respect to any of their rights or remedies concerning any Events of Default (other than, during the Forbearance Period, the Existing Defaults to the extent expressly set forth herein) occurring at any time.

(b) Subject to Section 3.2(a) above (solely with respect to the Existing Defaults), the Secured Parties reserve the right, in their discretion, to exercise any or all of their rights and remedies under the Term Loan Agreement and the other Loan Documents as a result of any other Events of Default occurring at any time. The Secured Parties have not waived any of such rights or remedies, and nothing in this Agreement, and no delay on their part in exercising any such rights or remedies, may or will be construed as a waiver of any such rights or remedies.

**3.4. Additional Events of Default.** Each Forbearance Party hereby acknowledges, confirms and agrees that any misrepresentation by such Forbearance Party, or any failure of such Forbearance Party to comply with the covenants, conditions and agreements contained in this Agreement, the Term Loan Agreement or any other Loan Document or in any other agreement, document or instrument at any time executed or delivered by such Forbearance Party with, to or in favor of any Secured Party will constitute an immediate Event of Default under the Term Loan

Agreement and the other Loan Documents. In the event that any Person, other than any Secured Party, will at any time exercise for any reason (including, without limitation, by reason of any Existing Default, any other present or future Event of Default, or otherwise) any of its rights or remedies against any Forbearance Party or any obligor providing credit support for such Forbearance Party's obligations to such other Person, or against such Forbearance Party's or such obligor's properties or assets, on account of an amount in excess of \$500,000, such event will constitute an immediate Event of Default hereunder and an Event of Default under the Term Loan Agreement and the other Loan Documents (without any notice or grace or cure period).

#### **SECTION 4. REPRESENTATIONS AND WARRANTIES**

Each Forbearance Party hereby represents, warrants and covenants as follows:

4.1. **Representations in the Term Loan Agreement and the Other Loan Documents.** Each of the representations and warranties made by or on behalf of each Forbearance Party to Agent or any Lender in the Term Loan Agreement or any of the other Loan Documents was true and correct when made, and is, except for the Existing Defaults, true and correct on and as of the date of this Agreement with the same full force and effect as if each of such representations and warranties had been made by each Forbearance Party on the Effective Date and in this Agreement.

4.2. **Binding Effect of Documents.** This Agreement has been duly authorized, executed and delivered to Agent and Lenders by each Forbearance Party, is enforceable in accordance with its terms and is in full force and effect except as enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally or principles of equity.

4.3. **No Conflict.** The execution, delivery and performance of this Agreement by each Forbearance Party will not violate any requirement of law or contractual obligation of any Forbearance Party and will not result in, or require, the creation or imposition of any Lien on any of their respective properties or revenues.

#### **SECTION 5. CONDITIONS TO EFFECTIVENESS OF CERTAIN PROVISIONS OF THIS AGREEMENT**

The terms and provisions of this Agreement will be effective immediately upon satisfaction of the following conditions precedent:

- (a) Agent's receipt of this Agreement, duly authorized, executed and delivered by each Forbearance Party;
- (b) Agent's receipt of a fully executed and effective LTA Agreement; and
- (c) Agent's receipt of an executed, duly authorized forbearance agreement among the Forbearance Parties and Revolving Loan Agent regarding the Forbearance Parties and their property in form and substance acceptable to Agent (the "Revolving Loan Forbearance Agreement").

## SECTION 6. MISCELLANEOUS

6.1. **Continuing Effect of Term Loan Agreement.** Except as modified pursuant hereto, no other changes or modifications to the Term Loan Agreement or any other Loan Document are intended or implied by this Agreement and in all other respects the Term Loan Agreement and the other Loan Documents hereby are ratified and reaffirmed by all parties hereto as of the Effective Date. To the extent of any conflict between the terms of this Agreement, the Term Loan Agreement and the other Loan Documents, the terms of this Agreement will govern and control. The Term Loan Agreement and this Agreement will be read and construed as one agreement.

6.2. **Costs and Expenses.** In addition to, and without in any way limiting, the obligations of each Forbearance Party set forth in Section 12.4 of the Term Loan Agreement, each Forbearance Party absolutely and unconditionally agrees to pay to the Agent, promptly (and in any event within 5 Business Days) upon receipt of a written invoice from the Agent accompanied by reasonable evidence supporting such invoice at any time, whether or not all or any of the transactions contemplated by this Agreement are consummated: all reasonable out-of-pocket fees, costs and expenses incurred by the Agent and any of its directors, officers, employees or agents (including, without limitation, reasonable fees, costs and expenses incurred of any counsel, advisor or consultant to the Agent), regardless of whether the Agent or any such other person is a prevailing party, in connection with (a) the preparation, negotiation, execution, delivery or enforcement of this Agreement, the Term Loan Agreement, the other Loan Documents and any agreements, documents or instruments contemplated hereby and thereby, and (b) any investigation, litigation or proceeding related to this Agreement, the Term Loan Agreement or any other Loan Document or any act, omission, event or circumstance in any matter related to any of the foregoing.

6.3. **Further Assurances.** At the Borrowers' expense, the parties hereto will execute and deliver such additional documents and take such further action as may be necessary or desirable to effectuate the provisions and purposes of this Agreement. Notwithstanding anything to the contrary set forth herein, the Forbearance Parties shall, during the Forbearance Period, concurrently with the delivery of any notice, certificate or other information required to be delivered to the Revolving Loan Agent pursuant to the Revolving Loan Forbearance Agreement, deliver such notice, certificate or other information to the Agent.

6.4. **Successors and Assigns; No Third-Party Beneficiaries.** This Agreement will be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns. No Person other than the parties hereto and, in the case of Sections 6.6 and 6.7 hereof, the Releasees, shall have any rights hereunder or be entitled to rely on this Agreement and all third-party beneficiary rights (other than the rights of the Releasees under Sections 6.6 and 6.7 hereof) are hereby expressly disclaimed.

6.5. **Survival of Representations, Warranties and Covenants.** All representations, warranties, covenants and releases of each Forbearance Party made in this Agreement or any other document furnished in connection with this Agreement will survive the execution and delivery of this Agreement and the Forbearance Period, and no investigation by the Agent or any Lender, or any closing, will affect the representations and warranties or the right of Agent and Lenders to rely upon them.



## 6.6. Release of Agent, Lender, Catalyst.

(a) In consideration of the agreements of Agent and Lender contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Forbearance Party, on behalf of itself and its successors and assigns, and its present and former members, managers, shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees, agents, legal representatives and other representatives (each Forbearance Party and all such other Persons being hereinafter referred to collectively as the “Releasing Parties” and individually as a “Releasing Party”), hereby absolutely, unconditionally and irrevocably releases, remises and forever discharges Agent, each Lender, Catalyst and each of their respective successors and assigns, and their respective present and former shareholders, members, managers, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees, agents, legal representatives and other representatives (Agent, Lenders, Catalyst and all such other Persons being hereinafter referred to collectively as the “Lender Related Parties” and individually as a “Lender Related Party”), of and from any and all demands, actions, causes of action, suits, damages and any and all other claims, counterclaims, defenses, rights of set-off, demands and liabilities whatsoever (individually, a “Claim” and collectively, “Claims”) of every kind and nature, known or unknown, suspected or unsuspected, at law or in equity, which any Releasing Party or any of its successors, assigns, or other legal representatives may now or hereafter own, hold, have or claim to have against the Lender Related Parties or any of them for, upon, or by reason of any circumstance, action, cause or thing whatsoever which arises at any time on or prior to the date of this Agreement, from or on account of, or in relation to, or in any way in connection with this Agreement. Releasing Parties hereby represent to the Lender Related Parties that they have not assigned or transferred any interest in any Claims against any Lender Related Party prior to the Effective Date.

(b) Each Forbearance Party understands, acknowledges and agrees that the release set forth above may be pleaded as a full and complete defense to any Claim and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release.

(c) Each Forbearance Party agrees that no fact, event, circumstance, evidence or transaction which could now be asserted or which may hereafter be discovered will affect in any manner the final, absolute and unconditional nature of the release set forth above.

**6.7. Covenant Not to Sue Agent, Lender, Catalyst.** Each Releasing Party hereby absolutely, unconditionally and irrevocably covenants and agrees with and in favor of each Lender Related Party that it will not sue (at law, in equity, in any regulatory proceeding or otherwise) any Lender Related Party on the basis of any Claim released, remised and discharged by any Releasing Party pursuant to Section 6.6 above. If any Releasing Party violates the foregoing covenant, each Forbearance Party, for itself and its successors and assigns, and its present and former members, managers, shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees, agents, legal representatives and other representatives, agrees to pay, in addition to such other damages as any Lender Related Party may sustain as a result of such violation, all attorneys’ fees and costs incurred by any Lender Related Party as a result of such violation.

6.8. **Release of Supplier Related Parties.** In consideration of the agreements of Agent and Lender contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Lender Related Party releases and forever discharges, and covenants not to sue any of the Supplier's or its subsidiaries' officers, directors, attorneys, employees, advisors, agents and legal representatives who serve in such capacity as of the Effective Date (collectively, the "Supplier Related Parties," and each, a "Supplier Related Party"), from and against any and all damages, liabilities, demands, debts, actions, claims, suits, costs, expenses, and attorneys' fees, whether known or unknown, contingent or certain, which each Lender Related Party has, or hereinafter may have, against any or all of the Supplier Related Parties, directly or indirectly, arising out of or related to this Agreement, the LTA Agreement or any other act or omission, transaction or agreement, in each case, (i) occurring or taking place prior to the Effective Date and (ii) solely and exclusively related to the Lender Related Party's relationship with Supplier prior to the Effective Date (collectively, the "Lender-Supplier Claims"); provided, however, the Lender-Supplier Claims do not include, and each Lender Related Party shall retain all Lender-Supplier Claims or causes of action, rights, defenses, and Losses arising out of or related to any act or omission of a Supplier Related Party that is a criminal act or constitutes fraud, gross negligence, or willful misconduct as determined by court order. Notwithstanding the foregoing, (i) all Lender-Supplier Claims are reserved for defensive purposes, and (ii) Justin Norman and any of his affiliated entities or persons shall not constitute a Supplier Related Party.

6.9. **Severability.** Any provision of this Agreement held by a court of competent jurisdiction to be invalid or unenforceable will not impair or invalidate the remainder of this Agreement.

6.10. **Reviewed by Attorneys.** Each Forbearance Party represents and warrants to the Agent and Lenders that it (a) understands fully the terms of this Agreement and the consequences of the execution and delivery of this Agreement, (b) has been afforded an opportunity to discuss this Agreement with, and have this Agreement reviewed by, such attorneys and other persons as such Forbearance Party may wish, and (c) has entered into this Agreement and executed and delivered all documents in connection herewith of its own free will and accord and without threat, duress or other coercion of any kind by any Person. The parties hereto acknowledge and agree that neither this Agreement nor the other documents executed pursuant hereto will be construed more favorably in favor of one than the other based upon which party drafted the same, it being acknowledged that all parties hereto contributed substantially to the negotiation and preparation of this Agreement and the other documents executed pursuant hereto or in connection herewith.

6.11. **Disgorgement.** If Agent or any Lender is, for any reason, compelled by a court or other tribunal of competent jurisdiction to surrender or disgorge any payment, interest or other consideration described hereunder to any person because the same is determined to be void or voidable as a preference, fraudulent conveyance, impermissible set-off or for any other reason, such indebtedness or part thereof intended to be satisfied by virtue of such payment, interest or other consideration will be revived and continue as if such payment, interest or other consideration had not been received by Agent or such Lender, and Borrowers will be liable to, and will indemnify, defend and hold Agent or such Lender harmless for, the amount of such payment or interest surrendered or disgorged. The provisions of this Section will survive repayment of the Obligations or any termination of the Term Loan Agreement or any other Loan Document.

6.12. **Tolling of Statute of Limitations.** Each and every statute of limitations or other applicable law, rule or regulation governing the time by which Agent must commence legal proceedings or otherwise take any action against any Forbearance Party with respect to any breach or default that exists on or prior to the expiration or termination of the Forbearance Period and arises under or in respect of the Term Loan Agreement or any other Loan Document shall be tolled during the Forbearance Period. Each Forbearance Party agrees, to the fullest extent permitted by law, not to include such period of time as a defense (whether equitable or legal) to any legal proceeding or other action by Agent in the exercise of its rights or remedies referred to in the immediately preceding sentence.

6.13. **Relationship.** Each Forbearance Party agrees that the relationship between the Agent and such Forbearance Party and between each Lender and such Forbearance Party is that of creditor and debtor and not that of partners or joint venturers. This Agreement does not constitute a partnership agreement, or any other association between the Agent and any Forbearance Party or between any Lender and any Forbearance Party. Each Forbearance Party acknowledges that the Agent and each Lender has acted at all times only as a creditor to such Forbearance Party within the normal and usual scope of the activities normally undertaken by a creditor and in no event has the Agent or any Lender attempted to exercise any control over such Forbearance Party or its business or affairs. Each Forbearance Party further acknowledges that the Agent and each Lender has not taken or failed to take any action under or in connection with its respective rights under the Term Loan Agreement or any of the other Loan Documents that in any way or to any extent has interfered with or adversely affected such Forbearance Party's ownership of Collateral.

6.14. **No Effect on Rights Under Subordination or Intercreditor Agreements.** The Secured Parties' agreement pursuant to Section 3.2(a) of this Agreement shall not extend to any of the Secured Parties' rights or remedies under any subordination agreement in favor of Secured Parties' (including without limitation, the Intercreditor Agreement and the Intercompany Subordination Agreement or any other intercompany subordination agreement), governing any other debt (including, without limitation, the Subordinated Indebtedness and ABL Obligations, which may arise as a result of the Existing Defaults, it being understood that the Existing Defaults shall at all times constitute Events of Default for purposes of any such agreement in favor of the Secured Parties (including without limitation, the Intercreditor Agreement and the Intercompany Subordination Agreement or any other intercompany subordination agreement), and the Secured Parties shall at all times be permitted to enforce all rights and remedies in respect thereof (including, without limitation, blocking payments to any holders of a subordinated debt, including, without limitation, the Subordinated Indebtedness and ABL Obligations, in accordance with the respective subordination agreement).

6.15. **Governing Law: Consent to Jurisdiction and Venue.** THIS AGREEMENT SHALL BE SUBJECT TO THE PROVISIONS REGARDING GOVERNING LAW, CONSENT TO JURISDICTION, SERVICE OF PROCESS AND VENUE SET FORTH IN SECTIONS 12.9 AND 12.10 OF THE TERM LOAN AGREEMENT, AND SUCH PROVISIONS ARE HEREBY INCORPORATED HEREIN BY THIS REFERENCE, *MUTATIS MUTANDIS*.

6.16. **Waivers.**



(a) **Mutual Waiver of Jury Trial.** THE PARTIES HERETO WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING BROUGHT TO RESOLVE ANY DISPUTE, WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE BETWEEN AGENT OR ANY LENDER AND ANY FORBEARANCE PARTY ARISING OUT OF, CONNECTED WITH, RELATED OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED BETWEEN THEM IN CONNECTION WITH THIS AGREEMENT OR THE TERM LOAN AGREEMENT OR THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS RELATED THERETO.

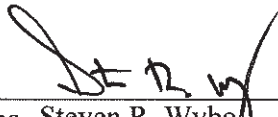
(b) **Waivers by the Forbearance Parties.** The Forbearance Parties hereby waive any rights any Forbearance Party may have upon payment in full of the Obligations to require the Agent to terminate its security interest in the Collateral, other collateral or in any other property of any Forbearance Party until termination of the Term Loan Agreement in accordance with its terms and the execution by each Forbearance Party of an agreement indemnifying the Agent from any loss or damage Agent may incur as the result of dishonored checks or other items of payment received by the Agent from any Forbearance Party or any account debtor and applied to the obligations and releasing and indemnifying, in the same manner as described in Section 6.7 of this Agreement, the Releasees from all claims arising on or before the date of such termination. Each Forbearance Party acknowledges that the foregoing waiver is a material inducement to the Agent in entering this Agreement and that Agent is relying upon the foregoing waiver in its future dealings with the Forbearance Parties.

6.17. **Counterparts.** This Agreement may be executed and delivered via facsimile or email (in .pdf format) transmission with the same force and effect as if an original were executed and may be executed in any number of counterparts, but all of such counterparts shall together constitute but one and the same agreement.

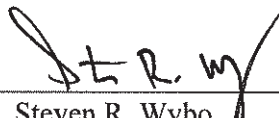
*[signatures on following page]*

IN WITNESS WHEREOF, this Agreement is executed and delivered as of the day and year first above written.

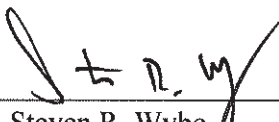
JD NORMAN INDUSTRIES, LLC  
 JD NORMAN INDUSTRIES, INC.  
 JD NORMAN METAL TECHNOLOGIES, INC.  
 JD NORMAN ELECTRIC HOLDINGS, INC.  
 JD NORMAN LESLIE BUILDING 1, LLC  
 JD NORMAN LESLIE BUILDING 2, LLC  
 JD NORMAN OHIO HOLDINGS, INC.  
 JD NORMAN INDIANA HOLDINGS, LLC  
 JD NORMAN MUNCIE BUILDING, LLC  
 JD NORMAN MUNCIE, LLC  
 JD NORMAN WINCHESTER BUILDING, LLC  
 JD NORMAN WINCHESTER, LLC  
 JD NORMAN TROY TECH CENTER, LLC  
 JD NORMAN CANADA HOLDINGS, LP  
 JD NORMAN CANADA GP, LLC  
 JD NORMAN MEXICO 2 HOLDINGS, LLC  
 JD NORMAN MEXICO HOLDINGS, LLC, each as a  
 Loan Party

By   
 Name Steven R. Wybo  
 Title Chief Restructuring Officer

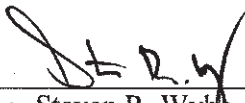
JD NORMAN CANADA, ULC, as a Loan Party

By   
 Name Steven R. Wybo  
 Title Chief Restructuring Officer


JD NORMAN DE SAN LUIS POTOSI, S. DE R.I. DE  
 C.V.  
 JD NORMAN DE SLP BODEGA, S. DE R.L. DE C.V.  
 JD NORMAN DE MEXICO S. DE. R.L. DE C.V.,  
 each as a Loan Party

By   
 Name Steven R. Wybo  
 Title Chief Restructuring Officer

JD NORMAN UK LIMITED, as a Loan Party

By   
Name Steven R. Wybo  
Title Chief Restructuring Officer

CALLIDUS CAPITAL CORPORATION, as Agent  
and Lender

By   
Name Patrick Dalton  
Title Chief Executive Officer

## Schedule 1

### Existing Defaults

1. An Event of Default under Section 9.1(a)(ii) of the Term Loan Agreement as a result of the Loan Parties' (as defined in the Term Loan Agreement) failure to pay the cash interest payment due and payable on January 31, 2019, in violation of Section 2.4(c) of the Term Loan Agreement.
2. An Event of Default under Section 9.1(a)(ii) of the Term Loan Agreement as a result of the Loan Parties' (as defined in the Term Loan Agreement) failure to pay the cash interest payment due and payable on February 28, 2019, in violation of Section 2.4(c) of the Term Loan Agreement.
3. An Event of Default under Section 9.1(a)(ii) of the Term Loan Agreement as a result of the Loan Parties' (as defined in the Term Loan Agreement) failure to pay the cash interest payment due and payable on March 31, 2019, in violation of Section 2.4(c) of the Term Loan Agreement.
4. An Event of Default under Section 9.1(a)(ii) of the Term Loan Agreement as a result of the Loan Parties' (as defined in the Term Loan Agreement) failure to pay the cash interest payment due and payable on April 30, 2019, in violation of Section 2.4(c) of the Term Loan Agreement.
5. An Event of Default under Section 9.1(a)(ii) of the Term Loan Agreement as a result of the Loan Parties' (as defined in the Term Loan Agreement) failure to pay the cash interest payment due and payable on May 31, 2019, in violation of Section 2.4(c) of the Term Loan Agreement.
6. An Event of Default under Section 9.1(a)(ii) of the Term Loan Agreement as a result of the Loan Parties' (as defined in the Term Loan Agreement) failure to pay the cash interest payment due and payable on June 30, 2019, in violation of Section 2.4(c) of the Term Loan Agreement.
7. An Event of Default under Section 9.1(a)(ii) of the Term Loan Agreement as a result of the Loan Parties' (as defined in the Term Loan Agreement) failure to pay the cash interest payment due and payable on July 31, 2019, in violation of Section 2.4(c) of the Term Loan Agreement.
8. An Event of Default under Section 9.1(a)(ii) of the Term Loan Agreement as a result of the Loan Parties' (as defined in the Term Loan Agreement) failure to pay the cash interest payment due and payable on August 31, 2019, in violation of Section 2.4(c) of the Term Loan Agreement.
9. An Event of Default under Section 9.1(a)(ii) of the Term Loan Agreement as a result of the Loan Parties' (as defined in the Term Loan Agreement) failure to pay the cash interest

- payment due and payable on September 30, 2019, in violation of Section 2.4(c) of the Term Loan Agreement.
10. An Event of Default under Section 9.1(a)(ii) of the Term Loan Agreement as a result of the Loan Parties' (as defined in the Term Loan Agreement) failure to pay the cash interest payment due and payable on October 31, 2019, in violation of Section 2.4(c) of the Term Loan Agreement.
  11. An Event of Default under Section 9.1(a)(ii) of the Term Loan Agreement as a result of the Loan Parties' (as defined in the Term Loan Agreement) failure to pay the cash interest payment due and payable on November 30, 2019, in violation of Section 2.4(c) of the Term Loan Agreement.
  12. An Event of Default under Section 9.1(a)(ii) of the Term Loan Agreement as a result of the Loan Parties' (as defined in the Term Loan Agreement) failure to pay the cash interest payment due and payable on December 31, 2019, in violation of Section 2.4(c) of the Term Loan Agreement.
  13. An Event of Default under Section 9.1(a)(i) of the Term Loan Agreement as a result of the Loan Parties' (as defined in the Term Loan Agreement) failure to pay the outstanding principal on the Term Loans (as defined in the Term Loan Agreement) due and payable on December 31, 2019, in violation of Section 2.3(b) of the Term Loan Agreement.
  14. An Event of Default under Section 9.1(a)(i) of the Term Loan Agreement as a result of the Loan Parties' (as defined in the Term Loan Agreement) failure to pay the outstanding principal on the Term Loans (as defined in the Term Loan Agreement) due and payable on September 31, 2019, in violation of Section 2.3(b) of the Term Loan Agreement.
  15. An Event of Default under Section 9.1(c) of the Term Loan Agreement as a result of the Loan Parties' (as defined in the Term Loan Agreement) failure to deliver their audited financial statements to the Agent for 2018 Fiscal Year (as defined in the Term Loan Agreement), in violation of Section 7.1(a)(iii) of the Term Loan Agreement.
  16. An Event of Default under Section 9.1(c) of the Term Loan Agreement as a result of the Loan Parties' (as defined in the Term Loan Agreement) failure to file their U.S. corporate Tax returns for 2018 when due, in violation of Section 7.1(c)(iii) of the Term Loan Agreement.
  17. An Event of Default under Section 9.1(f) and (g) of the Term Loan Agreement as a result Insolvency Proceedings commenced against JD Norman Germany GmbH in October 2019.
  18. An Event of Default under Section 9.1(c) of the Term Loan Agreement as a result of the Loan Parties' (as defined in the Term Loan Agreement) Leverage Ratio exceeding the limits set forth in Section 7.3(a) of the Term Loan Agreement on September 30, 2018 and the Loan Parties' Leverage Ratio continuing to exceed such limits presently, in violation of Section 7.3(a) of the Term Loan Agreement.

19. An Event of Default under Section 9.1(c) of the Term Loan Agreement as a result of the Loan Parties' (as defined in the Term Loan Agreement) Fixed Charge Coverage Ratio exceeding the limits set forth in Section 7.3(b) of the Term Loan Agreement on September 30, 2018 and the Loan Parties' Fixed Charge Coverage Ratio continuing to exceed such limits presently, in violation of Section 7.3(b) of the Term Loan Agreement.
20. An Event of Default under Section 9.1(c) of the Term Loan Agreement as a result of the Loan Parties' (as defined in the Term Loan Agreement) Permitted Consolidated EBITDA falling below the limits set forth in Section 7.3(c) of the Term Loan Agreement on September 30, 2018 and the Loan Parties' Fixed Charge Coverage Ratio continuing to exceed such limits presently, in violation of Section 7.3(c) of the Term Loan Agreement.
21. Events of Default under Section 7.1(a)(x) of the Term Loan Agreement as a result of the Loan Parties' (as defined in the Term Loan Agreement) failure to deliver notice of the occurrence of any Event of Default referred to above.
22. Events of Default under Section 9.1(b) of the Term Loan Agreement as a result of the failure of any representations and warranties to be true and correct as a result of the occurrence and continuance of any Event of Default referred to above.



This is Exhibit “G” referred to in the  
**AFFIDAVIT OF JOHN HO**  
sworn this 10<sup>th</sup> day of February, 2021.



---

*Commissioner for Taking Affidavits (or as may be)*



350 S. MAIN STREET, SUITE 300  
ANN ARBOR, MI 48104-2131  
TELEPHONE: (734) 623-7075  
FACSIMILE: (734) 623-1625  
<http://www.dickinsonwright.com>

DORON YITZCHAKI  
DYitzchaki@dickinsonwright.com  
(734) 623-1947

*Via Email and Federal Express*

February 2, 2021

JD Norman Industries, Inc.  
JD Norman Industries, LLC  
JD Norman Metal Technologies, Inc.  
JD Norman Electric Holdings, Inc.  
JD Norman Leslie Building 1, LLC  
JD Norman Leslie Building 2, LLC  
JD Norman Ohio Holdings, Inc.  
JD Norman Indiana, Holdings, LLC  
JD Norman Muncie Building, LLC  
JD Norman Muncie, LLC  
JD Norman Winchester Building, LLC  
JD Norman Winchester, LLC  
JD Norman Troy Tech Center, LLC  
JD Norman Canada Holdings, LP  
JD Norman Canada GP, LLC  
JD Norman Mexico 2 Holdings, LLC  
JD Norman Mexico Holdings, LLC  
JD Norman Canada, ULC  
JD Norman de San Luis Potosi, S. de R.I. de C.V.  
JD Norman de SLP Bodega, S. de R.L. de C.V.  
JD Norman de Mexico S. de R.L. de C.V.  
JD Norman UK Limited

Attn: Max Rogers, Chief Executive Officer  
787 West Belden Avenue  
Addison, Illinois 60101  
[Max.Rogers@jdnorman.com](mailto:Max.Rogers@jdnorman.com)

**Re: Notice of Expiration of Forbearance Period pursuant to Forbearance Agreement dated February 18, 2020 (“Forbearance Agreement”)**

Dear Mr. Rogers:

This Firm represents Callidus Capital Corporation (“Callidus”) as Agent and Lender as those terms are defined in the Forbearance Agreement. Capitalized terms not otherwise defined in this letter have the meanings ascribed to them in the Forbearance Agreement.

Page 2

Please take notice that pursuant to, *inter alia*, Section 1.2(b)(8) of the Forbearance Agreement, the Forbearance Period expired on December 31, 2020. Accordingly, please be advised that, pursuant to Section 3.2(b) of the Forbearance Agreement, Callidus has the right to immediately exercise all rights and remedies under the Term Loan Agreement and the other Loan Documents and applicable law, including, but not limited to, accelerating all of the Obligations under the Term Loan Agreement and the other Loan Documents, in all events without any further notice to Supplier, passage of time or forbearance of any kind (collectively, “Enforcement Rights”).

Callidus expects and hereby demands each Loan Party’s, and your, immediate and full cooperation with Callidus in the exercise of its Enforcement Rights. Further instructions from Callidus will be forthcoming.

Callidus expressly reserves all of its rights and remedies.

Very truly yours,

*/s/ Doron Yitzchaki*

cc: Paul Hastings LLP  
71 S. Wacker Drive, 45<sup>th</sup> Floor  
Chicago, Illinois 60606  
Attn: Todd Schwartz  
[toddschwartz@paulhastings.com](mailto:toddschwartz@paulhastings.com)

4836-8999-4970 v1 [57558-55]

This is Exhibit “H” referred to in the  
**AFFIDAVIT OF JOHN HO**  
sworn this 10<sup>th</sup> day of February, 2021.



---

*Commissioner for Taking Affidavits (or as may be)*

LAND  
REGISTRY  
OFFICE #12

01379-0091 (LT)

PREPARED FOR BGabbidon  
ON 2021/02/04 AT 16:43:08

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

PROPERTY DESCRIPTION: PT BLK E PL 1644 WINDSOR PTS 2 & 3 12R12466; WINDSOR

PROPERTY REMARKS:

ESTATE/QUALIFIER:  
FEE SIMPLE  
LT CONVERSION QUALIFIED

RECENTLY:  
RE-ENTRY FROM 01379-0286

PIN CREATION DATE:  
2000/07/24

OWNERS' NAMES  
JD NORMAN CANADA, ULC

CAPACITY SHARE

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
<p><b>**EFFECTIVE 2000/07/29 THE NOTATION OF THE "BLOCK IMPLEMENTATION DATE" OF 1996/01/08 ON THIS PIN**</b></p> <p><b>**WAS REPLACED WITH THE "PIN CREATION DATE" OF 2000/07/24**</b></p> <p><b>** PRINTOUT INCLUDES ALL DOCUMENT TYPES (DELETED INSTRUMENTS NOT INCLUDED) **</b></p> <p><b>**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:</b></p> <p><b>** SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES * AND ESCHEATS OR FORFEITURE TO THE CROWN.</b></p> <p><b>** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY CONVENTION.</b></p> <p><b>** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.</b></p> <p><b>**DATE OF CONVERSION TO LAND TITLES: 2000/07/24 **</b></p>						
12R1844	1974/10/25	PLAN REFERENCE				C
12R4577	1978/08/28	PLAN REFERENCE				C
R844423	1981/10/27	NOTICE		SEE DOCUMENT	DEPARTMENT OF TRANSPORT	C
<p>REMARKS: AMENDS 137437 &amp; 459284 WINDSOR AIRPORT ZONING REGULATIONS</p> <p>CORRECTIONS: 'PARTY' CHANGED FROM 'DEPARTMENT OF TRANSPORT' TO 'DEPARTMENT OF TRANSPORT' ON 1996/11/14 BY LAND REGISTRAR #3. 'PARTY' CHANGED FROM 'DEPARTMENT OF TRANSPORT' TO 'SEE DOCUMENT' ON 1997/04/01 BY LAND REGISTRAR#19. 'PARTY: DEPARTMENT OF TRANSPORT' ADDED ON 1997/04/08 BY REGISTRAR 23.</p>						
R844424	1981/10/27	NOTICE		SEE DOCUMENT	DEPARTMENT OF TRANSPORT	C
<p>CORRECTIONS: 'PARTY' CHANGED FROM 'DEPARTMENT OF TRANSPORT' TO 'SEE DOCUMENT' ON 1997/04/01 BY LAND REGISTRAR#19. 'PARTY: DEPARTMENT OF TRANSPORT' ADDED ON 1997/04/08 BY REGISTRAR 23.</p>						
12R7590	1984/07/09	PLAN REFERENCE				C
R932547	1985/03/26	AGREEMENT				C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.

NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

LAND  
REGISTRY  
OFFICE #12

01379-0091 (LT)

PREPARED FOR BGabbidon  
ON 2021/02/04 AT 16:43:08

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
12R12466	1993/03/11	PLAN REFERENCE				C
CE571214	2013/07/02	TRANSFER	\$1,444,000	FEDERAL-MOGUL CANADA LIMITED	JD NORMAN CANADA, ULC	C
CE837574	2018/07/10	CHARGE	\$95,000,000	JD NORMAN CANADA, ULC	CALLIDUS CAPITAL CORPORATION	C

This is Exhibit "I" referred to in the

**AFFIDAVIT OF JOHN HO**

sworn this 10<sup>th</sup> day of February, 2021.



---

*Commissioner for Taking Affidavits (or as may be)*

**INTERCREDITOR AGREEMENT**

This INTERCREDITOR AGREEMENT, dated as of July 10, 2018, is entered into by and between Bank of America, N.A., in its capacity as the Revolving Loan Agent (as hereinafter defined), and Callidus Capital Corporation, in its capacity as the Term Loan Agent (as hereinafter defined).

**WITNESSETH:**

WHEREAS, JD Norman Industries, Inc., JD Norman Metal Technologies, Inc., JD Norman Ohio Holdings, Inc., JD Norman Electric Holdings, Inc., JD Norman Leslie Building 1, LLC, JD Norman Leslie Building 2, LLC, JD Norman Canada, ULC, JD Norman Canada GP, JD Norman Industries, LLC, JD Norman Romania Holdings, LLC, JD Norman Germany Holdings, LLC, JD Norman Canada Holdings, LP, JD Norman Lydney Limited, a company incorporated in England and Wales with company number 08548240, JD Norman UK Limited, a company incorporated in England and Wales with company 08548195, JD Norman de San Luis Potosi, S. de R.L. de C.V., JD Norman de SLP Bodega, S. de R.L. de C.V., JD Norman de Mexico, S. de R.L. de C.V., JD Norman Indiana Holdings, LLC, JD Norman Muncie, LLC, JD Norman Winchester, LLC, JD Norman Muncie Building, LLC, JD Norman Winchester Building, LLC, JD Norman Troy Tech Center, LLC, JD Norman Mexico Holdings, LLC, JD Norman Mexico 2 Holdings, LLC, and JD Norman GmbH (collectively, the "Borrowers" and each a "Borrower"), have entered into a senior secured revolving credit facility with the Revolving Loan Agent, the lenders and the other parties for whom the Revolving Agent is acting as agent, as set forth in the Revolving Loan Agreement (as hereinafter defined) pursuant to which such lenders have made and from time to time may make loans and provide other financial accommodations to the Companies (as hereinafter defined) which are guaranteed by the Guarantors (as hereinafter defined) and secured by substantially all of the assets of the Companies and Guarantors;

WHEREAS, the Companies and Guarantors have entered into a senior secured term loan facility with the Term Loan Agent, the lenders and any other parties for whom the Term Loan Agent is acting as collateral agent, as set forth in the Term Loan Agreement (as hereinafter defined) and each other Term Loan Document (as hereinafter defined) pursuant to which such lenders have made term loans to the Companies which are guaranteed by the Guarantors and secured by substantially all of the assets of the Companies and Guarantors; and

WHEREAS, the Revolving Loan Agent, for itself and on behalf of the other Revolving Loan Secured Parties, and the Term Loan Agent, for itself and on behalf of the other Term Loan Secured Parties, desire to enter into this Intercreditor Agreement to (i) govern and confirm the relative priority of the security interests of the Revolving Loan Agent and the Term Loan Agent in the assets and properties of Grantors (as hereinafter defined), (ii) provide for the orderly allocation among the Revolving Loan Secured Parties and the Term Loan Secured Parties, in accordance with such priorities, of proceeds of such assets



and properties upon any foreclosure thereon or other disposition thereof and (iii) address certain related matters;

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and obligations herein set forth and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

Section 1. Definitions; Interpretation.

1.1 Definitions. As used in this Agreement, including in the preamble and recitals hereto, the following terms have the meanings specified below:

"Agents" shall mean, collectively, the Revolving Loan Agent and the Term Loan Agent, and "Agent" shall mean each of them.

"Aggregate Availability" has the meaning assigned to such term in the Revolving Loan Agreement as in effect on the date hereof or any substantially similar term at any time used therein or in any amendment, modification, supplement, replacement or refinancing thereof.

"Agreement" shall mean this Intercreditor Agreement, as the same now exists or may hereafter be amended, amended and restated, modified, supplemented, extended, renewed, restated or replaced from time to time in accordance with the terms hereof.

"Bank Product Obligations" shall mean Cash Management Obligations and Hedging Obligations.

"Bankruptcy Code" shall mean the United States Bankruptcy Code, being Title 11 of the United States Code, as the same now exists or may from time to time hereafter be amended, modified, recodified or supplemented.

"Bankruptcy Law" shall mean the Bankruptcy Code, Canadian Insolvency Laws, the Insolvency Act (1986), German Insolvency Code (Insolvenzordnung), the Enterprise Act (2002) and any similar Federal, state, provincial or foreign law for liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, arrangement (including under any relevant incorporating statute), rearrangement, receivership, insolvency, reorganization, judicial management, winding up, administration or the relief of debtors.

"Business Day" shall mean any day other than a Saturday, a Sunday or a day that is a legal holiday under the laws of the State of Illinois or New York or on which banking institutions in the State of Illinois or New York are required or authorized by law or other governmental action to close.

"Canadian Insolvency Law" shall mean any of the Bankruptcy and Insolvency Act (Canada), the Companies' Creditors Arrangement Act (Canada), and the Winding-up and Restructuring Act (Canada), each as now and hereafter in effect, and any successors to such statutes and any proceeding under applicable federal or provincial corporate law seeking an arrangement or compromise of some or all of the debts of a Person or a stay of proceedings to enforce some or all claims of creditors against a Person.

"Cash Equivalents" has the meaning set forth in the Revolving Loan Agreement as in effect on the date hereof or any substantially similar term at any time used therein or in any amendment, modification, supplement, replacement or refinancing thereof.

"Cash Management Obligations" shall mean with respect to any Person, the obligations of such Person arising out of (a) services relating to operating, collections, payroll, trust, or other depository or disbursement accounts, including automated clearinghouse, e-payable, electronic funds transfer, wire transfer, controlled disbursement, overdraft, depository, information reporting, lockbox and stop payment services, (b) the acceptance for deposit or the honoring for payment of any check, draft or other item with respect to any such deposit accounts, (c) commercial credit card and merchant card services and (d) any leases or other deposit, disbursement, treasury, banking or cash management services afforded to such Person by any Revolving Loan Secured Party.

"Common Collateral" shall mean all of the property and interests in property, real or personal, tangible or intangible, now owned or hereafter acquired by any Grantor in or upon which any Revolving Loan Secured Party or Term Loan Secured Party at any time has a Lien, and including, without limitation, all Proceeds of such property and interests in property, provided that Common Collateral shall not include the Exclusive Term Loan Collateral.

"Collateral Documents" shall mean the Revolving Loan Documents or the Term Loan Documents, as the context requires.

"Companies" shall mean, collectively, (a) the Borrowers, (b) any other person that at any time on or after the date hereof becomes a party to the Revolving Loan Agreement or the Term Loan Agreement as a borrower thereunder, and (c) their respective successors and assigns, and "Company" shall mean each of them.

"Discharge of Priority Revolving Loan Debt" shall mean, subject to Sections 6.9 and 11.3 hereof:

(a) the payment in full in cash of the principal and interest (including any interest which would accrue and become due but for the commencement of an Insolvency Proceeding, whether or not such amounts are allowed or allowable in whole or in part in such case) constituting Revolving Loan Debt (other than Excess Revolving Loan Debt);

(b) the payment in full in cash of all other Revolving Loan Debt (other than Excess Revolving Loan Debt) that is due and payable or otherwise accrued and owing at or

prior to the time such principal and interest are paid (including any such amounts which would accrue and become due but for the commencement of an Insolvency Proceeding, whether or not such amounts are allowed or allowable in whole or in part in such case), other than indemnification obligations for which no claim or demand for payment, whether oral or written, has been made at such time;

(c) the delivery to the Revolving Loan Agent of cash collateral, or at the Revolving Loan Agent's option, the delivery to the Revolving Loan Agent of a letter of credit payable to the Revolving Loan Agent issued by a bank acceptable to the Revolving Loan Agent and in form and substance satisfactory to the Revolving Loan Agent, in either case in respect of letters of credit, banker's acceptances or similar instruments issued under the Revolving Loan Documents (in an amount equal to one hundred five (105%) percent of the amount of such letters of credit, banker's acceptance or similar instruments), Bank Product Obligations (or, at the option of the Revolving Loan Secured Party with respect to such Bank Product Obligations, the termination of the applicable Hedging Obligations or cash management arrangements and the payment in full in cash of Revolving Loan Debt due and payable in connection with such termination), continuing obligations of the Revolving Loan Agent and the Revolving Loan Lenders under control agreements and other contingent Revolving Loan Debt for which a claim or demand for payment has been made at such time or in respect of matters or circumstances known to a Revolving Loan Secured Party at the time which are reasonably expected to result in any loss, cost, damage or expense (including attorneys' fees and legal expenses) to any Revolving Loan Secured Party for which such Revolving Loan Secured Party is entitled to indemnification by any Grantor; and

(d) the termination of the commitments of the Revolving Loan Lenders and the financing arrangements provided by the Revolving Loan Agent and the Revolving Loan Lenders to Grantors under the Revolving Loan Documents.

"Discharge of Priority Term Loan Debt" shall mean, subject to Sections 6.9 and 11.3 hereof:

(a) the payment in full in cash of the principal and interest (including any interest which would accrue and become due but for the commencement of an Insolvency Proceeding, whether or not such amounts are allowed or allowable in whole or in part in such case) constituting Term Loan Debt (other than Excess Term Loan Debt);

(b) the payment in full in cash of all other Term Loan Debt (other than Excess Term Loan Debt) that is due and payable or otherwise accrued and owing at or prior to the time such principal and interest are paid (including any such amounts which would accrue and become due but for the commencement of an Insolvency Proceeding, whether or not such amounts are allowed or allowable in whole or in part in such case), other than indemnification obligations for which no claim or demand for payment, whether oral or written, has been made at such time;

(c) the delivery to the Term Loan Agent of cash collateral in respect of contingent Term Loan Debt for which a claim or demand for payment has been made at such time or in respect of matters or circumstances known to a Term Loan Secured Party at the time which are reasonably expected to result in any loss, cost, damage or expense (including attorneys' fees and legal expenses) to any Term Loan Secured Party for which such Term Loan Secured Party is entitled to indemnification by any Grantor; and

(d) the termination of the commitments of the Term Loan Lenders and the financing arrangements provided by Term Loan Lenders to Grantors under the Term Loan Documents.

"Discharge of Revolving Loan Debt" shall mean, subject to Sections 6.9 and 11.3 hereof:

(a) the payment in full in cash of the principal and interest (including any interest which would accrue and become due but for the commencement of an Insolvency Proceeding, whether or not such amounts are allowed or allowable in whole or in part in such case) constituting Revolving Loan Debt;

(b) the payment in full in cash of all other Revolving Loan Debt that is due and payable or otherwise accrued and owing at or prior to the time such principal and interest are paid (including any such amounts which would accrue and become due but for the commencement of an Insolvency Proceeding, whether or not such amounts are allowed or allowable in whole or in part in such case), other than indemnification obligations for which no claim or demand for payment, whether oral or written, has been made at such time;

(c) the delivery to the Revolving Loan Agent of cash collateral, or at the Revolving Loan Agent's option, the delivery to the Revolving Loan Agent of a letter of credit payable to the Revolving Loan Agent issued by a bank acceptable to the Revolving Loan Agent and in form and substance satisfactory to the Revolving Loan Agent, in either case in respect of letters of credit, banker's acceptances or similar instruments issued under the Revolving Loan Documents (in an amount equal to one hundred five (105%) percent of the amount of such letters of credit, banker's acceptance or similar instruments), Bank Product Obligations (or, at the option of the Revolving Loan Secured Party with respect to such Bank Product Obligations, the termination of the applicable Hedging Obligations or cash management arrangements and the payment in full in cash of Revolving Loan Debt due and payable in connection with such termination), continuing obligations of the Revolving Loan Agent and Revolving Loan Lenders under control agreements and other contingent Revolving Loan Debt for which a claim or demand for payment has been made at such time or in respect of matters or circumstances known to a Revolving Loan Secured Party at the time which are reasonably expected to result in any loss, cost, damage or expense (including attorneys' fees and legal expenses) to any Revolving Loan Secured Party for which such Revolving Loan Secured Party is entitled to indemnification by any Grantor; and

(d) the termination of the commitments of the Revolving Loan Lenders and the financing arrangements provided by the Revolving Loan Agent and the Revolving Loan Lenders to Grantors under the Revolving Loan Documents.

"Discharge of Term Loan Debt" shall mean, subject to Sections 6.9 and 11.3 hereof:

(a) the payment in full in cash of the principal and interest (including any interest which would accrue and become due but for the commencement of an Insolvency Proceeding, whether or not such amounts are allowed or allowable in whole or in part in such case) constituting Term Loan Debt;

(b) the payment in full in cash of all other Term Loan Debt that is due and payable or otherwise accrued and owing at or prior to the time such principal and interest are paid (including any such amounts which would accrue and become due but for the commencement of an Insolvency Proceeding, whether or not such amounts are allowed or allowable in whole or in part in such case), other than indemnification obligations for which no claim or demand for payment, whether oral or written, has been made at such time;

(c) the delivery to the Term Loan Agent of cash collateral in respect of contingent Term Loan Debt for which a claim or demand for payment has been made at such time or in respect of matters or circumstances known to a Term Loan Secured Party at the time which are reasonably expected to result in any loss, cost, damage or expense (including attorneys' fees and legal expenses) to any Term Loan Secured Party for which such Term Loan Secured Party is entitled to indemnification by any Grantor; and

(d) the termination of the commitments of the Term Loan Lenders and the financing arrangements provided by the Term Loan Lenders to Grantors under the Term Loan Documents.

"Disposition" shall mean any sale, lease, license, assignment, exchange, transfer or other disposition and including any casualty or condemnation.

"ECF Prepayment Conditions" shall mean, (i) after giving effect to the making of any applicable payment, average Aggregate Availability determined over the ninety (90) day period prior to the date of any such payment and on the date of any such payment after giving pro forma effect to the making of such payment, in each case, is not less than \$6,000,000, (ii) after giving effect to the making of any applicable payment, actual Aggregate Availability on the date of any such payment is not less than \$6,000,000 and (iii) prior to making such payment, Borrowers shall deliver a to Revolving Loan Agent (1) projections prepared in good faith based on reasonable assumptions in light of the circumstances at such time and in form and substance reasonably acceptable to Revolving Loan Agent demonstrating that based on the most recently available financial statements of the Borrowers, that average Aggregate Availability projected for the sixty (60) day period beginning on the date of such payment (giving effect to the pro forma effect to the making of

such payment) will be not less than \$6,000,000 and (2) a certificate certifying that such projections were prepared in good faith based on reasonable assumptions in light of the circumstances at such time.

"Excess Cash Flow" has the meaning assigned to such term in the Term Loan Agreement as in effect on the date hereof or any substantially similar term at any time used therein or in any amendment, modification, supplement, replacement or refinancing thereof.

"Excess Cash Flow Payment" shall mean any payment or prepayment in respect of the Term Loan Debt required to be made based on Excess Cash Flow, including such payment required under Section 5.3.3 of the Term Loan Agreement as in effect on the date hereof or as such term may be amended, restated, supplemented or otherwise modified (including in any replacement or refinancing thereof) as not otherwise prohibited under Section 10.5 of this Agreement.

"Excess Revolving Loan Debt" means the sum of (a) the portion of the principal amount of the loans outstanding under the Revolving Loan Documents in excess of the Revolving Loan Cap plus (b) the portion of interest and fees that accrues or is charged with respect to that portion of the principal amount of the loans described in clause (a) of this definition.

"Excess Term Loan Debt" means the sum of (a) the portion of the principal amount of the loans outstanding under the Term Loan Documents in excess of the Term Loan Cap plus (b) the portion of interest and fees that accrues or is charged with respect to that portion of the principal amount of the loans described in clause (a) of this definition.

"Exigent Circumstance" shall mean an event or circumstance that materially and imminently threatens the ability of the Revolving Loan Agent to realize upon all or a material portion of the Revolving Loan Priority Collateral or the ability of the Term Loan Agent to realize upon all or a material portion of the Term Loan Priority Collateral, as the case may be, such as, without limitation, fraudulent removal, concealment, destruction (other than to the extent covered by insurance), material waste or abscondment thereof.

"Exclusive Term Loan Collateral" shall mean all of the property and interests in property, real or personal, tangible or intangible, now owned or hereafter acquired by the German Grantor in or upon which any Term Loan Secured Party at any time has a Lien, including, without limitation, the shares of Rege Automotive Brasov S.R.L., a Romanian limited liability company, owned by the German Grantor, including all identifiable Proceeds of such property and interests in property.

"German Grantor" means JD Norman Germany GmbH, a German limited liability company.

"Grantors" shall mean, collectively, the Companies, Guarantors and each Subsidiary of any Company or any Guarantor that shall have granted a Lien on any of its assets to secure any Revolving Loan Debt or Term Loan Debt (other than Exclusive Term

Loan Collateral), together with their respective successors and assigns; sometimes being referred to herein individually as a "Grantor".

"Guarantors" shall mean, collectively, JD Norman de Mexico, S. de R.L. de C.V., JD Norman de San Luis Potosí, S. de R.L. de C.V., JD Norman de SLP Bodega, S. de R.L. de C.V., JD Norman UK Limited, JD Norman Lydney Limited and any persons (other than the Companies) that at any time is party to a guarantee in favor of the Revolving Loan Agent or the Revolving Credit Secured Parties in respect of any of the Revolving Loan Debt or in favor of the Term Loan Agent or the Term Loan Secured Parties in respect of any of the Term Loan Debt, and in each case, their respective successors and assigns, and "Guarantor" shall mean each of them.

"Hedging Obligations" shall mean, with respect to any Person, the obligations of such Person under any agreements with respect of any interest rate, foreign currency and/or commodity exchanges, swaps, caps, collars, floors, forwards, options, or other similar arrangements as such Person may from time to time enter into (including without limitation any "swap agreement" as defined in Section 101(53B)(A) of the Bankruptcy Code) with any one or more of the Revolving Lenders or their affiliates.

"Insolvency Proceeding" shall mean (a) any voluntary or involuntary case or proceeding under any Bankruptcy Law with respect to any Grantor, (b) any other voluntary or involuntary insolvency, reorganization or bankruptcy case or proceeding, or any receivership, liquidation, power of sale, reorganization, administration or other similar case or proceeding with respect to any Grantor or with respect to any of their respective assets, (c) any proceeding seeking the appointment of any trustee, Receiver, liquidator, custodian, administrator or other insolvency official with similar powers with respect to such Person or any or all of its assets or properties, (d) any liquidation, dissolution, reorganization, administration or winding up of any Grantor whether voluntary or involuntary and whether or not involving insolvency or bankruptcy or (e) any assignment for the benefit of creditors or any other marshaling of assets and liabilities of any Grantor.

"Junior 507(b) Claims" shall have the meaning set forth in Section 6.4(c) hereof.

"Junior Agent" shall have the meaning set forth in Section 3.2(a) hereof.

"Junior Secured Parties" means, with respect to the Revolving Loan Priority Collateral, the Term Loan Secured Parties, and with respect to the Term Loan Priority Collateral, the Revolving Loan Secured Parties.

"Lien" shall mean any mortgage, deed of trust, pledge, hypothecation, assignment, land charge, deposit arrangement, security interest, encumbrance (including, but not limited to, easements, rights of way and the like), lien (statutory or other), security agreement or transfer intended as security, including without limitation, any conditional sale

or other title retention agreement, the interest of a lessor under a capital lease or any financing lease having substantially the same economic effect as any of the foregoing.

"Mexico/US Intercompany Indebtedness" shall mean any intercompany indebtedness, liabilities or obligations including indebtedness for borrowed money and including the owning at any time from any Mexican Loan Party(ies) to any US Loan Party and owing at any time from any US Loan Party(ies) to any Mexican Loan Party(ies) and including any such indebtedness that is part of a combined intercompany loan agreement among the Loan Parties and any of their Subsidiaries.

"Person" or "person" shall mean any individual, sole proprietorship, partnership, corporation (including, without limitation, any corporation which elects subchapter S status under the Internal Revenue Code of 1986, as amended), limited liability company, limited liability partnership, business trust, unincorporated association, joint stock company, trust, joint venture, or other entity or any government or any agency or instrumentality or political subdivision thereof.

"Pledged Collateral" shall have the meaning set forth in Section 5.1 hereof.

"PPSA" means the Personal Property Security Act (Ontario) and the regulations thereunder, as from time to time in effect, provided, however, if attachment, perfection or priority of an Agent's security interests in any Priority Collateral is governed by the personal property security laws of any jurisdiction other than Ontario, "PPSA" shall mean those personal property security laws in such other jurisdiction (including the Civil Code of Quebec) for the purposes of the provisions hereof relating to such attachment, perfection or priority and for the definitions related to such provisions.

"Priority Collateral" shall mean, with respect to the Revolving Loan Debt, all Revolving Loan Priority Collateral, and with respect to the Term Loan Debt, all Term Loan Priority Collateral.

"Priority Debt" shall mean, with respect to the Revolving Loan Priority Collateral, the Revolving Loan Debt, and with respect to the Term Loan Priority Collateral, the Term Loan Debt.

"Proceeds" or "proceeds" shall mean all "proceeds" as defined in Article 9 of the UCC, and in any event, shall include, without limitation whatever is receivable or received when Common Collateral or proceeds are sold, exchanged, collected or otherwise disposed of, whether such disposition is voluntary or involuntary.

"Purchasing Revolving Loan Secured Parties" shall have the meaning set forth in Section 8.1 hereof.

"Purchasing Term Loan Secured Parties" shall have the meaning set forth in Section 7.1 hereof.



"Receiver" means a receiver, interim receiver, receiver and manager, liquidator, trustee in bankruptcy or similar Person.

"Recovery" shall have the meaning set forth in Section 6.9 hereof.

"Refinance" or "refinance" shall mean, in respect of any of indebtedness, to refinance, replace, refund or repay, or to issue other indebtedness or enter into alternative financing arrangements, in exchange or replacement for, such indebtedness in whole or in part, including by adding or replacing lenders, creditors, agents, borrowers and/or guarantors, and including in each case, but not limited to, after the original instrument giving rise to such indebtedness has been terminated. "Refinanced", "refinanced", "Refinancing" and "refinancing" shall have correlative meanings.

"Revolving Loan Agent" shall mean Bank of America, N.A., and its successors and assigns in its capacity as agent pursuant to the Revolving Loan Documents acting for and on behalf of the other Revolving Loan Secured Parties and any successor or replacement agent.

"Revolving Loan Agreement" shall mean the Second Amended and Restated Credit Agreement, dated as of even date herewith, by and among Borrowers, Revolving Loan Agent and Revolving Loan Lenders, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

"Revolving Loan Cap" shall mean: (a) the sum of (which amount shall be increased by the amount of all interest, fees, costs, expenses, indemnities, and other amounts accrued or charged with respect to any of the Revolving Loan Debt (other than Excess Revolving Loan Debt) as and when the same accrues or becomes due and payable, irrespective of whether the same is added to the principal amount of the Revolving Loan Debt and including the same as would accrue and become due but for the commencement of an Insolvency Proceeding, whether or not such amounts are allowed or allowable, in whole or in part, in any such Insolvency Proceeding): (i) \$44,000,000 plus (iii) the amount of (x) all Bank Product Obligations described in clause (c) of the definition of Cash Management Obligations in an aggregate amount not to exceed \$4,000,000 and (y) all other Bank Product Obligations not described in the preceding clause (x), plus (iv) during an Insolvency Proceeding, incremental principal amount equal to 20% of the of the aggregate commitments under the Revolving Loan Documents as in effect immediately before the commencement of such Insolvency Proceeding (or, if earlier, immediately prior to the suspension or termination of such commitments in accordance with the terms of the Revolving Loan Agreement), minus (v) the amount of all payments of revolving loan obligations under the Revolving Loan Agreement that result in a permanent reduction of the revolving credit commitments under the Revolving Loan Agreement (other than (A) payments of such loan obligations in connection with a Refinancing thereof and (B) any commitment reduction occurring as a result of a Revolving Loan Event of Default).

"Revolving Loan Cash Collateral" shall have the meaning set forth in Section 6.2 hereof.

"Revolving Loan Debt" shall mean all "Obligations" as such term is defined in the Revolving Loan Agreement, including, without limitation, obligations, liabilities and indebtedness of every kind, nature and description owing by any Grantor to any Revolving Loan Secured Party, including principal, interest, Bank Product Obligations, charges, fees, premiums, indemnities and expenses, however evidenced, whether as principal, surety, endorser, guarantor or otherwise, arising under any of the Revolving Loan Documents, whether now existing or hereafter arising, whether arising before, during or after the initial or any renewal term of the Revolving Loan Documents or after the commencement of any case with respect to any Grantor under the Bankruptcy Code or any other Bankruptcy Law or any other Insolvency Proceeding (and including, without limitation, any principal, interest, fees, costs, expenses and other amounts which would accrue and become due but for the commencement of such case, whether or not such amounts are allowed or allowable in whole or in part in such case or similar proceeding), whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, secured or unsecured.

"Revolving Loan Debt Purchase Event" shall mean:

- (a) the acceleration of any Revolving Loan Debt;
- (b) Revolving Loan Agent's taking of any secured creditor remedies with respect to all or a material portion of the Revolving Loan Priority Collateral;
- (c) Revolving Loan Agent's taking of any secured creditor remedies with respect to any Term Loan Priority Collateral;
- (d) the occurrence of a Revolving Loan Event of Default as a result of a failure to make payment of any Revolving Loan Debt that remains unwaived for a period of at least ten (10) days after the occurrence of such Revolving Loan Event of Default; or
- (e) the refusal of the Revolving Loan Lenders to make revolving loans requested by the Borrowers that would otherwise have been available to the Borrowers under the Revolving Loan Documents (or the use of cash collateral in lieu thereof) had there been no Revolving Loan Event of Default in existence so long as such refusal continues for a period of more than fifteen (15) consecutive days (provided this clause (f) will only be a Revolving Loan Debt Purchase Event during the five (5) Business Day period after the expiration of such fifteen (15) consecutive day period);
- (f) the making of any Overadvance Loans (as defined in the Revolving Loan Agreement as of the date hereof) under the Revolving Loan Agreement;

(g) the termination of all or substantially all of the revolving loan commitments under the Revolving Loan Documents as a result of a Revolving Loan Event of Default; or

(h) the commencement of an Insolvency Proceeding by or against any Grantor.

"Revolving Loan DIP Financing" shall have the meaning set forth in Section 6.2 hereof.

"Revolving Loan Documents" shall mean, collectively, the Revolving Loan Agreement and all agreements, documents and instruments at any time executed and/or delivered by any Grantor or any other person to, with or in favor of any Revolving Loan Secured Party in connection therewith or related thereto, as all of the foregoing now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated, refinanced, replaced or restructured (in whole or in part and including any agreements with, to or in favor of any other lender or group of lenders that at any time refinances, replaces or succeeds to all or any portion of the Revolving Loan Debt), in each case, in accordance with the terms of this Agreement.

"Revolving Loan Event of Default" shall mean any "Event of Default" as defined in the Revolving Loan Agreement, as in effect on the date hereof or as such term may be amended, restated, supplemented or otherwise modified (including in any replacement or refinancing thereof).

"Revolving Loan Lenders" shall mean, collectively, any person party to the Revolving Loan Documents as lender (and including any other lender or group of lenders that at any time refinances, replaces or succeeds to all or any portion of the Revolving Loan Debt or is otherwise party to the Revolving Loan Documents as a lender), and "Revolving Loan Lender" shall mean each of them.

"Revolving Loan Priority Collateral" shall mean all Common Collateral described on Annex A annexed hereto.

"Revolving Loan Secured Parties" shall mean, collectively, (a) Revolving Loan Agent, (b) the Revolving Loan Lenders, (c) the issuing bank or banks of letters of credit or similar instruments under the Revolving Loan Agreement, (d) each other person to whom any of the Revolving Loan Debt (including Revolving Loan Debt constituting Bank Product Obligations) is owed and (e) the successors, replacements and assigns of each of the foregoing, and "Revolving Loan Secured Party" shall mean each of them.

"Revolving Loan Standstill Period" shall have the meaning set forth in Section 3.1(a) hereof.

"Secured Parties" shall mean, collectively, the Revolving Loan Secured Parties and the Term Loan Secured Parties, and "Secured Party" shall mean each of them.

"Senior 507(b) Claims" shall have the meaning set forth in Section 6.4(c) hereof.

"Senior Agent" shall have the meaning set forth in Section 3.2(a) hereof.

"Subsidiary" shall mean, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; provided, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a "qualifying share" of the former Person shall be deemed to be outstanding.

"Term Loan Agent" shall mean Callidus Capital Corporation and its successors and assigns in its capacity as collateral agent and administrative pursuant to the Term Loan Documents acting for and on behalf of the other Term Loan Secured Parties and any successor or replacement agent in such capacities.

"Term Loan Agreement" shall mean the Credit Agreement, dated as of even date herewith, among the Companies, the Guarantors, the Term Loan Agent and the Term Loan Lenders, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

"Term Loan Cap" shall mean: (a) the sum of (which amount shall be increased by the amount of all interest, fees (including any interest paid-in-kind and capitalized on the principal amount set forth in clause (i) of this definition), costs, expenses, indemnities, and other amounts accrued or charged with respect to any of the Term Loan Debt (other than Excess Term Loan Debt) as and when the same accrues or becomes due and payable, irrespective of whether the same is added to the principal amount of the Term Loan Debt and including the same as would accrue and become due but for the commencement of an Insolvency Proceeding, whether or not such amounts are allowed or allowable, in whole or in part, in any such Insolvency Proceeding): (i) \$105,000,000, plus (ii) during an Insolvency Proceeding, incremental principal amount equal to 20% of the aggregate principal of Term Loan Debt outstanding immediately before the commencement of such Insolvency Proceeding, minus (iii) the amount of all payments of principal of Term Loan Debt (other than (A) payments of such loan obligations in connection with a Refinancing thereof, (B) any commitment reduction occurring as a result of a Revolving Loan Event of Default and (C) any payment of such loan obligations constituting the payment of interest previously paid-in-kind).

"Term Loan Cash Collateral" shall have the meaning set forth in Section 6.2 hereof.

"Term Loan Debt" shall mean all "Obligations" as such term is defined in the Term Loan Agreement, including, without limitation, obligations, liabilities and indebtedness of every kind, nature and description owing by any Grantor to any Term Loan Secured Party, including principal, interest, charges, fees, premiums, indemnities and expenses, however evidenced, whether as principal, surety, endorser, guarantor or otherwise, arising under any of the Term Loan Documents, whether now existing or hereafter arising, whether arising before, during or after the initial or any renewal term of the Term Loan Documents or after the commencement of any case with respect to any Grantor under the Bankruptcy Code or any other Bankruptcy Law or any other Insolvency Proceeding (and including, without limitation, any principal, interest, fees, costs, expenses and other amounts, which would accrue and become due but for the commencement of such case, whether or not such amounts are allowed or allowable in whole or in part in such case or similar proceeding), whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, secured or unsecured.

"Term Loan Debt Purchase Event " shall mean:

- (a) the acceleration of any Term Loan Debt;
- (b) Term Loan Agent's taking of any secured creditor remedies with respect to all or a material portion of the Term Loan Priority Collateral;
- (c) Term Loan Agent's taking of any secured creditor remedies with respect to any Revolving Loan Priority Collateral;
- (d) the occurrence of a Term Loan Event of Default as a result of a failure to make payment of any Term Loan Debt that remains unwaived for a period of at least ten (10) days after the occurrence of such Term Loan Event of Default; or
- (e) the commencement of an Insolvency Proceeding by or against any Grantor.

"Term Loan DIP Financing" shall have the meaning set forth in Section 6.2 hereof.

"Term Loan Documents" shall mean, collectively, the Term Loan Agreement and all agreements, documents and instruments at any time executed and/or delivered by any Grantor or any other person to, with or in favor of any Term Loan Secured Party in connection therewith or related thereto, as all of the foregoing now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated, refinanced, replaced or restructured (in whole or in part and including any agreements with, to or in favor of any other lender or group of lenders that at any time refinances, replaces or succeeds to all or any

portion of the Term Loan Debt), in each case, in accordance with the terms of this Agreement.

"Term Loan Event of Default" shall mean any "Event of Default" as defined in the Term Loan Agreement, as in effect on the date hereof or as such term may be amended, restated, supplemented or otherwise modified (including in any replacement or refinancing thereof).

"Term Loan Lenders" shall mean, collectively, any person party to the Term Loan Documents as lender (and including any other lender or group of lenders that at any time refinances, replaces or succeeds to all or any portion of the Term Loan Debt or is otherwise party to the Term Loan Documents as a lender), and "Term Loan Lender" shall mean each of them.

"Term Loan Priority Collateral" shall mean (a) (i) 100% of the equity interests of existing and future Grantors in which a security interest is required to be granted under the Term Loan Documents; (ii) all fee-owned real property of any Grantor; (iii) all "equipment" (as defined in Article 9 of the UCC) of any Grantor; (iv) all intellectual property of Grantors and any other general intangibles and documents pertaining to the items of property included within the clauses of this paragraph; (v) all "fixtures" (as defined in Article 9 of the UCC) of the Grantors; (vi) "records" (as defined in Article 9 of the UCC), "supporting obligations" (as defined in Article 9 of the UCC) and related "letters of credit" (as defined in Article 5 of the UCC), commercial tort claims or other claims and causes of action, in each case, to the extent related to any of the other items of property included within the other clauses of this paragraph; (vii) all intercompany notes and intercompany indebtedness of Grantors other than Mexico/US Intercompany Indebtedness; (viii) cash, Cash Equivalents, "uncertificated securities," "securities entitlements" (each as defined in Article 8 of the UCC), "payment intangibles," and "instruments" (each as defined in Article 9 of the UCC) that are identifiable proceeds of Term Loan Priority Collateral held in a Term Loan Proceeds Account; (ix) proceeds with respect to tax refunds; and (x) all Common Collateral other than the Revolving Loan Priority Collateral, (b) all Exclusive Term Loan Collateral and (c) all substitutions, replacements, accessions, products and proceeds (including, without limitation, insurance proceeds, licenses, royalties, income, payments, claims, damages and proceeds of suit) of any or all of the foregoing described in clauses (a) and (b).

"Term Loan Proceeds Account" shall mean one or more Deposit Accounts or Securities Accounts established by the Term Loan Agent into which there may be deposited Proceeds of sales or dispositions of Term Priority Collateral as required by the terms of the Term Loan Documents (to the extent such Proceeds constitute Term Priority Collateral).

"Term Loan Purchase Event" shall mean:

- (a) the acceleration of any Revolving Loan Debt;

(b) Revolving Loan Agent's taking of any secured creditor remedies with respect to all or a material portion of the Revolving Loan Priority Collateral;

(c) Revolving Loan Agent's taking of any secured creditor remedies with respect to any Term Loan Priority Collateral;

(d) the occurrence of a Term Loan Event of Default as a result of a failure to make payment of any Term Loan Debt in excess of \$75,000 when due under the terms of the Term Loan Documents;

(e) the commencement of an Insolvency Proceeding by or against any Grantor;

(f) the refusal of the Revolving Loan Lenders to make revolving loans requested by the Borrowers that would otherwise have been available to the Borrowers under the Revolving Loan Documents (or the use of cash collateral in lieu thereof) had there been no Revolving Loan Event of Default in existence so long as such refusal continues for a period of more than fifteen (15) consecutive days (provided this clause (f) will only be a Term Loan Purchase Event during the five (5) Business Day period after the expiration of such fifteen (15) consecutive day period); or

(g) the termination of all or substantially all of the revolving loan commitments under the Revolving Loan Documents as a result of a Revolving Loan Event of Default.

"Term Loan Secured Parties" shall mean, collectively, (a) Term Loan Agent, (b) the Term Loan Lenders, (c) each other person to whom any of the Term Loan Debt is owed and (d) the successors, replacements and assigns of each of the foregoing, and "Term Loan Secured Party" shall mean each of them.

"Term Loan Standstill Period" shall have the meaning set forth in Section 3.1(b)(i) hereof.

"Third Party Purchaser" shall have the meaning set forth in Section 9.1 hereof.

"UK Grantor" shall mean any Grantor incorporated in England and Wales.

"Uniform Commercial Code" or "UCC" shall mean the Uniform Commercial Code as from time to time in effect in the State of New York, provided, however, if attachment, perfection or priority of any party's security interests in any Priority Collateral are governed by the personal property security laws of any jurisdiction other than the State of Illinois, UCC shall mean those personal property security laws in such other jurisdiction, including the PPSA, for the purposes of the provisions hereof relating to such attachment, perfection or priority and for the definitions related to such provisions.

## 1.2 Terms Generally.

The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise, (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified, (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, and as to any Company, any Guarantor or any other Grantor shall be deemed to include a Receiver, trustee or debtor-in-possession on behalf of any of such person or on behalf of any such successor or assign, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Sections shall be construed to refer to Sections of this Agreement and (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

## Section 2. Lien Priorities

### 2.1 Acknowledgment of Liens.

(a) Revolving Loan Agent, on behalf of itself and each Revolving Credit Secured Party, hereby acknowledges that Term Loan Agent, acting for and on behalf of itself and the Term Loan Secured Parties, has been granted Liens upon all of the Common Collateral pursuant to the Term Loan Agreements to secure the Term Loan Debt.

(b) Term Loan Agent, on behalf of itself and each Term Loan Secured Party, hereby acknowledges that Revolving Loan Agent, acting for and on behalf of itself and the Revolving Loan Secured Parties, has been granted Liens upon all of the Common Collateral pursuant to the Revolving Loan Documents to secure the Revolving Loan Debt.

### 2.2 Relative Priorities.

(a) Notwithstanding the date, manner or order of grant, attachment or perfection of any Liens granted to the Revolving Loan Agent or the Revolving Loan Secured Parties or Term Loan Agent or the Term Loan Secured Parties and notwithstanding any provision of the UCC, or any applicable law or any provisions of the Revolving Loan Documents or the Term Loan Documents or any defect or deficiencies in, or failure to perfect, any Liens or any other circumstance whatsoever, the Term Loan Agent, on behalf of itself and the Term Secured Parties, and the Revolving Loan Agent, on behalf of itself and the Revolving Secured Parties, hereby agree that:



(i) any Lien on the Revolving Loan Priority Collateral securing the Revolving Loan Debt (other than the Excess Revolving Loan Debt) now or hereafter held by or for the benefit or on behalf of any Revolving Loan Secured Party or any agent or trustee therefor shall be senior in right, priority, operation, effect and in all other respects to any Lien on the Revolving Loan Priority Collateral securing the Term Loan Debt now or hereafter held by or for the benefit or on behalf of any Term Loan Secured Party or any agent or trustee therefor and any Lien on the Revolving Loan Priority Collateral securing any of the Term Loan Debt now or hereafter held by or for the benefit or on behalf of any Term Loan Secured Party or any agent or trustee therefor regardless of how acquired, whether by grant, statute, operation of law, subrogation or otherwise, shall be junior and subordinate in all respects to all Liens on the Revolving Loan Priority Collateral securing any Revolving Loan Debt (other than Excess Revolving Loan Debt);

(ii) any Lien on the Term Loan Priority Collateral securing the Term Loan Debt (other than Excess Term Loan Debt) now or hereafter held by or for the benefit or on behalf of any Term Loan Secured Party or any agent or trustee therefor shall be senior in right, priority, operation, effect and in all other respects to any Lien on the Term Loan Priority Collateral securing the Revolving Loan Debt now or hereafter held by or for the benefit or on behalf of any Revolving Loan Secured Party or any agent or trustee therefor and any Lien on the Term Loan Priority Collateral securing any of the Revolving Loan Debt now or hereafter held by or for the benefit or on behalf of any Revolving Loan Secured Party or any agent or trustee therefor regardless of how acquired, whether by grant, statute, operation of law, subrogation or otherwise, shall be junior and subordinate in all respects to all Liens on the Term Loan Priority Collateral securing any Term Loan Debt (other than Excess Term Loan Debt); and

(iii) any Lien on the Revolving Loan Priority Collateral securing Excess Revolving Loan Debt now or hereafter held by or for the benefit or on behalf of any Revolving Loan Secured Party or any agent or trustee therefor shall be junior in right, priority, operation, effect and in all other respects to any Lien on the Revolving Loan Priority Collateral securing the Term Loan Debt (other than then Excess Term Loan Debt) and senior in right, priority, operation, effect and in all other respects to any Lien on the Revolving Loan Priority Collateral securing the then Excess Term Loan Debt now or hereafter held by or for the benefit or on behalf of any Term Loan Secured Party or any agent or trustee therefor; and

(iv) any Lien on the Term Loan Priority Collateral securing Excess Term Loan Debt now or hereafter held by or for the benefit or on behalf of any Term Loan Secured Party or any agent or trustee therefor shall be junior in right, priority, operation, effect and in all other respects to any Lien on the

Term Loan Priority Collateral securing the Revolving Loan Debt (other than then Excess Revolving Loan Debt) and senior in right, priority, operation, effect and in all other respects to any Lien on the Term Loan Priority Collateral securing the then Excess Revolving Loan Debt now or hereafter held by or for the benefit or on behalf of any Revolving Loan Secured Party or any agent or trustee therefor.

(b) As between Revolving Loan Secured Parties and Term Loan Secured Parties, the terms of this Agreement, including the priorities set forth above, shall govern even if part or all of the Revolving Loan Debt or Term Loan Debt or the Liens securing payment and performance thereof are not perfected or are subordinated, avoided, disallowed, set aside or otherwise invalidated in any judicial proceeding or otherwise.

### 2.3 Prohibition on Contesting Liens and Claims.

(a) Each of the Revolving Loan Agent, for itself and on behalf of the other Revolving Loan Secured Parties, and Term Loan Agent, for itself and on behalf of the other Term Loan Secured Parties, agrees that it shall not (and hereby waives any right to) contest or support any other Person in contesting, in any proceeding (including any Insolvency Proceeding), the perfection, priority, extent, validity or enforceability of a Lien held, or purported to be held, by or for the benefit or on behalf of any Revolving Loan Secured Party in any Common Collateral or by or on behalf of any Term Loan Secured Party in any Common Collateral or Exclusive Term Loan Collateral, as the case may be; provided, that, nothing in this Agreement shall be construed to prevent or impair the rights of any Revolving Loan Secured Party or Term Loan Secured Party to enforce this Agreement, and provided, further, that nothing in this Agreement shall be construed to prevent any Revolving Loan Secured Party or Term Loan Secured Party from challenging the characterization of any item of Common Collateral as Term Loan Priority Collateral or Revolving Loan Priority Collateral or the value of items of Term Loan Priority Collateral or Revolving Loan Priority Collateral, respectively.

(b) Each of the Revolving Loan Agent, for itself and on behalf of the other Revolving Loan Secured Parties, and Term Loan Agent, for itself and on behalf of the other Term Loan Secured Parties, agrees that it shall not (and hereby waives any right to) contest or support any other Person in contesting, in any proceeding (including any Insolvency Proceeding), any claim, or any purported claim, of or for the benefit or on behalf of any Revolving Loan Secured Party or Term Loan Secured Party, as the case may be; provided, that, nothing in this Agreement shall be construed to prevent or impair the rights of any Revolving Loan Secured Party or Term Loan Secured Party to enforce this Agreement.

2.4 Similar Liens and Agreements. The parties hereto agree that it is their intention that the Common Collateral securing the Term Loan Debt and the Revolving Loan Debt be identical; provided that, for the avoidance of doubt, only the Term Loan Debt shall be secured by any Exclusive Term Loan Collateral. In furtherance of the foregoing and of Section 11.8, the parties hereto agree, subject to the other provisions of this Agreement, upon

request by the Revolving Loan Agent or the Term Loan Agent, to cooperate in good faith from time to time in order to determine the specific items included in the Revolving Loan Priority Collateral and the Term Loan Priority Collateral (excluding the Exclusive Term Loan Collateral) and the steps taken to perfect their respective Liens thereon and the identity of the respective parties obligated under the Term Loan Documents and the Revolving Loan Documents.

2.5 New Liens. So long as no Insolvency Proceeding has been commenced by or against any Grantor, the parties hereto agree that no Grantor shall: (a) grant or permit any additional Liens on any asset to secure any Term Loan Debt unless such grantor gives Revolving Loan Agent at least five (5) Business Days prior written notice thereof and unless such notice also offers to grant a Lien on such asset to secure the Revolving Loan Debt concurrently with the grant of a Lien thereon in favor of the Term Loan Agent, provided that the German Grantor shall not be required to grant a Lien in favor of Revolving Loan Agent and no Lien in favor of Revolving Loan Agent shall be granted or purported to be granted on any Exclusive Term Loan Collateral; or (b) grant or permit any additional Liens on any asset to secure any Revolving Loan Debt unless such Grantor gives Term Loan Agent at least five (5) Business Days prior written notice thereof and unless such notice also offers to grant a Lien on such asset to secure the Term Loan Debt concurrently with the grant of a Lien thereon in favor of the Revolving Loan Agent. To the extent that the foregoing provisions are not complied with for any reason, without limiting any other rights and remedies available to the Secured Parties, Term Loan Agent and Revolving Credit Agent agree that any amounts received by or distributed to any of the Secured Parties pursuant to or as a result of Liens granted in contravention of this Section 2.5 shall be subject to Section 4.2.

### Section 3. Enforcement

#### 3.1 Exercise of Rights and Remedies.

(a) So long as the Discharge of Revolving Loan Debt has not occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor, Term Loan Agent, for itself and on behalf of the other Term Loan Secured Parties:

(i) will not enforce or exercise, or seek to enforce or exercise, any rights or remedies (including any right of setoff or notification of account debtors) with respect to any Revolving Loan Priority Collateral (including the enforcement of any right under any lockbox agreement, account control agreement, landlord waiver or bailee's letter or any similar agreement or arrangement to which the Term Loan Agent or any other Term Loan Secured Party is a party) or commence or join with any Person (other than Revolving Loan Agent with its consent) in commencing, or filing a petition for, any action or proceeding with respect to such rights or remedies (including any foreclosure action), except, that, subject at all times to the provisions of Section 4 of this Agreement and to Section 3.1(a)(ii) of this Agreement, Term Loan Agent may enforce or exercise any or all such rights and remedies as to

any Revolving Loan Priority Collateral commencing one hundred fifty (150) days after the date of the receipt by the Revolving Loan Agent of written notice from the Term Loan Agent of the declaration by Term Loan Secured Parties of a Term Loan Event of Default in accordance with the terms of the Term Loan Documents that is continuing and the written demand by Term Loan Secured Parties of the immediate payment in full of all of the Term Loan Debt under the Term Loan Documents so long such Term Loan Event of Default has not been cured or waived (such period being referred to herein as the "Term Loan Standstill Period"); provided, that,

(A) in the event that at any time after the Term Loan Agent has sent a notice to the Revolving Loan Agent to commence the Term Loan Standstill Period, the event of default that was the basis for such notice is waived and no other Term Loan Events of Default have occurred and are then continuing, then the notice shall automatically and without further action of the parties be deemed rescinded and no Term Loan Standstill Period shall be deemed to have been commenced;

(B) the Term Loan Standstill Period shall be tolled for any period during which Revolving Loan Agent is stayed from exercising rights or remedies pursuant to any Insolvency Proceeding or court order, so long as the Revolving Loan Agent has used its commercially reasonable efforts to have such stay lifted;

(C) prior to taking any action to enforce or exercise any or all such rights and remedies, or commence or petition for any such action or proceeding, after the end of the Term Loan Standstill Period, Term Loan Agent shall give Revolving Loan Agent not more than ten (10) Business Days' and not less than five (5) Business Days' prior written notice of the intention of the Term Loan Agent or any other Term Loan Secured Party to exercise its rights and remedies, including specifying the rights and remedies that it intends to exercise, which notice may be sent prior to the end of the Term Loan Standstill Period and in the event that Term Loan Agent shall not take any action to enforce or exercise any or all of such rights within one hundred fifty (150) days after the end of the Term Loan Standstill Period, then the notice to commence such Term Loan Standstill Period shall automatically and without further action of the parties be deemed rescinded and no Term Loan Standstill Period shall be deemed to have been commenced; and

(D) notwithstanding anything to the contrary contained in Section 3.1(a)(i) above, Term Loan Agent and the other Term Loan Secured Parties may exercise any rights or remedies against any specific item or items of the Revolving Loan Priority Collateral or commence or petition for any action or proceeding with respect to such

rights or remedies after the end of the Term Loan Standstill Period, unless Revolving Loan Agent or any other Revolving Loan Secured Party is diligently pursuing in good faith the exercise of its enforcement rights or remedies against Grantors and/or all or any material portion of the Revolving Loan Priority Collateral or such item or items of Revolving Loan Priority Collateral, including, without limitation, any of the following: solicitation of bids from third parties to conduct the liquidation of all or any material portion of the Revolving Loan Priority Collateral, the engagement or retention of sales brokers, marketing agents, investment bankers, accountants, auctioneers or other third parties for the purpose of valuing, marketing, promoting or selling all or any material portion of the Revolving Loan Priority Collateral, the notification of account debtors that owe all or a material portion of the accounts to make payments to the Revolving Loan Agent or its agents, the initiation of any action to take possession of all or any material portion of the Revolving Loan Priority Collateral or the commencement of any legal proceedings or actions against or with respect to all or any material portion of the Revolving Loan Priority Collateral);

(ii) will not contest, protest or object to any foreclosure action or proceeding brought by the Revolving Loan Agent or any other Revolving Loan Secured Party, or any other enforcement or exercise by any Revolving Loan Secured Party of any rights or remedies relating solely to the Revolving Loan Priority Collateral, so long as the Liens of the Term Loan Agent attach to the Proceeds thereof subject to the relative priorities set forth in Section 2.1;

(iii) will not object to the forbearance by the Revolving Loan Agent or the other Revolving Loan Secured Parties from commencing or pursuing any foreclosure action or proceeding or any other enforcement or exercise of any rights or remedies with respect to any of the Revolving Loan Priority Collateral;

(iv) will not, so long as the Discharge of Priority Revolving Loan Debt (or the Discharge of Revolving Loan Debt with respect to Excess Term Loan Debt) has not occurred and except for actions otherwise permitted (x) in accordance with Section 3.1(a)(i)(D) or (y) in accordance with Section 6.4 but not in violation of any provision of this Agreement, take or receive any Revolving Loan Priority Collateral or any Proceeds or payment with respect thereto, in each case, in connection with the exercise of any enforcement action with respect to any Revolving Loan Priority Collateral;

(v) agrees that no covenant, agreement or restriction contained in any Term Loan Document shall be deemed to restrict in any way the rights and remedies of the Revolving Loan Agent or the other Revolving Loan Secured

Parties with respect to the Revolving Loan Priority Collateral as set forth in this Agreement and the Revolving Loan Documents;

(vi) will not object to the manner in which Revolving Loan Agent or any other Revolving Loan Secured Party may seek to enforce or collect the Revolving Loan Debt or the Liens of such Revolving Loan Secured Party on any Revolving Loan Priority Collateral to the extent not in violation of this Agreement, regardless of whether any action or failure to act by or on behalf of the Revolving Loan Agent or any other Revolving Loan Secured Party is, or could be, adverse to the interests of the Term Loan Secured Parties, and will not assert, and hereby waive, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or claim the benefit of any marshaling, appraisal, valuation or other similar right that may be available under applicable law with respect to the Revolving Loan Priority Collateral or any other rights a junior secured creditor may have under applicable law with respect to the matters described in this clause (vi); and

(vii) will not attempt, directly or indirectly, whether by judicial proceeding or otherwise, to challenge or question the validity or enforceability of any Revolving Loan Debt or any Lien of the Revolving Loan Agent or this Agreement (other than the challenging the characterization of any item of Common Collateral as Term Loan Priority Collateral or Revolving Loan Priority Collateral), or the validity or enforceability of the priorities, rights or obligations established by this Agreement.

(b) So long as the Discharge of Term Loan Debt has not occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor, Revolving Loan Agent, for itself and on behalf of the other Revolving Loan Secured Parties, and any Receiver appointed by the Revolving Loan Agent:

(i) will not, subject to Section 3.1(c) below, enforce or exercise, or seek to enforce or exercise, any rights or remedies (including any right of setoff or notification of account debtors and the enforcement of any right under any lockbox agreement, account control agreement, landlord waiver or bailee's letter or any similar agreement or arrangement with respect to any Term Loan Priority Collateral to which the Revolving Loan Agent or any other Revolving Loan Secured Party is a party) or commence or join with any Person (other than Term Loan Agent with its consent) in commencing, or filing a petition for, any action or proceeding with respect to such rights or remedies (including any foreclosure action), except, that, subject at all times to the provisions of Section 4 of this Agreement and to Section 3.1(a)(ii) of this Agreement, Revolving Loan Agent may enforce or exercise any or all such rights and remedies as to any Term Loan Priority Collateral commencing one hundred fifty (150) days after the date of the receipt by Term Loan Agent of written notice from the Revolving Loan Agent of the declaration by Revolving

Loan Secured Parties of a Revolving Loan Event of Default in accordance with the terms of the Revolving Loan Documents that is continuing and the written demand by Revolving Loan Secured Parties of the immediate payment in full of all of the Revolving Loan Debt under the Revolving Loan Documents so long such Revolving Loan Event of Default has not been cured or waived (such period being referred to herein as the "Revolving Loan Standstill Period"); provided, that,

(A) in the event that at any time after the Revolving Loan Agent has sent a notice to the Term Loan Agent to commence the Revolving Loan Standstill Period, the Revolving Loan Event of Default that was the basis for such notice is waived and no other Revolving Loan Events of Default have occurred and are then continuing, then the notice shall automatically and without further action of the parties be deemed rescinded and no Revolving Loan Standstill Period shall be deemed to have been commenced;

(B) the Revolving Loan Standstill Period shall be tolled for any period during which Term Loan Agent is stayed from exercising rights or remedies pursuant to any Insolvency Proceeding or court order so long as the Term Loan Agent has used its commercially reasonable efforts to have such stay lifted;

(C) prior to taking any action to enforce or exercise any or all such rights and remedies, or commence or petition for any such action or proceeding, after the end of the Revolving Loan Standstill Period, Revolving Loan Agent shall give Term Loan Agent not more than ten (10) Business Days' and not less than five (5) Business Days' prior written notice of the intention of the Revolving Loan Agent or any other Revolving Loan Secured Party to exercise its rights and remedies, including specifying the rights and remedies that it intends to exercise, which notice may be sent prior to the end of the Revolving Loan Standstill Period and in the event that Revolving Loan Agent shall not take any action to enforce or exercise any or all of such rights within one hundred fifty (150) days after the end of the Revolving Loan Standstill Period, then the notice to commence such Revolving Loan Standstill Period shall automatically and without further action of the parties be deemed rescinded and no Revolving Loan Standstill Period shall be deemed to have been commenced; and

(D) notwithstanding anything to the contrary contained in Section 3.1(b)(i) above, Revolving Loan Agent and the other Revolving Loan Secured Parties may exercise any rights or remedies against any specific item or items of the Term Loan Priority Collateral or commence or petition for any action or proceeding with respect to such

rights or remedies after the end of the Revolving Loan Standstill Period, unless Term Loan Agent or any other Term Loan Secured Party is diligently pursuing in good faith the exercise of its enforcement rights or remedies against all or any material portion of the Term Loan Priority Collateral or such item or items of Term Loan Priority Collateral, including, without limitation, any of the following: solicitation of bids from third parties to conduct the liquidation of all or any material portion of the Term Loan Priority Collateral, the engagement or retention of sales brokers, marketing agents, investment bankers, accountants, auctioneers or other third parties for the purpose of valuing, marketing, promoting or selling all or any material portion of the Term Loan Priority Collateral, the initiation of any action to take possession of all or any material portion of the Term Loan Priority Collateral or the commencement of any legal proceedings or actions against or with respect to all or any material portion of the Term Loan Priority Collateral);

(ii) will not contest, protest or object to any foreclosure action or proceeding brought by the Term Loan Agent or any other Term Loan Secured Party, or any other enforcement or exercise by any Term Loan Secured Party of any rights or remedies relating solely to the Term Loan Priority Collateral, so long as the Liens of the Revolving Loan Agent attach to the Proceeds thereof subject to the relative priorities set forth in Section 2.1;

(iii) will not object to the forbearance by the Term Loan Agent or the other Term Loan Secured Parties from commencing or pursuing any foreclosure action or proceeding or any other enforcement or exercise of any rights or remedies with respect to any of the Term Loan Priority Collateral;

(iv) will not, so long as the Discharge of Priority Term Loan Debt (or the Discharge of Term Loan Debt with respect to Excess Revolving Loan Debt) has not occurred and except for actions otherwise permitted (x) in accordance with Section 3.1(b)(i)(D), (y) in accordance with Section 3.1(c), or (z) in accordance with Section 6.4 but not in violation of any provision of this Agreement, during the pendency of any insolvency proceeding, take or receive any Term Loan Priority Collateral, or payment with respect thereto, in each case, in connection with the exercise of any enforcement action with respect to any Term Loan Priority Collateral;

(v) agrees that no covenant, agreement or restriction contained in any Revolving Loan Document shall be deemed to restrict in any way the rights and remedies of the Term Loan Agent or the other Term Loan Secured Parties with respect to the Term Loan Priority Collateral as set forth in this Agreement and the Term Loan Documents;



(vi) will not object to the manner in which Term Loan Agent or any other Term Loan Secured Party may seek to enforce or collect the Term Loan Debt or the Liens of such Term Loan Secured Party on any Term Loan Priority Collateral to the extent not in violation of this Agreement, regardless of whether any action or failure to act by or on behalf of the Term Loan Agent or any other Term Loan Secured Party is, or could be, adverse to the interests of the Revolving Loan Secured Parties, and will not assert, and hereby waive, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or claim the benefit of any marshaling, appraisal, valuation or other similar right that may be available under applicable law with respect to the Term Loan Priority Collateral or any other rights a junior secured creditor may have under applicable law with respect to the matters described in this clause (vi); and

(vii) will not attempt, directly or indirectly, whether by judicial proceeding or otherwise, to challenge or question the validity or enforceability of any Term Loan Debt or any Lien of the Term Loan Agent or this Agreement (other than the challenging the characterization of any item of Common Collateral as Term Loan Priority Collateral or Revolving Loan Priority Collateral), or the validity or enforceability of the priorities, rights or obligations established by this Agreement.

(c) Until the Discharge of Revolving Loan Debt has occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor, subject to Section 3.1(a)(i) hereof:

(i) the Revolving Loan Secured Parties shall have the exclusive right to commence, and if applicable, maintain the exercise of its rights and remedies with respect to the Revolving Loan Priority Collateral, including, without limitation, the exclusive right, to the extent provided for in the Revolving Loan Documents or under applicable law, to appoint an administrator in respect of a UK Grantor or a Receiver in respect of the Revolving Loan Priority Collateral, to take or retake control or possession of such Common Collateral and to hold, prepare for sale, process, sell, lease, dispose of, or liquidate such Revolving Loan Priority Collateral, without any consultation with or the consent of any Term Loan Secured Party; provided, that, the Lien securing the Term Loan Debt shall continue as to the Proceeds of such Common Collateral released or disposed of subject to the relative priorities described in Section 2 hereof;

(ii) in exercising enforcement rights and remedies with respect to the Revolving Loan Priority Collateral, the Revolving Loan Secured Parties may enforce the provisions of the Revolving Loan Documents with respect to the Revolving Loan Priority Collateral and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their

sole discretion. Such exercise and enforcement shall include the rights of an agent appointed by them to sell or otherwise realize on or dispose of any Revolving Loan Priority Collateral upon foreclosure, to incur expenses in connection with such sale or other realization or disposition, and to exercise all of the rights and remedies of a secured creditor under the UCC and of a secured creditor under the Bankruptcy Laws of any applicable jurisdiction;

(iii) Term Loan Secured Parties shall not have any right to direct any Revolving Loan Secured Party to exercise any right, remedy or power with respect to the Revolving Loan Priority Collateral and each Term Loan Secured Party shall have no right to consent to any exercise of remedies under the Revolving Loan Documents or applicable law in respect of any of the Revolving Loan Priority Collateral; and

(iv) no Term Loan Secured Party shall institute any suit or assert in any suit, bankruptcy, insolvency or other proceeding any claim against any Revolving Loan Secured Party seeking damages from or other relief by way of specific performance, instructions or otherwise, with respect to the Revolving Loan Priority Collateral.

(d) Until the Discharge of Term Loan Debt has occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor, subject to Section 3.1(b)(i) hereof, the Term Loan Secured Parties shall have the exclusive right to commence, and if applicable, maintain the exercise of its rights and remedies with respect to the Term Loan Priority Collateral, including, without limitation, the exclusive right, to the extent provided for in the Term Loan Documents or under applicable law, to appoint an administrator or a Receiver in respect of the Term Loan Priority Collateral, to take or retake control or possession of such Common Collateral and to hold, prepare for sale, process, and subject to Section 3.1(b) hereof, sell, lease, dispose of, or liquidate such Term Loan Priority Collateral, without any consultation with or the consent of any Revolving Loan Secured Party; provided that, the Lien securing the Revolving Loan Debt shall continue as to the Proceeds of such Common Collateral released or disposed of subject to the relative priorities described in Section 2 hereof. In exercising enforcement rights and remedies with respect to the Term Loan Priority Collateral, the Term Loan Secured Parties may enforce the provisions of the Term Loan Documents with respect to the Term Loan Priority Collateral and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion. Such exercise and enforcement shall include the rights of an agent appointed by them to sell or otherwise realize on or dispose of any Term Loan Priority Collateral upon foreclosure, to incur expenses in connection with such sale or other realization or disposition, and to exercise all of the rights and remedies of a secured creditor under the UCC and of a secured creditor under the Bankruptcy Laws of any applicable jurisdiction. Revolving Loan Secured Parties shall not have any right to direct any Term Loan Secured Party to exercise any right, remedy or power with respect to the Term Loan Priority Collateral and each Revolving Loan Secured Party shall have no right to consent to any exercise of remedies under the Revolving Loan Documents or applicable law in respect

of any of the Term Loan Priority Collateral. No Revolving Loan Secured Party shall institute any suit or assert in any suit, bankruptcy, insolvency or other proceeding any claim against any Term Loan Secured Party seeking damages from or other relief by way of specific performance, instructions or otherwise, with respect to the Term Loan Priority Collateral.

(e) Notwithstanding the foregoing, each of the Term Loan Agent and the Revolving Loan Agent may:

(i) file a claim or statement of interest with respect to the Revolving Loan Debt or Term Loan Debt, as the case may be; provided, that, an Insolvency Proceeding has been commenced by or against any Grantor;

(ii) in the case of the Term Loan Agent, take any action in order to create, perfect, preserve or protect (but not enforce) its Lien on any of the Revolving Loan Priority Collateral, and in the case of the Revolving Loan Agent, take any action in order to create, perfect, preserve or protect (but not, subject to Section 3.1(c), enforce) its Lien on any of the Term Loan Priority Collateral;

(iii) file any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any Person objecting to or otherwise seeking the disallowance of the claims of the Revolving Loan Secured Parties or Term Loan Secured Parties represented by it, including any claims secured by the Common Collateral, if any, or otherwise make any agreements or file any motions or objections pertaining to the claims of such Secured Parties, in each case in accordance with the terms of this Agreement;

(iv) file any pleadings, objections, motions or agreements which assert rights or interests that are available to unsecured creditors of the Grantors including, without limitation, the commencement of an Insolvency Proceeding against any Company or any other Grantor, in each case, in accordance with applicable law and in a manner not inconsistent with the terms of this Agreement;

(v) vote on any plan of reorganization, file any proof of claim, make other filings and make any arguments and motions that do not, in any case, contravene the terms of this Agreement; and

(vi) exercise all other rights and remedies as unsecured creditors against Grantor so long as such exercise does not contravene any provision of this Agreement (it being understood that any provision of this Agreement that requires any party hereto to act or to refrain from acting shall be applicable to such party in its respective capacities as a secured and an unsecured creditor).

(f) Notwithstanding anything to the contrary contained in this Agreement, the Junior Agent and any other Junior Secured Party may:

(i) join (but not take any other action) any foreclosure or judicial lien enforcement proceeding with respect to the Priority Collateral initiated by Senior Agent, so long as such action would not and would not reasonably be expected to delay or interfere in any respect with the exercise by Senior Agent of its rights with respect to the Priority Collateral; and

(ii) present bids (including, without limitation, credit bids) for and purchase Priority Collateral at any private, public or judicial foreclosure upon or other disposition of Priority Collateral initiated by any Person (including without limitation, any disposition thereof pursuant to Section 363 of the Bankruptcy Code or a similar provision under any Bankruptcy Law); provided, that (x) such Junior Secured Party does not challenge the bid of the Senior Agent for its Priority Collateral, (y) each Priority Lender may, subject to the terms of its Collateral Documents offset its Priority Debt against the purchase price for the Priority Collateral and (z) such bid must comprise consideration sufficient to result in the Discharge of Priority Revolving Loan Debt with respect to a bid by the Term Loan Agent or the Discharge of Priority Term Loan Debt with respect to a bid by the Revolving Loan Agent.

### 3.2 Release of Second Priority Liens.

(a) If the Agent with the senior Lien on any Common Collateral (the "Senior Agent") releases its Liens on any part of such Common Collateral in connection with (i) any Disposition of such Common Collateral permitted under the terms of the Revolving Loan Documents and the terms of the Term Loan Documents, (ii) the Disposition by an Agent (but not by a Grantor) of such Common Collateral in connection with the exercise of such Agent's enforcement remedies in respect of such Common Collateral or (iii) the Disposition by any Grantor of such Common Collateral with the consent of the Senior Agent so long as, in the case of any Disposition of such Common Collateral pursuant to this clause (iii), (A) a Revolving Loan Event of Default (in the case of a Disposition of Revolving Loan Priority Collateral) or Term Loan Event of Default (in the case of a Disposition of Term Loan Priority Collateral) has occurred and is continuing, (B) the net cash proceeds received from such Disposition shall be applied to repay the Revolving Loan Debt (in the case of a Disposition of Revolving Loan Priority Collateral) or the Term Loan Debt (in the case of a Disposition of Term Loan Priority Collateral) and (C) such Disposition is conducted in a commercially reasonable manner (as if such Disposition were a disposition of collateral by a secured party in accordance with the UCC) and in accordance with applicable law, then (in each case) effective upon the consummation of any such Disposition or exercise of enforcement remedies, the Agent with the junior Lien on any such Common Collateral (the "Junior Agent") shall:

(i) be deemed to have automatically and without further action released and terminated any Liens it may have on such Common Collateral; provided, that, (x) the Liens of the Senior Agent so sold or disposed of are released at the same time, and (y) such junior Lien shall remain in place with respect to any Proceeds of such sale, transfer or other disposition under this clause (a)(i) that remain after the Discharge of Revolving Loan Debt (in the case of Revolving Loan Priority Collateral) or the Discharge of Term Loan Debt (in the case of Term Loan Priority Collateral);

(ii) be deemed to have authorized the Senior Agent to file UCC amendments and terminations covering the Common Collateral so sold or otherwise disposed of with respect to the UCC financing statements between any Grantor and the Junior Agent to evidence such release and termination; and

(iii) promptly upon the request of the Senior Agent, execute and deliver such other release documents and confirmations of the authorization to file UCC amendments and terminations provided for herein, in each case as the Senior Agent may require in connection with such sale or other Disposition, to evidence and effectuate such termination and release; provided, that, any such release or UCC amendment or termination by or on behalf of the Junior Agent shall not extend to or otherwise affect any of the rights, if any, of such Junior Agent to the Proceeds from any such sale or other disposition of Common Collateral upon the payment and satisfaction in full of the Revolving Loan Debt or the Term Loan Debt, as the case may be, whichever is secured by the senior Lien on such Common Collateral.

(b) Each Agent, for itself and on behalf of the other Secured Parties for whom such Agent is acting, in its capacity as Junior Agent, hereby irrevocably constitutes and appoints the other Agent, in its capacity as Senior Agent, and any officer or agent of such Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Junior Agent or such holder or in the Junior Agent's own name, from time to time in such Senior Agent's discretion, for the purpose of carrying out the terms of this Section 3.2, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Section 3.2, including any termination statements, endorsements or other instruments of transfer or release. Nothing contained in this Agreement shall be construed to modify the obligation of the Senior Agent to act in a commercially reasonable manner in the exercise of its rights to sell, lease, license, exchange, transfer or otherwise dispose of any Common Collateral.

(c) In the event that Proceeds of Collateral are received in connection with a Disposition of Common Collateral that directly or indirectly involves both of some or all of the Revolving Loan Priority Collateral and some or all of the Term Loan Priority Collateral, the Revolving Loan Agent and the Term Loan Agent shall use commercially reasonable

efforts in good faith to allocate the Proceeds received in connection with such Disposition of such Common Collateral to the Revolving Loan Priority Collateral and the Term Loan Priority Collateral. If the Revolving Loan Agent and Term Loan Agent are unable to agree on such allocation within ten (10) Business Days (or such other period of time as Revolving Loan Agent and Term Loan Agent agree) of the consummation of such Disposition, the portion of such Proceeds that shall be allocated as Proceeds of Revolving Loan Priority Collateral for purposes of this Agreement shall be an amount equal to not less than the sum of the book value of the accounts and inventory (each as defined in the UCC) included in the Common Collateral subject to such Disposition (determined at the time of such Disposition).

### 3.3 Insurance and Condemnation Awards.

(a) So long as the Discharge of Revolving Loan Debt has not occurred, Revolving Loan Agent and the other Revolving Loan Secured Parties shall have the sole and exclusive right, subject to the rights of Grantors under the Revolving Loan Documents, to settle and adjust claims in respect of the Revolving Loan Priority Collateral under policies of insurance and to approve any award granted in any condemnation or similar proceeding, or any deed in lieu of condemnation in respect of the Revolving Loan Priority Collateral. So long as the Discharge of Revolving Loan Debt has not occurred, all Proceeds of any such policy and any such award, or any payments with respect to a deed in lieu of condemnation, shall (a) first, be paid to the Revolving Loan Agent for the benefit of the Revolving Loan Secured Parties to the extent required under, and for application in accordance with, the Revolving Loan Documents, (b) second, be paid to the Term Loan Agent for the benefit of the Term Loan Secured Parties to the extent required under, and for application in accordance with, the applicable Term Loan Documents, and (c) third, if no Term Loan Debt is outstanding, be paid to the owner of the subject property or as a court of competent jurisdiction may otherwise direct or may otherwise be required by applicable law. Until the Discharge of Revolving Loan Debt, if Term Loan Agent or any other Term Loan Secured Party shall, at any time, receive any Proceeds of any such insurance policy or any such award or payment, it shall pay such Proceeds over to the Revolving Loan Agent in accordance with, and to the extent required by, the terms of Section 4.1 and 4.2.

(b) So long as the Discharge of Term Loan Debt has not occurred, Term Loan Agent and the other Term Loan Secured Parties shall have the sole and exclusive right, subject to the rights of Grantors under the Term Loan Documents, to settle and adjust claims in respect of the Term Loan Priority Collateral under policies of insurance and to approve any award granted in any condemnation or similar proceeding, or any deed in lieu of condemnation in respect of the Term Loan Priority Collateral. So long as the Discharge of Term Loan Debt has not occurred, all Proceeds of any such policy and any such award, or any payments with respect to a deed in lieu of condemnation, shall (a) first, be paid to the Term Loan Agent for the benefit of the Term Loan Secured Parties to the extent required under, and for application in accordance with, the applicable Term Loan Documents, (b) second, be paid to the Revolving Loan Agent for the benefit of the Revolving Loan Secured Parties to the extent required under, and for application in accordance with, the Revolving Loan Documents, and (c) third, if no Revolving Loan Debt is outstanding, be paid to the

owner of the subject property or as a court of competent jurisdiction may otherwise direct or may otherwise be required by applicable law. Until the Discharge of Term Loan Debt, if Revolving Loan Agent or any other Revolving Loan Secured Party shall, at any time, receive any Proceeds of any such insurance policy or any such award or payment, it shall pay such Proceeds over to the Term Loan Agent in accordance with, and to the extent required under, the terms of Sections 4.1 and 4.2.

3.4 Rights As Unsecured Creditors. Except as otherwise provided in Sections 2.3, 3.1(a), 3.1(b), 3.1(f) and 6, Revolving Loan Agent and Term Loan Agent, may exercise any and all rights and remedies available to an unsecured creditor against any Grantor in accordance with the terms of the Revolving Loan Documents and the Term Loan Documents, respectively, and applicable law. Nothing in this Agreement shall prohibit the receipt by either of the Revolving Loan Agent or Term Loan Agent of the required payments of principal, interest, fees and other amounts so long as such receipt is not the direct or indirect result of the exercise by the Revolving Loan Agent or Term Loan Agent or any other Secured Party of foreclosure rights or other remedies as a secured creditor or enforcement in contravention of this Agreement of any Lien held by any of them or any other act in contravention of this Agreement.

3.5 Intercompany Subordination Agreements. Notwithstanding the terms of any intercompany subordination agreement among the Loan Parties and Revolving Loan Agent or Term Loan Agent, as applicable, neither Revolving Loan Agent or Term Loan Agent shall exercise any rights or remedies under any such intercompany subordination agreement as a result of the prepayment of the Intercompany Note (as defined in the Revolving Loan Agreement) or any replacement thereof during a Mexican Receivables Purchase Period (as defined in the Revolving Loan Agreement) pursuant to the terms of the Mexican Receivables Purchase Documents (as defined in the Revolving Loan Agreement) or any replacements thereof.

#### Section 4. Payments

##### 4.1 Application of Proceeds.

(a) So long as the Discharge of Revolving Loan Debt has not occurred, the Revolving Loan Priority Collateral or Proceeds thereof received in connection with any Disposition of, or collection on, such Revolving Loan Priority Collateral, shall be applied in the following order of priority:

(i) first, to the Revolving Loan Debt (other than the Excess Revolving Loan Debt) and for cash collateral as required under the Revolving Loan Documents, and in such order as specified in the applicable Revolving Loan Documents until the Discharge of Priority Revolving Loan Debt has occurred;

(ii) second, to the Term Loan Debt (other than the Excess Term Loan Debt) and for cash collateral as required under the Term Loan Documents, and in such order as specified in the applicable Term Loan Documents until the Discharge of Priority Term Loan Debt has occurred;

(iii) third, to the Excess Revolving Loan Debt, and in such order as specified in the applicable Revolving Loan Documents until the Discharge of Revolving Loan Debt has occurred; and

(iv) fourth, to the Excess Term Loan Debt, and in such order as specified in the applicable Term Loan Documents until the Discharge of Term Loan Debt has occurred.

(b) So long as the Discharge of Term Loan Debt has not occurred, the Term Loan Priority Collateral or Proceeds thereof received in connection with the Disposition of, or collection on, such Term Loan Priority Collateral shall be applied in the following order of priority:

(i) first, to the Term Loan Debt (other than the Excess Term Loan Debt) and for cash collateral as required under the Term Loan Documents, and in such order as specified in the applicable Term Loan Documents until the Discharge of Priority Term Loan Debt has occurred;

(ii) second, to the Revolving Loan Debt (other than the Excess Revolving Loan Debt) and for cash collateral as required under the Revolving Loan Documents, and in such order as specified in the applicable Revolving Loan Documents until the Discharge of Priority Revolving Loan Debt has occurred;

(iii) third, to the Excess Term Loan Debt, and in such order as specified in the applicable Term Loan Documents until the Discharge of Term Loan Debt has occurred; and

(iv) fourth, to the Excess Revolving Loan Debt, and in such order as specified in the applicable Revolving Loan Documents until the Discharge of Revolving Loan Debt has occurred.

(c) Upon the Discharge of Priority Revolving Loan Debt (or the Discharge of Revolving Loan Debt with respect to Excess Term Loan Debt), to the extent permitted under applicable law and without risk of legal liability to the Revolving Loan Agent or any other Revolving Loan Secured Party and until the Discharge of the Priority Term Loan Debt, Revolving Loan Agent shall deliver to the Term Loan Agent, without representation or recourse, any Proceeds of Common Collateral held by it at such time in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct, to be applied by the Term Loan Agent to the Term Loan Debt in such order as specified in the relevant Term Loan Documents. Upon the Discharge of Priority Term



Loan Debt (or the Discharge of Term Loan Debt with respect to Excess Revolving Loan Debt), to the extent permitted under applicable law and without risk of legal liability to the Term Loan Agent or any other Term Loan Secured Party and until the Discharge of the Priority Revolving Loan Debt, Term Loan Agent shall deliver to the Revolving Loan Agent, without representation or recourse, any Proceeds of Common Collateral held by it at such time in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct, to be applied by the Revolving Loan Agent to the Revolving Loan Debt in such order as specified in the relevant Revolving Loan Documents. The provisions of this Section 4.1 are intended solely to govern the respective Lien priorities as between Term Loan Agent and Revolving Loan Agent and shall not impose on any Agent or any other Secured Party any obligations in respect of the disposition of Proceeds of foreclosure on any Common Collateral which would conflict with prior perfected claims therein in favor of any other person or any order or decree of any court or other governmental authority or any applicable law.

#### 4.2 Payments Over.

(a) So long as the Discharge of Priority Revolving Loan Debt has not occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor, Term Loan Agent agrees, for itself and on behalf of the other Term Loan Secured Parties, that any Revolving Loan Priority Collateral or Proceeds thereof or payment with respect thereto received by the Term Loan Agent or any other Term Loan Secured Party (including any right of set-off), and including in connection with any insurance policy claim or any condemnation award (or deed in lieu of condemnation), in each case, in violation of this Agreement, shall be segregated and held in trust and promptly transferred or paid over to Revolving Loan Agent for the benefit of the Revolving Loan Secured Parties in the same form as received, with any necessary endorsements or assignments or as a court of competent jurisdiction may otherwise direct. Revolving Loan Agent is hereby authorized to make any such endorsements or assignments as agent for the Term Loan Agent. This authorization is coupled with an interest and is irrevocable.

(b) So long as the Discharge of Priority Term Loan Debt has not occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor, Revolving Loan Agent agrees, for itself and on behalf of the other Revolving Loan Secured Parties, that any Term Loan Priority Collateral or Proceeds thereof or payment with respect thereto received by the Revolving Loan Agent or any other Revolving Loan Secured Party (including any right of set-off), and including in connection with any insurance policy claim or any condemnation award (or deed in lieu of condemnation), in each case, in violation of this Agreement, shall be segregated and held in trust and promptly transferred or paid over to Term Loan Agent for the benefit of the Term Loan Secured Parties in the same form as received, with any necessary endorsements or assignments or as a court of competent jurisdiction may otherwise direct. Term Loan Agent is hereby authorized to make any such endorsements or assignments as agent for the Revolving Loan Agent. This authorization is coupled with an interest and is irrevocable.

#### 4.3 Excess Cash Flow Payments.

Notwithstanding anything to the contrary contained in the Revolving Loan Documents or the Term Loan Documents, Grantors shall not make, or be required to make, and Term Loan Secured Parties shall not receive and retain, any Excess Cash Flow Payments in respect of the Term Loan Debt unless each of the following conditions is satisfied:

(a) such Excess Cash Flow Payments shall be made annually (commencing with the fiscal year of Borrower ending December 31, 2018), no sooner than the delivery of audited financial statements for the fiscal year to which any such Excess Cash Flow Payment corresponds;

(b) the aggregate amount of any such Excess Cash Flow Payment in respect of any fiscal year shall not exceed an amount equal to fifty percent (50%) of Excess Cash Flow for such fiscal year, and

(c) after giving effect to the making of any such Excess Cash Flow Payment, the ECF Prepayment Conditions are met; provided, that, if the ECF Prepayment Conditions are not met as of the date provided for in Section 4.3(a) (the “Scheduled Term Loan ECF Payment Date”), the ECF Prepayment Conditions shall be tested again on each of the dates that are thirty (30), sixty (60), ninety (90) and one hundred twenty (120) days following such date (each, an “Additional Term Loan ECF Payment Condition Testing Date”), and if the ECF Prepayment Conditions are met as of any Additional Term Loan ECF Payment Condition Testing Date, Grantors shall be required to make on such date any portion of the relevant Excess Cash Flow Payment that was not paid on the Scheduled Term Loan ECF Payment Date due to the failure to satisfy the conditions set forth in this Section 4.3(a).

#### 4.4 Proceeds of Mandatory Prepayments.

(a) So long as the Discharge of Term Loan Debt has not occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor, all net cash proceeds (including any other Proceeds as and when converted to cash) of assets sales and casualty events received by Grantors in respect of Term Loan Priority Collateral shall (to the extent required under and in accordance with the provisions of the Term Loan Agreement) be applied to prepay the Term Loan Debt in accordance with the Term Loan Documents and this Agreement.

(b) So long as the Discharge of Revolving Loan Debt has not occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor, all net cash proceeds (including any other Proceeds as and when converted to cash) of assets sales and casualty events received by Grantors in respect of Revolving Loan Priority Collateral shall (to the extent required under and in accordance with the provisions of the Revolving Loan Agreement) be applied to prepay the Revolving Loan Debt in accordance with the Revolving Loan Documents and this Agreement.

(c) So long as no Revolving Loan Event of Default has occurred, is continuing or would be caused thereby, all net cash proceeds of any extraordinary receipt, issuance of equity or incurrence of indebtedness by any Grantor shall be applied to prepay principal of the Term Loan Debt in accordance with the Term Loan Documents.

(d) If any Revolving Loan Event of Default has occurred, is continuing or would be caused thereby, all net cash proceeds of any extraordinary receipt, issuance of equity or incurrence of indebtedness by any Grantor shall be applied to prepay the Revolving Loan Debt in accordance with the Revolving Loan Documents (to the extent required under and in accordance with the provisions of the Revolving Loan Agreement).

4.5 Tracing of and Priorities in Proceeds. Prior to the delivery of notice of the commencement of any Term Loan Standstill Period or any Revolving Loan Standstill Period with respect to the Common Collateral of a Grantor (unless an Insolvency or Liquidation Proceeding of such Grantor has been commenced and is continuing), (a) any Proceeds of Revolving Loan Priority Collateral of such Grantor used by any Grantor to acquire any Term Loan Priority Collateral shall be treated as Term Loan Priority Collateral, so long as such use of Revolving Loan Priority Collateral is otherwise not in violation of the terms of this Agreement or the Revolving Loan Documents and (b) any Proceeds of Term Loan Priority Collateral of such Grantor consisting of or used by any Grantor to acquire any Revolving Loan Priority Collateral shall be treated as Revolving Loan Priority Collateral, so long as such use of Term Loan Priority Collateral is otherwise not in violation of the terms of this Agreement or the Term Loan Documents. Prior to the delivery of notice of the commencement of any Term Loan Standstill Period or any Revolving Loan Standstill Period with respect to the Common Collateral of a Grantor (unless an Insolvency or Liquidation Proceeding of such Grantor has been commenced and is continuing), any payment of principal, interest, fees and other obligations under the Term Loan Documents that are permitted to be paid under the terms of the Revolving Loan Documents (as in effect on the date hereof) or under the terms of this Agreement, in each case, shall not be deemed to constitute a payment from the Proceeds of the Revolving Loan Priority Collateral that would be subject to these payment over provisions or such similar provisions herein.

## Section 5. Bailee for Perfection

### 5.1 Each Agent as Bailee.

(a) Each Agent agrees to hold any Common Collateral that is in the possession or control of such Agent (or its agents or bailees), to the extent that possession or control thereof is effective to perfect a Lien thereon under the Uniform Commercial Code or under any other applicable law (such Common Collateral being referred to herein as the "Pledged Collateral"), as bailee and agent for and on behalf of the other Agent solely for the purpose of perfecting the Lien granted to the other Agent in such Pledged Collateral (including as to any securities or any deposit accounts or securities accounts, if any, for purposes of satisfying the requirements of Sections 8-106(d)(3), 8-301(a)(2) and 9-313(c) of

the UCC) pursuant to the Revolving Loan Documents or Term Loan Documents, as applicable, subject to the terms and conditions of this Section 5.

(b) Until the Discharge of Revolving Loan Debt has occurred, Revolving Loan Agent shall be entitled to deal with the Pledged Collateral constituting Revolving Loan Priority Collateral in accordance with the terms of the Revolving Loan Documents. The rights of the Term Loan Agent to such Pledged Collateral shall at all times be subject to the terms of this Agreement and to the Revolving Loan Agent's rights under the Revolving Loan Documents. Until the Discharge of Term Loan Debt has occurred, Term Loan Agent shall be entitled to deal with the Pledged Collateral constituting Term Loan Priority Collateral in accordance with the terms of the Term Loan Documents. The rights of the Revolving Loan Agent to such Pledged Collateral shall at all times be subject to the terms of this Agreement and to the Term Loan Agent's rights under the Term Loan Documents.

(c) Each Agent shall have no obligation whatsoever to the other Agent or any other Secured Party to assure that the Pledged Collateral is genuine or owned by any of the Grantors or to preserve rights or benefits of any Person except as expressly set forth in this Section 5. The duties or responsibilities of each Agent under this Section 5 shall be limited solely to holding the Pledged Collateral as bailee and agent for and on behalf of the other Agent for purposes of perfecting the Lien held by the other Agent.

(d) Each Agent shall not have by reason of the Revolving Loan Documents, the Term Loan Documents or this Agreement or any other document a fiduciary relationship in respect of the other Agent or any of the other Secured Parties and shall not have any liability to the other Agent or any other Secured Party in connection with its holding the Pledged Collateral, other than for its gross negligence or willful misconduct as determined by a final, non-appealable order of a court of competent jurisdiction.

## 5.2 Transfer of Pledged Collateral.

(a) Upon the Discharge of Revolving Loan Debt, to the extent permitted under applicable law, upon the request of the Term Loan Agent, Revolving Loan Agent shall, without recourse or warranty, transfer the possession and control of the Pledged Collateral, if any, then in its possession or control to the Term Loan Agent, except in the event and to the extent (i) Revolving Loan Agent or any other Revolving Loan Secured Party has retained or otherwise acquired such Common Collateral in full or partial satisfaction of any of the Revolving Loan Debt subject to the terms of this Agreement, (ii) such Common Collateral is sold or otherwise disposed of by the Revolving Loan Agent or any other Revolving Loan Secured Party or by a Grantor as provided herein or (iii) it is otherwise required by any order of any court or other governmental authority or applicable law or would result in the risk of liability of Revolving Loan Secured Party to any third party. In connection with any transfer described in the immediately preceding sentence to the Term Loan Agent, Revolving Loan Agent agrees to take reasonable actions in its power (with all costs and expenses in connection therewith to be for the account of the Term Loan Agent and to be paid by the Companies) as shall be reasonably requested by the Term Loan Agent to

permit Term Loan Agent to obtain, for the benefit of the Term Loan Secured Parties, a first priority security interest in the Pledged Collateral, including in connection with the terms of any Collateral Access Agreement (as defined in the Revolving Loan Agreement), whether with a landlord, processor, warehouse or other third party or any Deposit Account Control Agreement (as defined in the Revolving Loan Agreement), with respect to any such agreement delivered on or after the date hereof, Revolving Loan Agent shall notify the other parties thereto that it is no longer the "Secured Party Representative", "Agent Representative", "Lender Representative" or otherwise entitled to act under such agreement and shall confirm to such parties that Second Lien Agent is thereafter the "Secured Party Representative", "Agent Representative", "Lender Representative" as any of such terms are used in any such agreement and is otherwise entitled to the rights of the secured party under such agreement. The foregoing provision shall not impose on Revolving Loan Agent or any other Revolving Loan Secured Party any obligations which would conflict with prior perfected claims therein in favor of any other person or any order or decree of any court or other governmental authority or any applicable law.

(b) Upon the Discharge of Term Loan Debt, to the extent permitted under applicable law, upon the request of the Revolving Loan Agent, Term Loan Agent shall, without recourse or warranty, transfer the possession and control of the Pledged Collateral, if any, then in its possession or control to the Revolving Loan Agent, except in the event and to the extent (a) Term Loan Agent or any other Term Loan Secured Party has retained or otherwise acquired such Common Collateral in full or partial satisfaction of any of the Term Loan Debt subject to the terms of this Agreement, (b) such Common Collateral is sold or otherwise disposed of by the Term Loan Agent or any other Term Loan Secured Party or by a Grantor as provided herein or (c) it is otherwise required by any order of any court or other governmental authority or applicable law or would result in the risk of liability of Term Loan Secured Party to any third party. In connection with any transfer described in the immediately preceding sentence to the Revolving Loan Agent, Term Loan Agent agrees to take reasonable actions in its power (with all costs and expenses in connection therewith to be for the account of the Revolving Loan Agent and to be paid by The Companies) as shall be reasonably requested by the Revolving Loan Agent to permit Revolving Loan Agent to obtain, for the benefit of the Revolving Loan Secured Parties, a first priority security interest in the Pledged Collateral. The foregoing provision shall not impose on Term Loan Agent or any other Term Loan Secured Party any obligations which would conflict with prior perfected claims therein in favor of any other person or any order or decree of any court or other governmental authority or any applicable law.

(c) Each Grantor acknowledges and agrees to the delivery or transfer of control by the Revolving Loan Agent to the Term Loan Agent, and by the Term Loan Agent to the Revolving Loan Agent of any such Common Collateral and waives and releases Revolving Loan Agent and the other Revolving Secured Parties, and Term Loan Agent and the other Term Loan Secured Parties, from any liability as a result of such action.

(d) The Term Loan Agent agrees that, until the Discharge of Term Loan Debt has occurred, it will not, without the express agreement of the Revolving Loan Agent,

deliver or require a Grantor to deliver any notice or direction to any third party (including, without limitation, any bank, insurance company or contract counterparty) or seek to enter into any direct agreement with any such third party to the extent that such third party's involvement relates to any Revolving Loan Priority Collateral located in the United Kingdom and subject to a Lien under English law (including, without limitation, deposit accounts domiciled in the United Kingdom).

(e) The Revolving Loan Agent agrees that, until the Discharge of Revolving Loan Debt has occurred, it will not, without the express agreement of the Term Loan Agent, deliver or require a Grantor to deliver any notice or direction to any third party (including, without limitation, any bank, insurance company or contract counterparty) or seek to enter into any direct agreement with any such third party to the extent that such third party's involvement relates to any Term Loan Priority Collateral located in the United Kingdom and subject to a Lien under English law (including, without limitation, deposit accounts domiciled in the United Kingdom).

## Section 6. Insolvency Proceedings

### 6.1 General Applicability.

This Agreement shall be applicable both before and after the institution of any Insolvency Proceeding involving any Grantor, including, without limitation, the filing of any petition by or against any Grantor under the Bankruptcy Code or under any other Bankruptcy Law and all converted or subsequent cases in respect thereof, and all references herein to any Grantor shall be deemed to apply to the trustee or similar official for such Grantor and such Grantor as debtor-in-possession. The relative rights of the Revolving Loan Secured Parties and the Term Loan Secured Parties in or to any distributions from or in respect of any Common Collateral or Proceeds shall continue after the institution of any Insolvency Proceeding involving any Grantor, including, without limitation, the filing of any petition or other similar proceeding by or against any Grantor under the Bankruptcy Code or under any other Bankruptcy Law and all converted cases and subsequent cases or proceedings, on the same basis as prior to the date of such institution, subject to any court order approving the financing of, or use of Revolving Loan Cash Collateral by, any Grantor as debtor-in-possession, or any other court order affecting the rights and interests of the parties hereto not in conflict with this Agreement. This Agreement shall constitute a "subordination agreement" for the purposes of Section 510(a) of the Bankruptcy Code and shall be enforceable in any Insolvency Proceeding in accordance with its terms.

### 6.2 Use of Cash Collateral; Bankruptcy Financing.

(a) If any Grantor becomes subject to any Insolvency Proceeding, until the Discharge of Revolving Loan Debt has occurred, Term Loan Agent, for itself and on behalf of the other Term Loan Secured Parties, agrees that each Term Loan Secured Party will (i) raise no objection to, nor support any other Person objecting to, and will be deemed to have consented to, the use of any Revolving Loan Priority Collateral constituting cash collateral

under Section 363 of the Bankruptcy Code, or any comparable provision of any other Bankruptcy Law ("Revolving Loan Cash Collateral"), or any post-petition financing under Section 364 of the Bankruptcy Code, or any comparable provision of any other Bankruptcy Law, whether provided by any Revolving Loan Secured Party or other Person, but in each case to the extent consented to by the Revolving Loan Agent (a "Revolving Loan DIP Financing"), (ii) will not request or accept adequate protection or any other relief in connection with the use of such Revolving Loan Cash Collateral or such Revolving Loan DIP Financing except as set forth in Section 6.4 below, and (iii) will subordinate (and will be deemed hereunder to have subordinated) the Liens of the Term Loan Agent or any other Term Loan Secured Parties on the Revolving Loan Priority Collateral (but not the Term Loan Priority Collateral) to (x) the Liens on the Revolving Loan Priority Collateral pursuant to such Revolving Loan DIP Financing, (y) any adequate protection provided to the Revolving Loan Secured Parties and (z) any professional fee, U.S. trustee fee "carve-out" or in Canada, a court-ordered charge or security approved in connection with such Revolving Loan Cash Collateral or such Revolving Loan DIP Financing to be paid prior to the discharge of the Revolving Loan Debt, in each case, on the same terms as the Liens of the Term Loan Secured Parties are subordinated hereunder to the Liens in the Revolving Loan Priority Collateral securing the Revolving Loan Debt (and such subordination will not alter in any manner the terms of this Agreement); provided, that:

(I) Revolving Loan Agent does not oppose or object to such use of cash collateral or Revolving Loan DIP Financing,

(II) the aggregate principal amount of the Revolving Loan DIP Financing plus the aggregate outstanding principal amount of loans and letters of credit included in the Revolving Loan Debt shall not exceed an amount equal to 120% of the aggregate commitments under the Revolving Loan Documents as in effect immediately before the commencement of such Insolvency Proceeding (or, if earlier, immediately prior to the suspension or termination of such commitments in accordance with the terms of the Revolving Loan Agreement),

(III) the Term Loan Secured Parties retain a Lien on the Common Collateral (including Proceeds thereof arising after the commencement of such proceeding) with the same priority relative to the Liens on such Common Collateral of the Revolving Loan Agent as existed prior to the commencement of the case under the Bankruptcy Code or other Bankruptcy Law (junior in priority to the Liens securing such Revolving Loan DIP Financing and the existing Liens in favor of the Revolving Loan Agent on the Revolving Loan Priority Collateral but senior to the Liens of the Revolving Loan Agent (and the Liens securing the Revolving Loan DIP Financing) on the Term Loan Priority Collateral to the same extent as provided under Section 2.2),

(IV) Term Loan Agent receives, as security for the Term Loan Debt, additional or replacement Liens on all post-petition assets of any Grantor

which are subject to an additional or replacement Lien to secure the Revolving Loan DIP Financing with same priority relative to the Liens of the Revolving Loan Agent as existed prior to such Insolvency Proceeding to the extent Term Loan Agent seeks such Liens and is entitled to such additional or replacement Liens under the Bankruptcy Code or other applicable Bankruptcy Law (in each case junior to the additional or replacement Liens of the Revolving Loan Agent on the Revolving Loan Priority Collateral),

(V) such Revolving Loan DIP Financing or use of Revolving Loan Cash Collateral is subject to the terms of this Agreement, and

(VI) the Term Loan Agent retains the right to object to any ancillary agreements or arrangements regarding the use of Revolving Loan Cash Collateral or the Revolving Loan DIP Financing that require a specific treatment of a claim in respect of the Term Loan Debt for purposes of a plan of reorganization (provided, that, in no event shall the foregoing be construed to give rise to the right to object to any of the rights and remedies that are customary for the Revolving Loan Agent to receive as part of any order with respect to the use of Revolving Loan Cash Collateral or any such Revolving Loan DIP Financing).

(b) If any Grantor becomes subject to any Insolvency Proceeding, until the Discharge of Term Loan Debt has occurred, Revolving Loan Agent, for itself and on behalf of the other Revolving Loan Secured Parties, agrees that each Revolving Loan Secured Party will (i) raise no objection to, nor support any other Person objecting to, and will be deemed to have consented to, the use of any Term Loan Priority Collateral constituting cash collateral under Section 363 of the Bankruptcy Code, or any comparable provision of any other Bankruptcy Law ("Term Loan Cash Collateral"), or any post-petition financing under Section 364 of the Bankruptcy Code, or any comparable provision of any other Bankruptcy Law, whether provided by any Term Loan Secured Party or other Person, but in each case to the extent approved for such purpose by the Term Loan Agent (a "Term Loan DIP Financing"), (ii) will not request or accept adequate protection or any other relief in connection with the use of such Term Loan Cash Collateral or such Term Loan DIP Financing except as set forth in Section 6.4 below, and (iii) will subordinate (and will be deemed hereunder to have subordinated) the Liens of the Revolving Loan Agent or any other Revolving Loan Secured Parties on the Term Loan Priority Collateral (but not the Revolving Loan Priority Collateral) to (x) the Liens on the Term Loan Priority Collateral pursuant to such Term Loan DIP Financing, (y) any adequate protection provided to the Term Loan Secured Parties and (z) any professional fee, U.S. trustee fee "carve-out" or in Canada, a court-ordered charge or security approved in connection with such Term Loan Cash Collateral or such Term Loan DIP Financing to be paid prior to the discharge of the Term Obligations, in each case, on the same terms as the Liens of the Revolving Loan Secured Parties are subordinated hereunder to the Liens in the Term Loan Priority Collateral securing the Term Loan Debt (and such subordination will not alter in any manner the terms of this Agreement); provided, that:



(I) Term Loan Agent does not oppose or object to such use of cash collateral or Term Loan DIP Financing,

(II) the aggregate principal amount of the Term Loan DIP Financing plus the aggregate outstanding principal amount of Term Loan Debt shall not exceed 120% of the aggregate principal amount of loans included in the Term Loan Debt outstanding immediately before the commencement of such Insolvency Proceeding,

(III) the Revolving Loan Secured Parties retain a Lien on the Common Collateral (including Proceeds thereof arising after the commencement of such proceeding) with the same priority relative to the Liens on such Common Collateral of the Term Loan Agent as existed prior to the commencement of the case under the Bankruptcy Code or other Bankruptcy Law (junior in priority to the Liens securing such Term Loan DIP Financing and the existing Liens in favor of the Term Loan Agent on the Term Loan Priority Collateral but senior to the Liens of the Term Loan Agent (and the Liens securing the Term Loan DIP Financing) on the Revolving Loan Priority Collateral to the same extent as provided under Section 2.2),

(IV) Revolving Loan Agent receives, as security for the Revolving Loan Debt, additional or replacement Liens on all post-petition assets of any Grantor which are subject to an additional or replacement Lien to secure the Term Loan DIP Financing with same priority relative to the Liens of the Term Loan Agent as existed prior to such Insolvency Proceeding to the extent Revolving Loan Agent seeks such Liens and is entitled to such additional or replacement Liens under the Bankruptcy Code or other applicable Bankruptcy Law (in each case junior to the additional or replacement Liens of the Term Loan Agent on the Term Loan Priority Collateral),

(V) such Term Loan DIP Financing or use of Term Loan Cash Collateral is subject to the terms of this Agreement, and

(VI) the Revolving Loan Agent retains the right to object to any ancillary agreements or arrangements regarding the use of Term Loan Cash Collateral or the Term Loan DIP Financing that require a specific treatment of a claim in respect of the Revolving Loan Debt for purposes of a plan of reorganization (provided that, in no event shall the foregoing be construed to give rise to the right to object to any of the rights and remedies that are customary for the Term Loan Agent to receive as part of any order with respect to the use of Term Loan Cash Collateral or any such Revolving Loan DIP Financing).

(c) Neither the Revolving Loan Agent nor any Revolving Loan Secured Party shall, directly or indirectly, provide, or seek to provide, or support any other person

providing or seeking to provide, the use of Revolving Loan Cash Collateral or Revolving Loan DIP Financing secured by Liens equal or senior in priority to the Liens on the Term Loan Priority Collateral (including any assets or property arising after the commencement of an Insolvency Proceeding) of the Term Loan Agent. Neither the Term Loan Agent nor any Term Loan Secured Party, shall, directly or indirectly, provide, or seek to provide, or support any other person providing or seeking to provide, the use of Term Loan Cash Collateral or Term Loan DIP Financing secured by Liens equal or senior in priority to the Liens on the Revolving Loan Priority Collateral (including any assets or property arising after the commencement of any Insolvency Proceeding) of the Revolving Loan Agent.

### 6.3 Relief from the Automatic Stay.

(a) So long as the Discharge of Revolving Loan Debt has not occurred, neither the Term Loan Agent nor any of the Term Loan Secured Parties will seek relief from the automatic stay or any other stay in any Insolvency Proceeding in respect of any part of the Revolving Loan Priority Collateral, any Proceeds thereof or any Lien thereon securing any of the Term Loan Debt; provided, however, that in the event that any or all of the Revolving Loan Agent and the Revolving Loan Secured Parties have obtained relief from the automatic stay or any other stay with respect to any Revolving Loan Priority Collateral, any or all of the Term Loan Agent and Term Loan Secured Parties may seek corresponding relief from the automatic stay or any other stay with respect to such Revolving Loan Priority Collateral for purposes of joining in a foreclosure or other enforcement action commenced by any of the Revolving Loan Secured Parties against any Revolving Loan Priority Collateral (even if the Term Loan Standstill Period has not expired) so long as the Term Loan Agent and/or Term Loan Secured Parties do not hinder, delay or interfere with either the efforts by the Revolving Loan Agent and/or Revolving Loan Secured Parties to obtain relief from the automatic stay or any other stay with respect to such Revolving Loan Priority Collateral or to exercise any rights or remedies against such Revolving Loan Priority Collateral.

(b) So long as the Discharge of Term Loan Debt has not occurred, neither the Revolving Loan Agent nor any of the Revolving Loan Secured Parties will seek any relief from the automatic stay or any other stay in any Insolvency Proceeding in respect of any part of the Term Loan Priority Collateral, any Proceeds thereof or any Lien thereon securing any of the Revolving Loan Debt; provided, however, that in the event that any or all of the Term Loan Agent and the Term Loan Secured Parties have obtained relief from the automatic stay or any other stay with respect to any Term Loan Priority Collateral, any or all of the Revolving Loan Agent and Revolving Loan Secured Parties may seek corresponding relief from the automatic stay or any other stay with respect to such Term Loan Priority Collateral for purposes of joining in a foreclosure or other enforcement action commenced by any of the Term Loan Secured Parties against the Term Loan Priority Collateral (even if the Revolving Loan Standstill Period has not expired) so long as the Revolving Loan Agent and/or Revolving Loan Secured Parties do not hinder, delay or interfere with either the efforts by the Term Loan Agent and/or Term Secured Parties to obtain relief from the automatic stay or any other stay with respect to such Term Loan Priority Collateral or to exercise any rights or remedies against such Term Loan Priority Collateral.

#### 6.4 Adequate Protection.

##### (a) Objections.

(i) The Term Loan Agent, on behalf of itself and the other Term Loan Secured Parties, agrees that none of them shall contest (or support any other Person contesting) in their capacities as secured creditors, any objection by the Revolving Loan Agent or the other Revolving Loan Secured Parties to any motion, relief, action or proceeding based on the Revolving Loan Agent or the other Revolving Loan Secured Parties claiming a lack of adequate protection with respect to Liens in Revolving Loan Priority Collateral to the extent not inconsistent with the other terms of this Agreement.

(ii) The Revolving Loan Agent, on behalf of itself and the other Revolving Loan Secured Parties, agrees that none of them shall contest (or support any other Person contesting) in their capacities as secured creditors, any objection by the Term Loan Agent or the other Term Loan Secured Parties to any motion, relief, action or proceeding based on the Term Loan Agent or the other Term Loan Secured Parties claiming a lack of adequate protection with respect to Liens in Term Loan Priority Collateral to the extent not inconsistent with the other terms of this Agreement.

(b) Notwithstanding anything to the contrary in Section 6.3(a), in any Insolvency Proceeding:

(i) if any or all of the Revolving Loan Secured Parties are granted adequate protection in the form of additional collateral in connection with any use of Revolving Loan Cash Collateral or a Revolving Loan DIP Financing and such additional collateral is the type of asset or property that would constitute Revolving Loan Priority Collateral, then the Term Loan Agent, on behalf of itself or any of the Term Loan Secured Parties, may seek or request adequate protection in the form of a Lien on such additional collateral, which Lien will be subordinated to the Liens securing the Revolving Loan Debt and such use of Revolving Loan Cash Collateral or Revolving Loan DIP Financing (and all obligations relating thereto) on the same basis as the other Liens on Revolving Loan Priority Collateral securing the Term Loan Debt are so subordinated to the Liens on Revolving Loan Priority Collateral securing the Revolving Loan Debt under this Agreement;

(ii) if any or all of the Term Loan Secured Parties are granted adequate protection in the form of additional collateral in connection with any use of Term Loan Cash Collateral or a Term Loan DIP Financing and such additional collateral is the type of asset or property that would constitute Term Loan Priority Collateral, then the Revolving Loan Agent, on behalf of itself or any of the Revolving Loan Secured Parties, may seek or request adequate

protection in the form of a Lien on such additional collateral, which Lien will be subordinated to the Liens securing the Term Loan Debt and such use of Term Loan Cash Collateral or Term Loan DIP Financing (and all obligations relating thereto) on the same basis as the other Liens on Term Loan Priority Collateral securing the Revolving Loan Debt are so subordinated to the Liens on Term Loan Priority Collateral securing the Term Loan Debt under this Agreement;

(iii) in the event the Revolving Loan Agent, on behalf of itself or any other Revolving Loan Secured Parties, seeks or requests adequate protection in respect of Revolving Loan Debt and such adequate protection is granted in the form of additional collateral of a type of asset or property that would constitute Term Loan Priority Collateral, then the Revolving Loan Agent, on behalf of itself and the other Revolving Loan Secured Parties, agrees that the Term Loan Agent shall also be granted a Lien on such additional collateral as security for the Term Loan Debt and for any use of Term Loan Cash Collateral or Term Loan DIP Financing and that any Lien on such additional collateral securing the applicable Revolving Loan Debt shall be subordinated to the Lien on such collateral securing the Term Loan Debt and any such use of Term Loan Cash Collateral or Term Loan DIP Financing (and all obligations relating thereto) and to any other Liens granted to the Term Loan Secured Parties as adequate protection on the same basis as the other Liens on Term Priority Collateral securing the Revolving Loan Debt are so subordinated to the Liens on Term Loan Priority Collateral securing the Term Loan Debt under this Agreement; and

(iv) in the event the Term Loan Agent, on behalf of itself or any other Term Loan Secured Parties, seeks or requests adequate protection in respect of Term Loan Debt and such adequate protection is granted in the form of additional collateral of a type of asset or property that would constitute Revolving Loan Priority Collateral, then the Term Loan Agent, on behalf of itself and the other Term Loan Secured Parties, agrees that the Revolving Loan Agent shall also be granted a Lien on such additional collateral as security for the Revolving Loan Debt and for any use of Revolving Loan Cash Collateral or Revolving Loan DIP Financing and that any Lien on such additional collateral securing the applicable Term Loan Debt shall be subordinated to the Lien on such collateral securing the Revolving Loan Debt and any such use of Revolving Loan Cash Collateral or Revolving Loan DIP Financing (and all obligations relating thereto) and to any other Liens granted to the Revolving Loan Secured Parties as adequate protection on the same basis as the other Liens on Revolving Loan Priority Collateral securing the Term Loan Debt are so subordinated to the Liens on Revolving Loan Priority Collateral securing the Revolving Loan Debt under this Agreement.

(c) any adequate protection granted in favor of any Revolving Loan Secured Party with respect to the Revolving Loan Priority Collateral or any Term Loan Secured Party with respect to the Term Loan Priority Collateral in the form of a superpriority or other administrative expense claim and any claim in favor of such Secured Party arising under Section 507(b) of the Bankruptcy Code (or similar Bankruptcy Law) ("Senior 507(b) Claims"), shall be *pari passu* with the grant of adequate protection in favor of the other Revolving Loan Secured Parties with respect to the Revolving Loan Priority Collateral or the other Term Loan Secured Parties with respect to the Term Loan Priority Collateral in the form of a superpriority or other administrative expense claim. Any claim arising under Section 507(b) of the Bankruptcy Code in favor of any Revolving Loan Secured Party with respect to the Term Loan Priority Collateral or any Term Loan Secured Party with respect to the Revolving Loan Priority Collateral shall be *pari passu* with the claims arising under Section 507(b) of the Bankruptcy Code (or similar Bankruptcy Law) in favor of the other Revolving Loan Secured Parties with respect to the Term Loan Priority Collateral or the other Term Loan Secured Parties with respect to the Revolving Loan Priority Collateral (collectively, "Junior 507(b) Claims"), all Junior 507(b) Claims shall be junior and subordinate in right of payment to the Senior 507(b) Claims, and the holders of the Junior 507(b) Claims agree that, in connection with any plan of reorganization in such Insolvency Proceeding, such Junior 507(b) Claims may be paid in any combination of cash, securities, or other property having a present value equal to the amount of such Junior 507(b) Claims as of the effective date of confirmation of such plan.

(d) Except as otherwise provided in this Section 6.4, (i) no Revolving Loan Secured Party may seek or assert any right it may have for adequate protection of its interest in the Term Loan Priority Collateral without the prior written consent of the requisite Term Loan Lenders under the Term Loan Agreement, and (ii) no Term Loan Secured Party may seek or assert any right it may have for adequate protection of its interest in the Revolving Loan Priority Collateral without the written consent of the requisite Revolving Loan Lenders under the Revolving Loan Agreement.

#### 6.5 Reorganization Securities.

If, in any Insolvency Proceeding, debt obligations of any reorganized Grantor secured by Liens upon any property of such reorganized Grantor are distributed, pursuant to a plan of reorganization, on account of both the Revolving Loan Debt and the Term Loan Debt, then, to the extent the debt obligations distributed on account of the Revolving Loan Debt and on account of the Term Loan Debt are secured by Liens upon the same assets or property, the provisions of this Agreement will survive the distribution of such debt obligations pursuant to such plan and will apply with like effect to the Liens securing such debt obligations.

#### 6.6 Separate Grants of Security and Separate Classes.

Each of the parties hereto irrevocably acknowledges and agrees that (a) the claims and interests of the Revolving Loan Secured Parties and the Term Loan Secured

Parties are not "substantially similar" within the meaning of Section 1122 of the Bankruptcy Code, or any comparable provision of any other Bankruptcy Law, (b) the grants of the Liens to secure the Revolving Loan Debt and the grants of the Liens to secure the Term Loan Debt constitute two separate and distinct grants of Liens, (c) the Revolving Loan Secured Parties' rights in the Common Collateral are fundamentally different from the Term Loan Secured Parties' rights in the Common Collateral and (d) as a result of the foregoing, among other things, the Revolving Loan Debt and the Term Loan Debt shall be separately classified in any plan of reorganization proposed or adopted in any Insolvency Proceeding.

#### 6.7 Asset Dispositions.

(a) Until the Discharge of Revolving Loan Debt has occurred, the Term Loan Agent, for itself and on behalf of the other Term Loan Secured Parties, agrees that, in the event of any Insolvency Proceeding, the Term Loan Secured Parties will not object or oppose (or support any Person in objecting or opposing) a motion for any Disposition of any Revolving Loan Priority Collateral free and clear of the Liens of the Term Loan Agent and the other Term Loan Secured Parties or other claims under Sections 363, 365 or 1129 of the Bankruptcy Code, or any comparable provision of any other Bankruptcy Law, and shall be deemed to have consented to any such Disposition of any Revolving Loan Priority Collateral under Section 363(f) of the Bankruptcy Code or any comparable provision of any other Bankruptcy Law that has been consented to by the Revolving Loan Agent; provided, that, the Proceeds of such Disposition to be applied to the Revolving Loan Debt or the Term Loan Debt are applied in accordance with Sections 4.1 and 4.2.

(b) Until the Discharge of Term Loan Debt has occurred, the Revolving Loan Agent, for itself and on behalf of the other Revolving Loan Secured Parties, agrees that, in the event of any Insolvency Proceeding, the Revolving Loan Secured Parties will not object or oppose (or support any Person in objecting or opposing) a motion to any Disposition of any Term Loan Priority Collateral free and clear of the Liens of the Revolving Loan Agent and the other Revolving Loan Secured Parties or other claims under Sections 363, 365 or 1129 of the Bankruptcy Code, or any comparable provision of any other Bankruptcy Law, and shall be deemed to have consented to any such Disposition of any Term Loan Priority Collateral under Section 363(f) of the Bankruptcy Code or any comparable provision of any other Bankruptcy Law that has been consented to by the Term Loan Agent; provided, that, the Proceeds of such Disposition to be applied to the Term Loan Debt or the Revolving Loan Debt are applied in accordance with Sections 4.1 and 4.2.

(c) The Term Loan Secured Parties agree that the Revolving Loan Secured Parties shall have the right to credit bid under Section 363(k) of the Bankruptcy Code or any comparable provision of any other Bankruptcy Law with respect to, or otherwise object to any Disposition of, the Revolving Loan Priority Collateral, and the Revolving Loan Secured Parties agree that the Term Loan Secured Parties shall have the right to credit bid under Section 363(k) of the Bankruptcy Code or any comparable provision of any other Bankruptcy Law with respect to, or otherwise object to any Disposition of, the Term Loan Priority Collateral; provided, that, the Secured Parties shall not be deemed to have agreed to

any credit bid by other Secured Parties in connection with the Disposition of Common Collateral consisting of both Term Loan Priority Collateral and Revolving Loan Priority Collateral.

6.8 Certain Waivers as to Section 1111(b)(2) of Bankruptcy Code.

Term Loan Agent, for itself and on behalf of the other Term Loan Secured Parties, waives any claim any Term Loan Secured Party may hereafter have against any Revolving Loan Secured Party arising out of the election by any Revolving Loan Secured Party of the application of Section 1111(b)(2) of the Bankruptcy Code, or any comparable provision of any other Bankruptcy Law. Revolving Loan Agent, for itself and on behalf of the other Revolving Loan Secured Parties, waives any claim they may hereafter have against any Term Loan Secured Party arising out of the election by any Term Loan Secured Party of the application of Section 1111(b)(2) of the Bankruptcy Code or any comparable provision of any other Bankruptcy Law.

6.9 Avoidance Issues.

If any Revolving Loan Secured Party is required in any Insolvency Proceeding or otherwise to turn over or otherwise pay to the estate of any Grantor or any other person any amount (a "Recovery"), then the Revolving Loan Debt shall be reinstated to the extent of such Recovery and the Revolving Loan Secured Parties shall be entitled to a Discharge of Revolving Loan Debt with respect to all such recovered amounts. If any Term Loan Secured Party is required in any Insolvency Proceeding or otherwise to turn over or otherwise pay to the estate of any Grantor or any other person any Recovery, then the Term Loan Debt shall be reinstated to the extent of such Recovery and the Term Loan Secured Parties shall be entitled to a Discharge of Term Loan Debt with respect to all such recovered amounts. If this Agreement shall have been terminated prior to any Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties hereto from such date of reinstatement.

6.10 Other Bankruptcy Laws.

In the event that an Insolvency Proceeding is filed in a jurisdiction other than the United States or is governed by any Bankruptcy Law other than the Bankruptcy Code, each reference in this Agreement to a section of the Bankruptcy Code shall be deemed to refer to the substantially similar or corresponding provision of the Bankruptcy Law applicable to such Insolvency Proceeding, or, in the absence of any specific similar or corresponding provision of Bankruptcy Law, such other general Bankruptcy Law as may be applied in order to achieve substantially the same result as would be achieved under each applicable section of the Bankruptcy Code.

## Section 7. Term Loan Lenders' Purchase Option

### 7.1 Exercise of Option.

On or after the occurrence and during the continuance of a Revolving Loan Debt Purchase Event, one or more of the Term Loan Secured Parties (the "Purchasing Term Loan Secured Parties") shall have the option for a period of thirty (30) days after a Revolving Loan Debt Purchase Event, upon no less than five (5) Business Days' and no more than twelve (12) Business Days' prior written notice by the Term Loan Agent to the Revolving Loan Agent, to purchase all (but not less than all) of the Revolving Loan Debt up to the Revolving Loan Cap from the Revolving Loan Secured Parties and to assume all of the commitments and duties of the Revolving Loan Secured Parties. Such notice from the Term Loan Agent to the Revolving Loan Agent shall be irrevocable. The obligations of Revolving Loan Secured Parties hereunder to sell the Revolving Loan Debt up to the Revolving Loan Cap owing to them are several and not joint and several. Each Grantor irrevocably consents to such sale.

### 7.2 Pro Rata Offer.

The Term Loan Secured Parties agree, solely as among themselves, that upon the occurrence of any Revolving Loan Debt Purchase Event, the Term Loan Agent shall send a notice to all Term Loan Secured Parties giving each Term Loan Secured Party the option to purchase at least its pro rata share of the Revolving Loan Debt (other than the Excess Revolving Loan Debt). No Term Loan Secured Party shall be required to participate in any purchase offer hereunder, and each Term Loan Secured Party acknowledges and agrees that a purchase offer may be made by any or all of the Term Loan Secured Parties, subject to the requirements of the preceding sentence. The provisions of this Section 7.2 are intended solely for the benefit of the Term Loan Secured Parties and may be modified, amended or waived by them without the approval of any Grantor, any Revolving Loan Secured Party, or otherwise.

### 7.3 Purchase and Sale.

On the date specified by the Term Loan Agent in such notice (which shall not be less than five (5) Business Days, nor more than twelve (12) Business Days, after the receipt by the Revolving Loan Agent of the notice from the Term Loan Agent of its election to exercise such option), Revolving Loan Secured Parties shall, subject to any required approval of any court or other regulatory or governmental authority then in effect, if any, sell to such of the Purchasing Term Loan Secured Parties as are specified in the notice from the Term Loan Agent of its election to exercise such option, and such Purchasing Term Loan Secured Parties shall purchase from Revolving Loan Secured Parties, all of the Revolving Loan Debt up to the Revolving Loan Cap. Notwithstanding anything to the contrary contained herein, in connection with any such purchase and sale, Revolving Loan Secured Parties shall retain all rights under the Revolving Loan Documents to be indemnified or held harmless by Grantors in accordance with the terms thereof. In connection with any such



purchase and sale, each Revolving Loan Lender and each Purchasing Term Loan Secured Party shall execute and deliver an assignment and acceptance agreement, in form reasonably acceptable to all parties thereto, pursuant to which, among other things, each Revolving Loan Lender shall assign to the Purchasing Term Loan Secured Parties such Revolving Loan Lender's pro rata share of the commitments and Revolving Loan Debt up to the Revolving Loan Cap. Upon the consummation of such purchase and sale, Revolving Loan Agent shall resign as the "Administrative Agent" under the Revolving Loan Documents and upon the written request of the Term Loan Agent, and at the expense of Term Loan Secured Parties, shall take reasonable actions in its power to execute and deliver all such documents and instruments reasonably requested by the Term Loan Agent and/or Purchasing Term Loan Secured Parties to assign and transfer any Common Collateral to the applicable successor Agent under the Revolving Loan Documents.

#### 7.4 Payment of Purchase Price.

(a) Upon the date of such purchase and sale, the Purchasing Term Loan Secured Parties shall (i) pay to the Revolving Loan Agent for the account of the Revolving Loan Secured Parties as the purchase price therefor the full amount of all of the Revolving Loan Debt up to the Revolving Loan Cap then outstanding and unpaid (including principal, interest, fees and expenses, and including reasonable attorneys' fees and legal expenses), (ii) furnish cash collateral to the Revolving Loan Agent in such amounts as Revolving Loan Agent determines is reasonably necessary to secure Revolving Loan Secured Parties in connection with any issued and outstanding letters of credit, banker's acceptances or similar instruments issued under the Revolving Loan Documents (but not in any event in an amount greater than one hundred five (105%) percent of the aggregate undrawn face amount of such letters of credit, banker's acceptances and similar instruments) and Bank Product Obligations (or at the option of the Revolving Loan Secured Party with respect to such Bank Product Obligations, terminate the applicable Hedging Obligations or cash management arrangements and make all payments pursuant thereto, as applicable) and in respect of indemnification obligations of Grantors under the Revolving Loan Documents as to matters or circumstances known to Revolving Loan Secured Parties and disclosed in writing to the Term Loan Agent (unless such disclosure is not permitted under applicable law) at the time of the purchase and sale which would reasonably be expected to result in any loss, cost, damage or expense (including reasonable attorneys' fees and legal expenses) to Revolving Loan Secured Parties and (iii) agree to reimburse Revolving Loan Secured Parties for any loss, cost, damage or expense (including reasonable attorneys' fees and legal expenses) in connection with any commissions, fees, costs or expenses related to any issued and outstanding letters of credit, banker's acceptances and similar instruments as described above and any checks or other payments provisionally credited to the Revolving Loan Debt, and/or as to which Revolving Loan Secured Parties have not yet received final payment.

(b) Such purchase price and cash collateral shall be remitted by wire transfer in federal funds to such bank account of the Revolving Loan Agent as Revolving Loan Agent may designate in writing to the Term Loan Agent for such purpose. Interest shall be calculated to but excluding the Business Day on which such purchase and sale shall

occur if the amounts so paid by the Purchasing Term Loan Secured Parties to the bank account designated by the Revolving Loan Agent are received in such bank account prior to 12:00 noon, New York, New York time and interest shall be calculated to and including such Business Day if the amounts so paid by the Purchasing Term Loan Secured Parties to the bank account designated by the Revolving Loan Agent are received in such bank account later than 12:00 noon, New York, New York time.

#### 7.5 Representations Upon Purchase and Sale.

Such purchase and sale shall be expressly made without representation or warranty of any kind by the Revolving Loan Agent or any Revolving Loan Secured Party as to the Revolving Loan Debt or otherwise and without recourse to the Revolving Loan Secured Parties; except, that, each Revolving Loan Secured Party that is transferring such Revolving Loan Debt shall represent and warrant, severally as to it: (a) the amount of the Revolving Loan Debt being purchased from it is as reflected in the books and records of such Revolving Loan Secured Party (but without representation or warranty as to the collectability, validity or enforceability thereof), (b) that such Revolving Loan Secured Party owns the Revolving Loan Debt being sold by it free and clear of any liens or encumbrances and (c) such Revolving Loan Secured Party has the right to assign the Revolving Loan Debt being sold by it and the assignment is duly authorized.

#### 7.6 Notice from the Revolving Loan Agent Prior to Enforcement Action.

In the absence of Exigent Circumstances, Revolving Loan Agent, for itself and on behalf of the Revolving Loan Secured Parties, agrees that it will give Term Loan Agent five (5) Business Days' prior written notice of its intention to commence any foreclosure or other action to sell or otherwise realize upon the Revolving Loan Priority Collateral. In the event that during such five (5) Business Day period, Term Loan Agent shall send to the Revolving Loan Agent the irrevocable notice of the Term Loan Secured Parties' intention to exercise the purchase option given by the Revolving Loan Secured Parties to the Term Loan Secured Parties under this Section 7, the Revolving Loan Secured Parties shall not commence any foreclosure or other action to sell or otherwise realize upon the Common Collateral; provided, that, the purchase and sale with respect to the Revolving Loan Debt provided for herein shall have closed within twelve (12) Business Days after the receipt by the Revolving Loan Agent of the irrevocable notice from the Term Loan Agent.

#### 7.7 Agency; Retained Interest.

(a) In the event that the Term Loan Agent exercises and consummates the purchase option set forth in this Section 7, (i) Revolving Loan Agent shall have the right, but not the obligation, to immediately resign under the Revolving Loan Agreement, and (ii) the Term Loan Agent shall have the right, but not the obligation, to require Revolving Loan Agent to immediately resign under the Revolving Loan Agreement.

(b) In the event that Term Loan Agent exercises and consummates the purchase option set forth in this Section 7, (i) the Revolving Loan Secured Parties shall retain their indemnification rights under the Revolving Loan Agreement for actions or other matters arising on or prior to the date of such purchase and thereafter with respect to Excess Revolving Loan Debt (if any), and (ii) in the event that, at the time of such purchase, there exists Excess Revolving Loan Debt, the consummation of such purchase option shall not include (nor shall the purchase price be calculated with respect to) such Excess Revolving Loan Debt (clauses (i) and (ii), the "Retained Interest").

(c) In the event that a Retained Interest exists, each Revolving Loan Lender shall, at the request of the Term Loan Agent, execute an amendment to the Revolving Loan Agreement acknowledging that such Retained Interest consisting of Excess Revolving Loan Debt is a last-out tranche, payable after Discharge of Priority Revolving Loan Debt and discharge of Term Loan Debt. Interest with respect to such Retained Interest consisting of Excess Revolving Loan Debt shall continue to accrue and be payable in accordance with the terms of the Revolving Loan Documents, the Retained Interest shall continue to be secured by the Common Collateral, and the Retained Interest shall be paid (or cash collateralized, as applicable) in accordance with the terms of the Revolving Loan Agreement and this Agreement. Each Revolving Loan Lender shall continue to have all rights and remedies of a lender under the Revolving Loan Agreement and the other Revolving Loan Documents; provided, that no Revolving Loan Lender shall have any right to vote on or otherwise consent to any amendment, waiver, departure from or other modification of any provision of any Revolving Loan Debt other than amendments, waivers, departures or modifications that require the vote of all lenders, all affected or similar lenders. The purchasing lenders agree not to amend the provisions of the Revolving Loan Documents with respect to the Excess Revolving Loan Debt in any way that treats any holder of the Retained Interest differently than the lenders and other secured parties under the Revolving Loan Agreement and other Revolving Loan Documents after the effective date of the purchase of the Revolving Loan Debt (excluding the Excess Revolving Loan Debt).

## Section 8. Revolving Loan Secured Parties' Purchase Option

### 8.1 Exercise of Option.

On or after the occurrence and during the continuance of a Term Loan Debt Purchase Event, one or more of the Revolving Loan Secured Parties (the "Purchasing Revolving Loan Secured Parties") shall have the option for a period of thirty (30) days after a Term Loan Debt Purchase Event, upon no less than five (5) Business Days' and no more than twelve (12) Business Days' prior written notice by the Revolving Loan Agent to the Term Loan Agent, to purchase all (but not less than all) of the Term Loan Debt up to the Term Loan Cap from the Term Loan Secured Parties and to assume all of the commitments and duties of the Term Loan Secured Parties. Such notice from the Revolving Loan Agent to the Term Loan Agent shall be irrevocable. The obligations of the Term Loan Secured Parties hereunder to sell the Term Loan Debt up to the Term Loan Cap owing to them are several and not joint and several. Each Grantor irrevocably consents to such sale.

## 8.2 Pro Rata Offer.

The Revolving Loan Secured Parties agree, solely as among themselves, that upon the occurrence of any Term Loan Debt Purchase Event, the Revolving Loan Agent shall send a notice to all Revolving Loan Secured Parties giving each Revolving Loan Secured Party the option to purchase at least its pro rata share of the Term Loan Debt (other than the Excess Term Loan Debt). No Revolving Loan Secured Party shall be required to participate in any purchase offer hereunder, and each Revolving Loan Secured Party acknowledges and agrees that a purchase offer may be made by any or all of the Revolving Loan Secured Parties, subject to the requirements of the preceding sentence. The provisions of this Section 8.2 are intended solely for the benefit of the Revolving Loan Secured Parties and may be modified, amended or waived by them without the approval of any Grantor, any Term Loan Secured Party, or otherwise.

## 8.3 Purchase and Sale.

On the date specified by the Revolving Loan Agent in such notice (which shall not be less than five (5) Business Days, nor more than twelve (12) Business Days, after the receipt by the Term Loan Agent of the notice from the Revolving Loan Agent of its election to exercise such option), Term Loan Secured Parties shall, subject to any required approval of any court or other regulatory or governmental authority then in effect, if any, sell to such of the Purchasing Revolving Loan Secured Parties as are specified in the notice from the Revolving Loan Agent of its election to exercise such option, and such Purchasing Revolving Loan Secured Parties shall purchase from Term Loan Secured Parties, all of the Term Loan Debt up to the Term Loan Cap. Notwithstanding anything to the contrary contained herein, in connection with any such purchase and sale, Term Loan Secured Parties shall retain all rights under the Term Loan Documents to be indemnified or held harmless by Grantors in accordance with the terms thereof. In connection with any such purchase and sale, each Term Loan Lender and each Purchasing Revolving Loan Secured Party shall execute and deliver an assignment and acceptance agreement, in form reasonably acceptable to all parties thereto, pursuant to which, among other things, each such Term Loan Lender shall assign to the Purchasing Revolving Loan Secured Parties such Term Loan Lender's pro rata share of the commitments and Term Loan Debt up to the Term Loan Cap. Upon the consummation of such purchase and sale, Term Loan Agent shall resign as the "Agent" under the Term Loan Documents and upon the written request of the Revolving Loan Agent, and at the expense of Revolving Loan Secured Parties, shall take reasonable actions in its power to execute and deliver all such documents and instruments reasonably requested by the Revolving Loan Agent and/or Purchasing Revolving Loan Secured Parties to assign and transfer any Common Collateral to the applicable successor Agent under the Term Loan Documents.

## 8.4 Payment of Purchase Price.

(a) Upon the date of such purchase and sale, the Purchasing Revolving Loan Secured Parties shall (a) pay to the Term Loan Agent for the account of the Term Loan

Secured Parties as the purchase price therefor the full amount of all of the Term Loan Debt up to the Term Loan Cap then outstanding and unpaid (including principal, interest, fees and expenses, and including reasonable attorneys' fees and legal expenses) and (b) agree to reimburse Term Loan Secured Parties for any loss, cost, damage or expense (including reasonable attorneys' fees and legal expenses) in connection with any commissions, fees, costs or expenses related to any issued and outstanding letters of credit, banker's acceptances and similar instruments as described above and any checks or other payments provisionally credited to the Term Loan Debt, and/or as to which Term Loan Secured Parties have not yet received final payment.

(b) Such purchase price and cash collateral shall be remitted by wire transfer in federal funds to such bank account of the Term Loan Agent as Term Loan Agent may designate in writing to the Revolving Loan Agent for such purpose. Interest shall be calculated to but excluding the Business Day on which such purchase and sale shall occur if the amounts so paid by the Purchasing Revolving Loan Secured Parties to the bank account designated by Term Loan Agent are received in such bank account prior to 12:00 noon, New York, New York time and interest shall be calculated to and including such Business Day if the amounts so paid by the Purchasing Revolving Loan Secured Parties to the bank account designated by Term Loan Agent are received in such bank account later than 12:00 noon, New York, New York time.

#### 8.5 Representations Upon Purchase and Sale.

Such purchase and sale shall be expressly made without representation or warranty of any kind by the Term Loan Agent or any Term Loan Secured Party as to the Term Loan Debt or otherwise and without recourse to the Term Loan Secured Parties; except, that, each Term Loan Secured Party that is transferring such Term Loan Debt shall represent and warrant, severally as to it: (a) the amount of the Term Loan Debt being purchased from it is as reflected in the books and records of such Term Loan Secured Party (but without representation or warranty as to the collectability, validity or enforceability thereof), (b) that such Term Loan Secured Party owns the Term Loan Debt being sold by it free and clear of any liens or encumbrances and (c) such Term Loan Secured Party has the right to assign the Term Loan Debt being sold by it and the assignment is duly authorized.

#### 8.6 Notice from the Term Loan Agent Prior to Enforcement Action.

In the absence of Exigent Circumstances, Term Loan Agent, for itself and on behalf of the Term Loan Secured Parties, agrees that it will give Revolving Loan Agent five (5) Business Days' prior written notice of its intention to commence any foreclosure or other action to sell or otherwise realize upon the Term Loan Priority Collateral. In the event that during such five (5) Business Day period, Revolving Term Loan Agent shall send to the Revolving Loan Agent the irrevocable notice of the Term Loan Secured Parties' intention to exercise the purchase option given by the Revolving Loan Secured Parties to the Term Loan Secured Parties under this Section 8, the Revolving Loan Secured Parties shall not commence any foreclosure or other action to sell or otherwise realize upon the Common

Collateral; provided, that, the purchase and sale with respect to the Revolving Loan Debt provided for herein shall have closed within twelve (12) Business Days after the receipt by the Revolving Loan Agent of the irrevocable notice from the Term Loan Agent.

#### 8.7 Agency; Retained Interest.

(a) In the event that the Revolving Loan Agent exercises and consummates the purchase option set forth in this Section 8, (i) Term Loan Agent shall have the right, but not the obligation, to immediately resign under the Term Loan Agreement, and (ii) the Revolving Loan Agent shall have the right, but not the obligation, to require Term Loan Agent to immediately resign under the Term Loan Agreement.

(b) In the event that Revolving Loan Agent exercises and consummates the purchase option set forth in this Section 8, (i) the Term Loan Secured Parties shall retain their indemnification rights under the Term Loan Agreement for actions or other matters arising on or prior to the date of such purchase and thereafter with respect to Excess Term Loan Debt (if any), and (ii) in the event that, at the time of such purchase, there exists Excess Term Loan Debt, the consummation of such purchase option shall not include (nor shall the purchase price be calculated with respect to) such Excess Term Loan Debt (clauses (i) and (ii), the "Retained Interest").

In the event that a Retained Interest exists, each Term Loan Lender shall, at the request of the Revolving Loan Agent, execute an amendment to the Term Loan Agreement acknowledging that such Retained Interest consisting of Excess Term Loan Debt is a last-out tranche, payable after Discharge of Priority Term Loan Debt and Discharge of Revolving Loan Debt. Interest with respect to such Retained Interest consisting of Excess Term Loan Debt shall continue to accrue and be payable in accordance with the terms of the Term Loan Documents, the Retained Interest shall continue to be secured by the Common Collateral, and the Retained Interest shall be paid (or cash collateralized, as applicable) in accordance with the terms of the Term Loan Agreement and this Agreement. Each Term Loan Lender shall continue to have all rights and remedies of a lender under the Term Loan Agreement and the other Term Loan Documents; provided, that no Term Loan Lender shall have any right to vote on or otherwise consent to any amendment, waiver, departure from or other modification of any provision of any Term Loan Debt other than amendments, waivers, departures or modifications that require the vote of all lenders, all affected or similar lenders. The purchasing lenders agree not to amend the provisions of the Term Loan Documents with respect to the Excess Revolving Loan Debt in any way that treats any holder of the Retained Interest differently than the lenders and other secured parties under the Term Loan Agreement and other Term Loan Documents after the effective date of the purchase of the Term Loan Debt (excluding the Excess Term Loan Debt).

Section 9. Access and Use of Term Loan Priority Collateral.

9.1 Access and Use Rights of the Revolving Loan Agent.

(a) In the event that Term Loan Agent shall acquire control or possession of any of the Term Loan Priority Collateral or shall, through the exercise of remedies under the Term Loan Documents or otherwise, sell any of the Term Loan Priority Collateral to any third party (a "Third Party Purchaser"), Term Loan Agent shall permit Revolving Loan Agent (or require as a condition of such sale to the Third Party Purchaser that the Third Party Purchaser agree to permit the Revolving Loan Agent), at Revolving Loan Agent's option and in accordance with applicable law, and at the expense of the Revolving Loan Secured Parties (reimbursable to Revolving Loan Secured Parties by Grantors): (a) to enter and use any or all of the Term Loan Priority Collateral under such control or possession (or sold to a Third Party Purchaser) consisting of real property and the improvements, structures, buildings thereon and all related rights during normal business hours or in order to inspect, finish, remove or take any action with respect to the Revolving Loan Priority Collateral or to enforce Revolving Loan Agent's rights with respect thereto, including, but not limited to, the examination and removal of Revolving Loan Priority Collateral and the examination and duplication of the books and records of any Grantor related to the Revolving Loan Priority Collateral, or to otherwise handle, deliver, ship, transport, deal with or dispose of any Revolving Loan Priority Collateral, such right to include, without limiting the generality of the foregoing, the right to conduct one or more public or private sales or auctions thereon and (b) use any of the Term Loan Priority Collateral under such control or possession (or sold to a Third Party Purchaser) consisting of equipment (including computers or other data processing equipment) to handle, manufacture, deal with or dispose of any Revolving Loan Priority Collateral pursuant to the rights of the Revolving Loan Agent and the other Revolving Loan Secured Parties as set forth in the Revolving Loan Documents, the UCC of any applicable jurisdiction and other applicable law.

(b) The rights of the Revolving Loan Agent set forth in clause (a) above as to the Term Loan Priority Collateral shall be irrevocable and without charge and shall continue at Revolving Loan Agent's option for a period of one hundred fifty (150) days as to any such Term Loan Priority Collateral from the date on which Term Loan Agent has notified Revolving Loan Agent that Term Loan Agent has acquired possession or control of such Term Loan Priority Collateral. The time periods set forth herein shall be tolled during the pendency of any proceeding of a Grantor under the Bankruptcy Code or any other Bankruptcy Law or other proceedings pursuant to which Revolving Loan Agent is effectively stayed from enforcing its rights against the Revolving Loan Priority Collateral; provided that the Revolving Loan Agent shall have used its commercially reasonable efforts to have such stay lifted. In no event shall Term Loan Agent or any of the Term Loan Secured Parties take any action to interfere, limit or restrict the rights of the Revolving Loan Agent set forth above or the exercise of such rights by the Revolving Loan Agent pursuant to this Section 9.1 prior to the expiration of such periods.

## 9.2 Responsibilities of Revolving Loan Secured Parties.

The Revolving Loan Agent shall reimburse the Term Loan Agent for all reasonable, out-of-pocket costs and expenses (including for any physical damage to any Term Loan Priority Collateral) incurred by the Term Loan Agent or any other Term Loan Secured Party in connection with or as a direct result of the actions of the Revolving Loan Agent (or its representatives, including a Receiver) in exercising its access and use rights as provided in Section 9.1 above (but not any diminution in value of the Term Loan Priority Collateral resulting from the Revolving Loan Agent so dealing with any Revolving Loan Priority Collateral), such access and use rights shall be exercised in accordance with applicable law and customary industry practices, and, if requested by the Term Loan Agent, Revolving Loan Agent shall furnish evidence of its liability insurance to the Term Loan Agent. Term Loan Agent shall not have any responsibility or liability for the acts or omissions of the Revolving Loan Agent or any of the other Revolving Loan Secured Parties, and Revolving Loan Agent and the other Revolving Loan Secured Parties shall not have any responsibility or liability for the acts or omissions of the Term Loan Agent, in each case arising in connection with such other Person's use and/or occupancy of any of the Term Loan Priority Collateral.

## 9.3 Intellectual Property.

In addition to and not in limitation of Section 9.1, in connection with any enforcement action by the Revolving Loan Agent, Term Loan Agent hereby grants to Revolving Loan Agent a non-exclusive, royalty free license with respect to any Term Loan Priority Collateral consisting of trademarks, copyrights, patents, know-how or other intellectual property and pertaining to the Revolving Loan Priority Collateral solely for purposes of disposing, collecting, or otherwise realizing on any of the Revolving Loan Priority Collateral pursuant to the rights of the Revolving Loan Agent and the other Revolving Loan Secured Parties as set forth in the Revolving Loan Documents, the UCC of any applicable jurisdiction and other applicable law. Notwithstanding anything to the contrary contained herein, any purchaser or assignee of Revolving Loan Priority Collateral pursuant to the exercise by the Revolving Loan Agent of any of its rights or remedies with respect thereto shall have the right to sell or otherwise dispose of any such Revolving Loan Priority Collateral to which any such Intellectual Property is affixed. The license and right herein shall continue in full force and effect until all Revolving Loan Priority Collateral has been sold, transferred or otherwise disposed of (or, if sooner, the occurrence of a Discharge of Revolving Loan Debt) notwithstanding (i) any exercise of remedies by any Term Loan Secured Parties with respect to any Term Loan Priority Collateral or (ii) any voluntary or involuntary transfer or assignment of any of such Term Loan Priority Collateral consisting of intellectual property or any rights therein. The Term Loan Agent makes no representation or warranty to the Revolving Loan Agent or Revolving Loan Agent's successors and assigns, as to the effectiveness or value of any right to use, license or sublicense granted in this Section 9.3 and has performed no diligence as to whether it is entitled to provide any such right to use, license or sublicense, and shall have no liability to the Revolving Loan Agent for the Term Loan Agent's failure to have any such right or the failure of any such license to be



valid or effective for any purpose whatsoever. Revolving Loan Agent acknowledges that the Term Loan Agent, as of the date hereof, has no title to any Term Loan Priority Collateral and that its interest in the Term Loan Priority Collateral as of the date hereof is a security interest.

Section 10. Reliance; Waivers; Etc.

10.1 Reliance.

(a) The consent by the Revolving Loan Secured Parties to the execution and delivery of the Term Loan Documents and the grant to the Term Loan Agent on behalf of the Term Loan Secured Parties of a Lien on the Common Collateral and all loans and other extensions of credit made or deemed made on and after the date hereof by the Revolving Loan Secured Parties to any Grantor shall be deemed to have been given and made in reliance upon this Agreement.

(b) The consent by the Term Loan Secured Parties to the execution and delivery of the Revolving Loan Documents and the grant to the Revolving Loan Agent on behalf of the Revolving Loan Secured Parties of a Lien on the Common Collateral and all loans and other extensions of credit made or deemed made on and after the date hereof by the Term Loan Secured Parties to any Grantor shall be deemed to have been given and made in reliance upon this Agreement.

10.2 No Warranties or Liability.

(a) Term Loan Agent, for itself and on behalf of the other Term Loan Secured Parties, acknowledges and agrees that each of the Revolving Loan Agent and the other Revolving Loan Secured Parties have made no express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the Revolving Loan Documents, the ownership of any Common Collateral or the perfection or priority of any Liens thereon. Term Loan Agent agrees, for itself and on behalf of the other Term Loan Secured Parties, that the Revolving Loan Secured Parties will be entitled to manage and supervise their respective loans and extensions of credit under the Revolving Loan Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate, and the Revolving Loan Secured Parties may manage their loans and extensions of credit without regard to any rights or interests that Term Loan Agent or any of the other Term Loan Secured Parties have in the Common Collateral or otherwise, except as otherwise provided in this Agreement. Neither Revolving Loan Agent nor any of the other Revolving Loan Secured Parties shall have any duty to the Term Loan Agent or any of the other Term Loan Secured Parties to act or refrain from acting in a manner which allows, or results in, the occurrence or continuance of an event of default or default under any agreements with any Grantor (including the Term Loan Documents), regardless of any knowledge thereof which they may have or with which they may be charged.

(b) Revolving Loan Agent, for itself and on behalf of the other Revolving Loan Secured Parties, acknowledges and agrees that each of the Term Loan Agent and the other Term Loan Secured Parties have made no express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the Term Loan Documents, the ownership of any Common Collateral or the perfection or priority of any Liens thereon. Revolving Loan Agent agrees, for itself and on behalf of the other Revolving Loan Secured Parties, that the Term Loan Secured Parties will be entitled to manage and supervise their respective loans and extensions of credit under the Term Loan Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate, and the Term Loan Secured Parties may manage their loans and extensions of credit without regard to any rights or interests that Revolving Loan Agent or any of the other Revolving Loan Secured Parties have in the Common Collateral or otherwise, except as otherwise provided in this Agreement. Neither Term Loan Agent nor any of the other Term Loan Secured Parties shall have any duty to the Revolving Loan Agent or any of the other Revolving Loan Secured Parties to act or refrain from acting in a manner which allows, or results in, the occurrence or continuance of an event of default or default under any agreements with any Grantor (including the Revolving Loan Documents), regardless of any knowledge thereof which they may have or with which they may be charged.

### 10.3 No Waiver of Lien Priorities.

(a) No right of the Revolving Loan Agent or any of the other Revolving Loan Secured Parties to enforce any provision of this Agreement or any of the Revolving Loan Documents shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of any Grantor or by any act or failure to act by the Revolving Loan Agent or any other Revolving Loan Secured Party, or by any noncompliance by any Person with the terms, provisions and covenants of this Agreement, any of the Revolving Loan Documents or any of the Term Loan Documents, regardless of any knowledge thereof which Revolving Loan Agent or any of the other Revolving Loan Secured Parties may have or be otherwise charged with.

(b) No right of the Term Loan Agent or any of the other Term Loan Secured Parties to enforce any provision of this Agreement or any of the Term Loan Documents shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of any Grantor or by any act or failure to act by the Term Loan Agent or any other Term Loan Secured Party, or by any noncompliance by any Person with the terms, provisions and covenants of this Agreement, any of the Term Loan Documents or any of the Revolving Loan Documents, regardless of any knowledge thereof which Term Loan Agent or any of the other Term Loan Secured Parties may have or be otherwise charged with.

(c) Term Loan Agent agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or otherwise claim the benefit of, any marshaling, appraisal, valuation or other similar right that may otherwise be available under applicable law with respect to the Revolving Loan Priority

Collateral or any other similar rights a junior secured creditor may have under applicable law.

(d) Revolving Loan Agent agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or otherwise claim the benefit of, any marshaling, appraisal, valuation or other similar right that may otherwise be available under applicable law with respect to the Term Loan Priority Collateral or any other similar rights a junior secured creditor may have under applicable law.

#### 10.4 Amendments to Revolving Loan Documents.

The Revolving Loan Documents may be amended, supplemented or otherwise modified in accordance with their terms and the Revolving Loan Agreement may be refinanced, in each case, without notice to, or the consent of the Term Loan Agent or the other Term Loan Secured Parties, all without affecting the lien subordination or other provisions set forth in this Agreement (even if any right of subrogation or other right or remedy of the Term Loan Agent or any other Term Loan Secured Party is affected, impaired or extinguished thereby); provided, that:

(a) in the case of a refinancing or replacement of the Revolving Loan Debt, the Revolving Loan Agent on behalf of the Revolving Loan Secured Parties binds itself in a writing addressed to the Term Loan Agent to the terms of this Agreement, and

(b) without the prior written consent of the Term Loan Agent, any such amendment, restatement, supplement, modification, replacement or refinancing shall not:

(i) extend the final maturity of the Revolving Loan Debt (as set forth in the Revolving Loan Documents as in effect on the date hereof) by more than one year;

(ii) increase the "Applicable Margin", any interest rate floors or similar components of the interest rate by more than three percent (3.00%) per annum in the aggregate to be agreed (excluding increases resulting from the accrual of interest at the default rate or fluctuations in the underlying reference rates) or increase the amount, or frequency of payment, of any recurring fees provided for in the Revolving Loan Agreement;

(iii) shorten the scheduled maturity of the Revolving Loan Debt or any refinancing thereof to a date prior to the scheduled maturity date of the Revolving Loan Agreement (as in effect on the date hereof) unless imposed as a result of a default;

(iv) modify (or have the effect of a modification of) the terms of payment, including the mandatory prepayment provisions of the Revolving Loan Agreement in a manner that increases the amount or frequency of any of

such payments, or requires additional mandatory prepayments or limits the rights of Grantors with respect thereto;

(v) contravene the provisions of this Agreement;

(vi) amend or modify any provision of the Revolving Loan Documents to prohibit any Grantor from making any payment of principal, interest, fees, cost and expense reimbursements or indemnities with respect to the Term Loan Debt; or

(vii) amend or modify the Revolving Loan Documents in order to (i) permit the Grantors or any of their Affiliates to hold greater than twenty percent (20%) of the outstanding revolving loan commitments plus outstanding principal of the Revolving Loan Debt or (ii) provide the Grantors or any of the Affiliates with voting rights other than those set forth in Sections 14.1.1(c), (d) and (e) of the Revolving Loan Agreement as in effect on the date hereof.

#### 10.5 Amendments to Term Loan Documents.

The Term Loan Documents may be amended, supplemented or otherwise modified in accordance with their terms and the Term Loan Agreement may be refinanced, in each case, without notice to, or the consent of the Revolving Loan Agent, all without affecting the lien subordination or other provisions set forth in the Intercreditor Agreement (even if any right of subrogation or other right or remedy of the Revolving Loan Agent or any other Revolving Loan Secured Party is affected, impaired or extinguished thereby); provided, that,

(a) in the case of a refinancing or replacement of the Term Loan Debt, the Term Loan Agent on behalf of the Term Loan Secured Parties binds itself in a writing addressed to the Revolving Loan Agent to the terms of this Agreement, and

(b) without the prior written consent of the Revolving Loan Agent, any such amendment, restatement, supplement, modification, replacement or refinancing shall not:

(i) increase the "Applicable Margin", any interest rate floors or similar components of the interest rate by more than three percent (3.00%) per annum in the aggregate (excluding increases resulting from the accrual of interest at the default rate or changes in the underlying rate) or increase the amount, or frequency of payment, of any recurring fees provided for in the Term Loan Agreement;

(ii) shorten the scheduled maturity of the Term Loan Agreement to a date prior to the scheduled maturity date of the Revolving Loan Agreement or any refinancing thereof;

(iii) modify (or have the effect of a modification of) the terms of payment, including the regularly scheduled payments of principal or mandatory prepayment provisions of the Term Loan Agreement in a manner that increases the amount or frequency of any of such payments, or requires additional mandatory prepayments or limits the rights of Grantors with respect thereto;

(iv) contravene the provisions of this Agreement;

(v) amend or modify any provision of the Term Loan Documents to prohibit any Grantor from making any payment of principal, interest, fees, cost and expense reimbursements or indemnities with respect to the Revolving Loan Debt; or

(vi) amend or modify the Term Loan Documents in order to (i) permit the Grantors or any of their Affiliates to hold greater than twenty percent (20%) of the outstanding revolving loan commitments plus outstanding principal of the Term Loan Debt or (ii) provide the Grantors or any of the Affiliates with voting rights other than those set forth in Sections 14.1.1(c), (d) and (e) of the Term Loan Agreement as in effect on the date hereof.

## Section 11. Miscellaneous.

### 11.1 Conflicts.

In the event of any conflict between the provisions of this Agreement and the provisions of the Revolving Loan Documents or the Term Loan Documents, the provisions of this Agreement shall govern.

### 11.2 Continuing Nature of this Agreement; Severability.

This Agreement shall continue to be effective until the first to occur of the Discharge of Revolving Loan Debt and the Discharge of the Term Loan Debt. This is a continuing agreement of lien subordination and the Secured Parties may continue, at any time and without notice to the other Secured Parties, to extend credit and other financial accommodations and lend monies to or for the benefit of any Grantor constituting Revolving Loan Debt and/or Term Loan Debt (as applicable) in reliance hereof. Each of the Term Loan Agent, for itself and on behalf of the Term Loan Secured Parties, and Revolving Loan Agent, for itself and on behalf of the Revolving Loan Secured Parties, hereby waives any right it may have under applicable law to revoke this Agreement or any of the provisions of this Agreement. The terms of this Agreement shall survive, and shall continue in full force and effect, in any Insolvency Proceeding. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

### 11.3 Refinancing.

(a) Refinancing Permitted. As an agreement among the Secured Parties only and without prejudice to any rights of the Secured Parties under the Revolving Loan Documents and Term Loan Documents, as applicable, the Revolving Loan Debt and/or Term Loan Debt may be refinanced in their entirety if (a) the terms and provisions of any such refinancing debt, if instead implemented as modifications to the debt being refinanced, could be effected without the consent of the Agent to the debt not being refinanced, in accordance with the provisions of Section 10.4 or Section 10.5, as applicable, and (b) the holders of such indebtedness, or a duly authorized agent on their behalf, agree in writing to be bound by the terms of this Agreement. Revolving Loan Agent, for itself and on behalf of the Revolving Loan Secured Parties, and Term Loan Agent, for itself and on behalf of the Term Loan Secured Parties, agree, in connection with any refinancing of the Revolving Loan Debt and/or the Term Loan Debt permitted by this Section 11.3(a), promptly to enter into such documents and agreements (including amendments or supplements to this Agreement) as Grantors may reasonably request to reflect such refinancing; provided, that, the rights and powers of the Secured Parties contemplated hereby shall not be affected thereby.

#### (b) Effect of Refinancing.

(i) If substantially contemporaneously with the Discharge of Revolving Loan Debt, The Companies refinance indebtedness outstanding under the Revolving Loan Documents in accordance with the provisions of Section 11.3(a), then after written notice to the Term Loan Agent, (i) the indebtedness and other obligations arising pursuant to such refinancing of the then outstanding indebtedness under the Revolving Loan Documents shall automatically be treated as Revolving Loan Debt for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Common Collateral set forth herein, (ii) the credit agreement and the other loan documents evidencing such new indebtedness shall automatically be treated as the Revolving Loan Agreement and the Revolving Loan Documents for all purposes of this Agreement and (iii) the agent under the new Revolving Loan Agreement shall be deemed to be Revolving Loan Agent for all purposes of this Agreement. Upon receipt of notice of such refinancing (including the identity of the new Revolving Loan Agent), Term Loan Agent shall promptly enter into such documents and agreements (including amendments or supplements to this Agreement) as The Companies or the new Revolving Loan Agent may reasonably request in order to provide to the new Revolving Loan Agent the rights of the Revolving Loan Agent contemplated hereby.

(ii) If substantially contemporaneously with the Discharge of Term Loan Debt, The Companies refinance indebtedness outstanding under the Term Loan Documents in accordance with the provisions of Section 11.3(a), then after written notice to the Revolving Loan Agent, (i) the indebtedness and other obligations arising pursuant to such refinancing of the then outstanding

indebtedness under the Term Loan Documents shall automatically be treated as Term Loan Debt for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Common Collateral set forth herein, (ii) the credit agreement and the other loan documents evidencing such new indebtedness shall automatically be treated as the Term Loan Agreement and the Term Loan Documents for all purposes of this Agreement and (iii) the agent under the new Term Loan Agreement shall be deemed to be Term Loan Agent for all purposes of this Agreement. Upon receipt of notice of such refinancing (including the identity of the new Term Loan Agent), Term Loan Agent shall promptly enter into such documents and agreements (including amendments or supplements to this Agreement) as The Companies or the new Term Loan Agent may reasonably request in order to provide to the new Term Loan Agent the rights of the Term Loan Agent contemplated hereby.

#### 11.4 Amendments; Waivers.

No amendment or modification of any of the provisions of this Agreement by the Term Loan Agent or Revolving Loan Agent shall be deemed to be made unless the same shall be in writing signed on behalf of both of the Term Loan Agent and the Revolving Loan Agent (as directed by the applicable Secured Parties pursuant to the applicable Term Loan Documents or Revolving Loan Documents, as the case may be). No waiver of any of the provisions of this Agreement shall be deemed to be made unless the same shall be in writing signed by the party making the same or its authorized agent and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the parties making such waiver or the obligations of the other parties to such party in any other respect or at any other time.

#### 11.5 Subrogation.

(a) Term Loan Agent, for itself and on behalf of the Term Loan Secured Parties, hereby waives any rights of subrogation it may acquire with respect to the Revolving Loan Debt as a result of any payment hereunder until the Discharge of Priority Revolving Loan Debt has occurred.

(b) Revolving Loan Agent, for itself and on behalf of the Revolving Loan Secured Parties, hereby waives any rights of subrogation it may acquire with respect to the Term Loan Debt as a result of any payment hereunder until the Discharge of Priority Term Loan Debt has occurred.

#### 11.6 Consent to Jurisdiction; Waivers.

The parties hereto consent to the jurisdiction of any state or federal court located in the Borough of Manhattan, City of New York, New York, and consent that all service of process may be made by registered mail directed to such party as provided in Section 11.7 below for such party. Service so made shall be deemed to be completed three

(3) days after the same shall be posted as aforesaid. The parties hereto waive any objection to any action instituted hereunder based on forum non conveniens, and any objection to the venue of any action instituted hereunder. Each of the parties hereto waives any right it may have to trial by jury in respect of any litigation based on, or arising out of, under or in connection with this Agreement, or any course of conduct, course of dealing, verbal or written statement or action of any party hereto.

#### 11.7 Notices.

All notices to the Term Loan Secured Parties and the Revolving Loan Secured Parties permitted or required under this Agreement may be sent to Term Loan Agent and Revolving Loan Agent, respectively. Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, electronically mailed or sent by courier service, facsimile transmission or U.S. mail and shall be deemed to have been given when delivered in person or by courier service, upon receipt of a facsimile transmission or electronic mail or four (4) Business Days after deposit in the U.S. mail (registered or certified, with postage prepaid and properly addressed). For the purposes hereof, the addresses of the parties hereto shall be as set forth below, or, as to each party, at such other address as may be designated by such party in a written notice to all of the other parties.

Revolving Loan Agent:

**BANK OF AMERICA, N.A.**  
135 South LaSalle Street, 9<sup>th</sup> Floor  
Chicago, Illinois 60603  
Telecopy: (312) 904-7190  
Attention: Thomas H. Herron

with a copy to:

**GOLDBERG KOHN LTD.**  
55 E. Monroe Street, Suite 3300  
Chicago, Illinois 60603  
Attention: William A. Starshak

Term Loan Agent:

**CALLIDUS CAPITAL CORPORATION**  
181 Bay Street, Suite 4620, P.O. Box 792  
Bay Wellington Tower, Brookfield Place  
Toronto, Ontario M5J 2T3  
Attention: Jay Rogers  
Email: JRogers@calliduscapital.ca

with a copy to:

Klee, Tuchin, Bogdanoff & Stern LLP  
1999 Avenue of the Stars, 39th Floor



Los Angeles, CA 90067  
Attention: Maria Sountas-Argiropoulos, Esq.  
Email: MSArgiropoulos@ktbslaw.com

11.8 Further Assurances.

(a) Term Loan Agent agrees that it shall, for itself and on behalf of the Term Loan Secured Parties, take such further action and shall execute and deliver to the Revolving Loan Agent such additional documents and instruments (in recordable form, if requested) as Revolving Loan Agent may reasonably request to effectuate the terms of and the lien priorities contemplated by this Agreement.

(b) Revolving Loan Agent agrees that it shall, for itself and on behalf of the Revolving Loan Secured Parties, take such further action and shall execute and deliver to the Term Loan Agent such additional documents and instruments (in recordable form, if requested) as Term Loan Agent may reasonably request to effectuate the terms of and the lien priorities contemplated by this Agreement.

11.9 Governing Law.

The validity, construction and effect of this Agreement shall be governed by the internal laws of the State of New York but excluding any principles of conflicts of law or any other rule of law that would result in the application of the law of any jurisdiction other than the laws of the State of New York.

11.10 Binding on Successors and Assigns.

This Agreement shall be binding upon Revolving Loan Agent, the other Revolving Loan Secured Parties, Term Loan Agent, the other Term Loan Secured Parties, Grantors and their respective permitted successors and assigns.

11.11 Specific Performance.

(a) Revolving Loan Agent may demand specific performance of this Agreement. Term Loan Agent, for itself and on behalf of the Term Loan Secured Parties, hereby irrevocably waives any defense based on the adequacy of a remedy at law and any other defense which might be asserted to bar the remedy of specific performance in any action which may be brought by the Revolving Loan Agent.

(b) Term Loan Agent may demand specific performance of this Agreement. Revolving Loan Agent, for itself and on behalf of the Revolving Loan Secured Parties, hereby irrevocably waives any defense based on the adequacy of a remedy at law and any other defense which might be asserted to bar the remedy of specific performance in any action which may be brought by the Term Loan Agent.

11.12 Section Titles; Time Periods.

The section titles contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of this Agreement.

11.13 Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which shall together constitute one and the same document. Delivery of an executed counterpart of a signature page of this Agreement or any document or instrument delivered in connection herewith by facsimile transmission or electronic transmission (in pdf format) shall be effective as delivery of a manually executed counterpart of this Agreement or such other document or instrument, as applicable.

11.14 Authorization.

By its signature, each Person executing this Agreement on behalf of a party hereto represents and warrants to the other parties hereto that it is duly authorized to execute this Agreement.

11.15 No Third Party Beneficiaries.

This Agreement and the rights and benefits hereof shall inure to the benefit of each of the parties hereto and their respective successors and assigns and shall inure to the benefit of each of the holders of Revolving Loan Debt and Term Loan Debt. No other Person shall have or be entitled to assert rights or benefits hereunder.

11.16 Additional Grantors.

The Companies and Guarantors shall cause each of their Subsidiaries that becomes a Grantor to acknowledge and consent to the terms of this Agreement by causing such Subsidiary to execute and deliver to the parties hereto a Grantor Joinder, substantially in the form of Annex B hereto, pursuant to which such Subsidiary shall agree to be bound by the terms of the attached Acknowledgment and Agreement to the same extent as if it had executed and delivered same as of the date hereof.

11.17 Conflicts.

Notwithstanding anything in the Revolving Loan Documents or the Term Loan Documents to the contrary, in the event of a conflict between the terms of this Agreement and the terms of the Term Loan Documents or the Revolving Loan Documents, the terms of this Agreement shall control.

**[Signature Pages Follow]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

REVOLVING LOAN AGENT

BANK OF AMERICA, N.A.

By: Thomas H. Heron  
Name: Thomas H. Heron  
Title: Senior Vice President

TERM LOAN AGENT

**CALLIDUS CAPITAL CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

REVOLVING LOAN AGENT

**BANK OF AMERICA, N.A.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

TERM LOAN AGENT

**CALLIDUS CAPITAL CORPORATION**

By:           *D. Reese*          

Name:           **David Reese**          

Title:           **President & Chief Operating Officer**

## **ACKNOWLEDGMENT AND AGREEMENT**

Each of the undersigned hereby acknowledges and agrees to the representations, terms and provisions of the Intercreditor Agreement between Bank of America, N.A., in its capacity as agent for the Revolving Loan Secured Parties (in such capacity, the "Revolving Loan Agent") and Callidus Capital Corporation, in its capacity as collateral agent for the Term Loan Secured Parties (in such capacity, "Term Loan Agent"), of which this Acknowledgment and Agreement is a part. By its signature below, the undersigned agrees that it will, together with its successors and assigns, be bound by the provisions hereof.

Each of the undersigned agrees that (a) if either the Revolving Loan Agent or the Term Loan Agent holds Common Collateral it does so as bailee (under the UCC) for the other and is hereby authorized to and may turn over to such other Secured Party upon request therefor any such Common Collateral, after all obligations and indebtedness of the undersigned to the bailee Secured Party have been fully paid and performed, or as otherwise provided in the Intercreditor Agreement, and (b) it will execute and deliver such additional documents and take such additional action as may be necessary or desirable in the opinion of any Secured Party to effectuate the provisions and purposes of the foregoing Intercreditor Agreement. Each of the undersigned agrees to provide to the Term Loan Agent and the Revolving Loan Agent a copy of each Grantor Joinder hereto executed and delivered pursuant to Section 11.16 of the Intercreditor Agreement.

Each of the undersigned acknowledges and agrees that, although it may sign this Agreement, it is not a party hereto and does not and will not receive any right, benefit, priority or interest under or because of the existence of the foregoing Agreement, a breach by the undersigned of any of its obligations under the Intercreditor Agreement or this Acknowledgment and Agreement will constitute an Event of Default under the terms of each of the Revolving Loan Agreement and the Term Loan Agreement.

**[Signature Page Follows]**

**GRANTORS:**

**JD NORMAN INDUSTRIES, LLC**  
**JD NORMAN INDUSTRIES, INC.**  
**JD NORMAN METAL TECHNOLOGIES, INC.**  
**JD NORMAN OHIO HOLDINGS, INC.**  
**JD NORMAN ELECTRIC HOLDINGS, INC.**  
**JD NORMAN LESLIE BUILDING 1, LLC**  
**JD NORMAN LESLIE BUILDING 2, LLC**  
**JD NORMAN TROY TECH CENTER, LLC**  
**JD NORMAN MEXICO HOLDINGS, LLC**  
**JD NORMAN MEXICO 2 HOLDINGS, LLC**  
**JD NORMAN ROMANIA HOLDINGS, LLC**  
**JD NORMAN GERMANY HOLDINGS, LLC**  
**JD NORMAN CANADA GP, LLC**  
**JD NORMAN INDIANA HOLDINGS, LLC**  
**JD NORMAN MUNCIE, LLC**  
**JD NORMAN WINCHESTER, LLC**  
**JD NORMAN MUNCIE BUILDING, LLC**  
**JD NORMAN WINCHESTER BUILDING, LLC**

By \_\_\_\_\_  
 Name: Justin D. Norman  
 Title: President

**JD NORMAN CANADA HOLDINGS, LP**

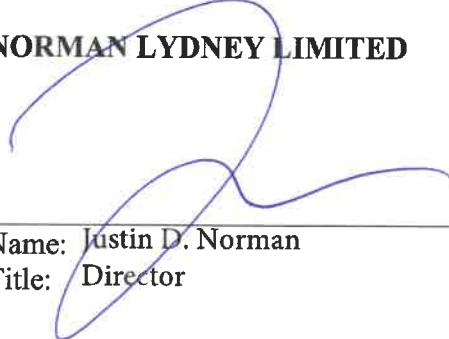
By: JD Norman Canada GP, LLC,  
 its general partner

By \_\_\_\_\_  
 Name: Justin D. Norman  
 Title: President

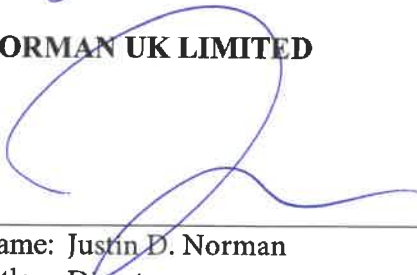
**JD NORMAN CANADA, ULC**

By   
Name: Justin D. Norman  
Title: President


**JD NORMAN LYDNEY LIMITED**

By   
Name: Justin D. Norman  
Title: Director

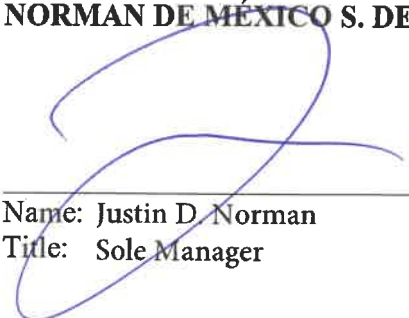
**JD NORMAN UK LIMITED**

By   
Name: Justin D. Norman  
Title: Director

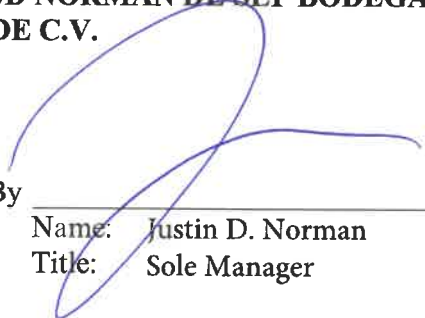
**JD NORMAN GERMANY GMBH**

By   
Name: Justin D. Norman  
Title: Sole Managing  
Director

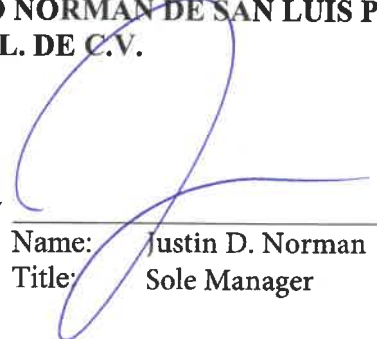
**JD NORMAN DE MÉXICO S. DE R.L. DE C.V.**

By   
Name: Justin D. Norman  
Title: Sole Manager

**JD NORMAN DE SLP BODEGA, S. DE R.L. DE C.V.**

By   
Name: Justin D. Norman  
Title: Sole Manager

**JD NORMAN DE SAN LUIS POTOSÍ, S. DE R.L. DE C.V.**

By   
Name: Justin D. Norman  
Title: Sole Manager



**Annex A**  
**to**  
**Intercreditor Agreement**

**Revolving Loan Priority Collateral**

Revolving Loan Priority Collateral consists of any and all: (i) "accounts" and "payment intangibles," other than "payment intangibles" (in each case, as defined in Article 9 of the UCC) which constitute identifiable proceeds of Term Loan Priority Collateral; (ii) all "inventory" (as defined in Article 9 of the UCC), including inventory, merchandise, goods and other personal property that are held for sale or lease or are furnished or are to be furnished under a contract of service, or that constitute raw materials, work in process, finished goods, returned goods, or materials or supplies of any kind used or consumed or to be used or consumed in the processing, production, packaging, promotion, delivery or shipping of the same, including all supplies and embedded software; (iii) proceeds and receivables arising under policies of business interruption insurance; (iv) (x) "deposit accounts" (as defined in Article 9 of the UCC) and "securities accounts" (as defined in Article 8 of the UCC), including all monies, "uncertificated securities," and "securities entitlements" (as defined in Article 8 of the UCC) contained therein (including all cash, marketable securities and other funds held in or on deposit in either of the foregoing) and other cash and Cash Equivalents but excluding cash, Cash Equivalents, "uncertificated securities," and "securities entitlements" that are identifiable proceeds of Term Loan Priority Collateral and excluding any "security" (as defined in Article 8 of the UCC) constituting an equity interest of any type in any Company or any Guarantor, and (y)(A) "instruments" (as defined in Article 9 of the UCC) that are identifiable proceeds of the Revolving Loan Priority Collateral, and (B) Mexico/US Intercompany Indebtedness, including the indebtedness evidenced by the JDN Mexico Intercompany Note; (v) general intangibles and documents pertaining to the other items of property included within the other clauses of this paragraph, including, without limitation, all contingent rights with respect to warranties on accounts but excluding, for the avoidance of doubt, (x) any general intangible constituting an equity interest of any type in any Company or any Guarantor and (y) any general intangible and documents that are identifiable proceeds of Term Loan Priority Collateral; (vi) "records" (as defined in Article 9 of the UCC), "supporting obligations" (as defined in Article 9 of the UCC) and related "letters of credit" (as defined in Article 5 of the UCC), commercial tort claims or other claims and causes of action, in each case, to the extent related to any of the other items of property included within the other clauses of this paragraph; and (vii) substitutions, replacements, accessions, products and proceeds (including, without limitation, insurance proceeds, licenses, royalties, income, payments, claims, damages and proceeds of suit) of any or all of the foregoing.

**Annex B**  
**to**  
**Intercreditor Agreement**  
  
**Form of Grantor Joinder**

Reference is made to that certain Intercreditor Agreement, dated as of July 10, 2018 (as amended, amended and restated, renewed, extended, supplemented or otherwise modified from time to time in accordance with the terms thereof, the "Intercreditor Agreement"), between Bank of America, N.A., in its capacity as agent for the Revolving Loan Secured Parties (in such capacity, the "Revolving Loan Agent") and Callidus Capital Corporation in its capacity as agent for the Term Loan Secured Parties (in such capacity, "Term Loan Agent"). Capitalized terms used herein without definition shall have the meaning assigned thereto in the Intercreditor Agreement.

This Grantor Joinder, dated as of \_\_\_\_\_, 20\_\_ (this "Grantor Joinder"), is being delivered pursuant to Section 11.16 of the Intercreditor Agreement.

The undersigned, \_\_\_\_\_, a \_\_\_\_\_ (the "Additional Grantor"), hereby agrees to become a party to the Intercreditor Agreement as a Grantor thereunder, for all purposes thereof on the terms set forth therein, and to be bound by the terms of the Intercreditor Agreement as fully as if the Additional Grantor had executed and delivered the Intercreditor Agreement as of the date thereof.

This Grantor Joinder may be executed in two or more counterparts, each of which shall constitute an original but all of which when taken together shall constitute one contract.

THIS GRANTOR JOINDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

The provisions of Section 11 of the Intercreditor Agreement shall apply with like effect to this Grantor Joinder.

**[Signature Pages Follow]**

IN WITNESS WHEREOF, the Additional Grantor has caused this Grantor Joinder to be duly executed by its authorized representative as of the day and year first above written.

**[ADDITIONAL GRANTOR]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

This is Exhibit “J” referred to in the

**AFFIDAVIT OF JOHN HO**

sworn this 10<sup>th</sup> day of February, 2021.



---

*Commissioner for Taking Affidavits (or as may be)*

## Enquiry Result

File Currency: 03FEB 2021

[Show All Pages](#)

All Pages ▾

**Note: All pages have been returned.**

Type of Search	Business Debtor								
Search Conducted On	JD NORMAN CANADA, ULC								
File Currency	03FEB 2021								
	File Number	Family	of Families	Page	of Pages	Expiry Date	Status		
	687962421	1	4	1	9	21JUN 2029			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule	Registration Number	Registered Under	Registration Period		
687962421		001	001		20130621 0904 1862 8157	P PPSA	7		
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	JD NORMAN CANADA, ULC								
	Address				City	Province	Postal Code		
	SUITE 2300, 550 BURNARD STREET				VANCOUVER	BC	V6C 2B5		
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address				City	Province	Postal Code		
Secured Party	Secured Party / Lien Claimant								
	BANK OF AMERICA, N.A., AS AGENT								
	Address				City	Province	Postal Code		
	SUITE 925, 135 SOUTH LASALLE STREET				CHICAGO	IL	60603		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
		X	X	X	X	X			
Motor Vehicle Description	Year	Make			Model	V.I.N.			
General Collateral Description	General Collateral Description								

Registering Agent	Registering Agent			
	GOWLING LAFLEUR HENDERSON LLP (LBN)			
	Address	City	Province	Postal Code
	SUITE 1600, 100 KING STREET WEST	TORONTO	ON	M5X 1G5

190

CONTINUED

Type of Search	Business Debtor									191
Search Conducted On	JD NORMAN CANADA, ULC									
File Currency	03FEB 2021									
	File Number	Family	of Families	Page						of Pages
	687962421	1	4	2						9
<b>FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT</b>										
	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule Attached	Registration Number				Registered Under	
		001	001		20130627 1120 1862 8600					
Record Referenced	File Number	Page Amended	No Specific Page Amended	Change Required			Renewal Years	Correct Period		
	687962421	1		A AMNDMNT						
Reference Debtor/ Transferor	First Given Name			Initial	Surname					
	Business Debtor Name									
	JD NORMAN CANADA, ULC									
Other Change	Other Change									
Reason / Description	Reason / Description									
	THE ADDRESS OF THE DEBTOR HAS BEEN AMENDED									
Debtor/ Transferee	Date of Birth	First Given Name			Initial	Surname				
	Business Debtor Name								Ontario Corporation Number	
	JD NORMAN CANADA, ULC									
	Address				City		Province	Postal Code		
	6845 HAWTHORNE DRIVE				WINDSOR		ON	N8T 3B8		
Assignor Name	Assignor Name									
Secured Party	Secured party, lien claimant, assignee									
	Address				City		Province	Postal Code		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date	
Motor Vehicle Description	Year	Make			Model			V.I.N.		
General Collateral Description	General Collateral Description									
Registering Agent	Registering Agent or Secured Party/ Lien Claimant									
	GOWLING LAFLEUR HENDERSON LLP (LBN)									

	Address	City	Province	Postal Code
	SUITE 1600, 100 KING STREET WEST	TORONTO	ON	M5X 1C5

CONTINUED



Type of Search	Business Debtor									193
Search Conducted On	JD NORMAN CANADA, ULC									
File Currency	03FEB 2021									
	File Number	Family	of Families	Page						of Pages
	687962421	1	4	3						9
<b>FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT</b>										
	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule Attached	Registration Number				Registered Under	
		001	001		20180703 1524 1862 7094					
Record Referenced	File Number	Page Amended	No Specific Page Amended	Change Required	Renewal Years	Correct Period				
	687962421		X	B RENEWAL	4					
Reference Debtor/ Transferor	First Given Name			Initial	Surname					
	Business Debtor Name									
	JD NORMAN CANADA, ULC									
Other Change	Other Change									
Reason / Description	Reason / Description									
Debtor/ Transferee	Date of Birth	First Given Name			Initial	Surname				
	Business Debtor Name								Ontario Corporation Number	
	Address				City		Province	Postal Code		
Assignor Name	Assignor Name									
Secured Party	Secured party, lien claimant, assignee									
	Address				City		Province	Postal Code		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date	
Motor Vehicle Description	Year	Make			Model			V.I.N.		
General Collateral Description	General Collateral Description									
Registering Agent	Registering Agent or Secured Party/ Lien Claimant									
	GOWLING WLG (CANADA) LLP (LBN)									

	Address	City	Province	Postal Code
	SUITE 1600, 100 KING STREET WEST	TORONTO	ON	M5X 1C5

CONTINUED

Type of Search	Business Debtor									195	
Search Conducted On	JD NORMAN CANADA, ULC										
File Currency	03FEB 2021										
	File Number	Family	of Families	Page					of Pages		
	687962421	1	4	4					9		
<b>FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT</b>											
	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule Attached	Registration Number			Registered Under			
		001	1		20200127 1745 1902 8880						
Record Referenced	File Number	Page Amended	No Specific Page Amended	Change Required	Renewal Years	Correct Period					
	687962421			B RENEWAL	05						
Reference Debtor/ Transferor	First Given Name			Initial	Surname						
	Business Debtor Name										
	JD NORMAN CANADA, ULC										
Other Change	Other Change										
Reason / Description	Reason / Description										
Debtor/ Transferee	Date of Birth	First Given Name			Initial	Surname					
	Business Debtor Name							Ontario Corporation Number			
	Address				City		Province	Postal Code			
Assignor Name	Assignor Name										
Secured Party	Secured party, lien claimant, assignee										
	Address				City		Province	Postal Code			
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date		
Motor Vehicle Description	Year	Make			Model			V.I.N.			
General Collateral Description	General Collateral Description										
Registering Agent	Registering Agent or Secured Party/ Lien Claimant										
	ESC CORPORATE SERVICES LTD.										

	Address	City	Province	Postal Code
	201-1325 POLSON DRIVE	VERNON	BC	V1T 1G2

END OF FAMILY

Type of Search	Business Debtor							197	
Search Conducted On	JD NORMAN CANADA, ULC								
File Currency	03FEB 2021								
	File Number	Family	of Families	Page	of Pages	Expiry Date	Status		
	718825068	2	4	5	9	21JUL 2022			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule	Registration Number	Registered Under	Registration Period		
718825068		001	1		20160721 1144 1616 9079	P PPSA	06		
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	JD NORMAN CANADA, ULC								
	Address				City	Province	Postal Code		
	6845 HAWTHORNE DR				WINDSOR	ON	N8T 3B8		
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address				City	Province	Postal Code		
Secured Party	Secured Party / Lien Claimant								
	CIT FINANCIAL LTD.								
	Address				City	Province	Postal Code		
	5035 SOUTH SERVICE ROAD				BURLINGTON	ON	L7R 4C8		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
			X		X				
Motor Vehicle Description	Year	Make			Model	V.I.N.			
General Collateral Description	General Collateral Description								
	COLOUR PHOTOCOPIERS AND ACCESSORIES								
Registering Agent	Registering Agent								
	JCLD ONLINE								
	Address				City	Province	Postal Code		
	16-1375 SOUTHDOWN RD STE 322				MISSISSAUGA	ON	L5J 2Z1		

END OF FAMILY

Type of Search	Business Debtor							198	
Search Conducted On	JD NORMAN CANADA, ULC								
File Currency	03FEB 2021								
	File Number	Family	of Families	Page	of Pages	Expiry Date	Status		
	740878299	3	4	6	9	25JUN 2023			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule	Registration Number	Registered Under	Registration Period		
740878299		001	1		20180625 1404 1590 3151	P PPSA	5		
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	JD NORMAN CANADA, ULC								
	Address				City	Province	Postal Code		
	SUITE 2300, BENTALL 5, 550 BURNARD ST.				VANCOUVER	BC	V6C 2B5		
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address				City	Province	Postal Code		
Secured Party	Secured Party / Lien Claimant								
	CALLIDUS CAPITAL CORPORATION								
	Address				City	Province	Postal Code		
	181 BAY STREET, SUITE 4620				TORONTO	ON	M5J 2T3		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
		X	X	X	X	X			
Motor Vehicle Description	Year	Make			Model	V.I.N.			
General Collateral Description	General Collateral Description								
Registering Agent	Registering Agent								
	CHAITONS LLP (DB/42754)								
	Address				City	Province	Postal Code		
	5000 YONGE STREET, 10TH FLOOR				TORONTO	ON	M2N 7E9		

END OF FAMILY

<b>Type of Search</b>	Business Debtor							199	
<b>Search Conducted On</b>	JD NORMAN CANADA, ULC								
<b>File Currency</b>	03FEB 2021								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
	742135311	4	4	7	9	30JUL 2022			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>		
742135311		01	003		20180730 1404 1462 3188	P PPSA	4		
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	JD NORMAN CANADA, ULC								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
	6845 HAWTHORNE DRIVE				WINDSOR	ON	N8T3B8		
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>								
	TOYOTA INDUSTRIES COMMERCIAL FINANCE CANADA, INC.								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
	630 - 401 THE WEST MALL				TORONTO	ON	M9C5J5		
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
			X		X				
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>	<b>V.I.N.</b>			
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
	MATERIAL HANDLING EQUIPMENT TOGETHER WITH ALL PARTS, ATTACHMENTS, ACCESSORIES, ADDITIONS, BATTERIES, CHARGERS, REPAIR PARTS, AND OTHER EQUIPMENT PLACED ON OR FORMING PART OF THE GOODS DESCRIBED HEREIN								
<b>Registering Agent</b>	<b>Registering Agent</b>								
	PPSA CANADA INC. - (8154)								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
	110 SHEPPARD AVE EAST, SUITE 303				TORONTO	ON	M2N6Y8		

CONTINUED

Type of Search	Business Debtor							200	
Search Conducted On	JD NORMAN CANADA, ULC								
File Currency	03FEB 2021								
	File Number	Family	of Families	Page	of Pages	Expiry Date	Status		
	742135311	4	4	8	9	30JUL 2022			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule	Registration Number	Registered Under	Registration Period		
742135311		02	003		20180730 1404 1462 3188	P PPSA	4		
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address				City	Province	Postal Code		
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address				City	Province	Postal Code		
Secured Party	Secured Party / Lien Claimant								
	Address				City	Province	Postal Code		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
Motor Vehicle Description	Year	Make			Model	V.I.N.			
General Collateral Description	General Collateral Description								
	WITH ANY PROCEEDS THEREOF AND THEREFROM INCLUDING, WITHOUT LIMITATION, ALL GOODS, SECURITIES, INSTRUMENTS, DOCUMENTS OF TITLE, CHATTEL PAPER AND INTANGIBLES (AS DEFINED IN THE PERSONAL PROPERTY								
Registering Agent	Registering Agent								
	PPSA CANADA INC. - (8154)								
	Address				City	Province	Postal Code		
	110 SHEPPARD AVE EAST, SUITE 303				TORONTO	ON	M2N6Y8		

CONTINUED



Type of Search	Business Debtor							201	
Search Conducted On	JD NORMAN CANADA, ULC								
File Currency	03FEB 2021								
	File Number	Family	of Families	Page	of Pages	Expiry Date	Status		
	742135311	4	4	9	9	30JUL 2022			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule	Registration Number	Registered Under	Registration Period		
742135311		03	003		20180730 1404 1462 3188	P PPSA	4		
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address				City	Province	Postal Code		
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address				City	Province	Postal Code		
Secured Party	Secured Party / Lien Claimant								
	Address				City	Province	Postal Code		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
Motor Vehicle Description	Year	Make			Model	V.I.N.			
General Collateral Description	General Collateral Description SECURITY ACT)								
Registering Agent	Registering Agent								
	PPSA CANADA INC. - (8154)								
	Address				City	Province	Postal Code		
	110 SHEPPARD AVE EAST, SUITE 303				TORONTO	ON	M2N6Y8		

LAST PAGE

**Note: All pages have been returned.**

[BACK TO TOP](#)



Show All Pages

This service is tested daily with McAfee SECURE™ to ensure the security of the transaction and information.

At ServiceOntario, we respect your right to privacy and value the trust you place in us. [Read more about ServiceOntario's Privacy Statement](#)

[Privacy](#)

[Accessibility](#)

[Contact us](#)

[FAQ](#)

[Terms of Use](#)

[© Queen's Printer for Ontario 2015](#)

This is Exhibit “K” referred to in the  
**AFFIDAVIT OF JOHN HO**  
sworn this 10<sup>th</sup> day of February, 2021.



---

*Commissioner for Taking Affidavits (or as may be)*

**NOTICE OF INTENTION TO ENFORCE A SECURITY**

**Subsection 244(1) of the  
*Bankruptcy and Insolvency Act (Canada)***

**Form 86**

To: **JD Norman Canada, ULC, an insolvent person**  
6845 Hawthorne Drive  
Windsor, ON N8T 3B8  
Attention: President


**TAKE NOTICE THAT:**

1. Callidus Capital Corporation, a secured creditor, intends to enforce its security on the insolvent person's property described below:
 

All present and future property, assets and undertaking of **JD Norman Canada, ULC**, including without limitation, accounts, books and records, chattel paper, documents of title, equipment, goods, instruments, intangibles (including intellectual property rights, contracts and permits), inventory, money, securities, contracts, licenses, agreements and real property, as more fully described in the security agreements set out below.
2. The security that is to be enforced is in the form of the following (hereinafter referred to collectively as the “**Security**”):
  - (a) Charge/Mortgage of Land (the “Mortgage”) in the principal amount of \$95,000,000 granted by the Borrower and registered on July 10, 2018 as Instrument No. CE837574, on title to the property located at 6845 Hawthorne Drive, Windsor, legally described as PT BLK E PL 1644 WINDSOR PTS 2 & 3 12R12466; WINDSOR, in the Province of Ontario, in the Land Titles Division of the Land Registry Office for Windsor Land Registry Office (No. 12) being PIN 01379 - 0091 (LT) (the “**Property**”); and
  - (b) General Security Agreement granted by the Borrower dated July 10, 2018.
3. The total amount of indebtedness secured by the Security is US\$146,388,486.77 as of February 8, 2021, plus all unpaid and accrued interest thereon, and costs.
4. The secured creditor will not have the right to enforce the Security until after the expiry of the 10-day period after this notice is sent unless the insolvent person consents to an earlier enforcement.

Dated at Toronto, Ontario, this 10<sup>th</sup> day of February, 2021.

**DICKINSON WRIGHT LLP, lawyers on  
behalf of Callidus Capital Corporation**

Per:   
\_\_\_\_\_  
Lisa S. Corne

This is Exhibit "L" referred to in the  
**AFFIDAVIT OF JOHN HO**  
sworn this 10<sup>th</sup> day of February, 2021.



---

*Commissioner for Taking Affidavits (or as may be)*

**CONSENT AND WAIVER**

TO: **Callidus Capital Corporation, in its capacity as Agent and as Lender**  
(the "**Secured Creditor**")

FROM: JD Norman Canada, ULC  
(the "**Debtor**")

DATE: February 10, 2021

The Debtor hereby acknowledges receipt of a Notice of Intention to Enforce Security (the "**Notice**") issued by the Secured Creditor pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* in respect of the security granted by the Debtor in favour of the Secured Creditor.

The Debtor hereby consents to the Secured Creditor enforcing the security described in the Notice prior to the expiry of the 10-day period referred to in the Notice or at any time thereafter. The Debtor hereby waives all cure periods to which it may be entitled under the Security (as that term is defined in the Notice).

**JD NORMAN CANADA, ULC**

By:   
Name: Michael T. Wyse  
Title: Director

This is Exhibit “M” referred to in the  
**AFFIDAVIT OF JOHN HO**  
sworn this 10<sup>th</sup> day of February, 2021.



---

*Commissioner for Taking Affidavits (or as may be)*



Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 C. C.43, AS AMENDED**

B E T W E E N:

**CALLIDUS CAPITAL CORPORATION**

Applicant

- and -

**JD NORMAN CANADA, ULC**

Respondent

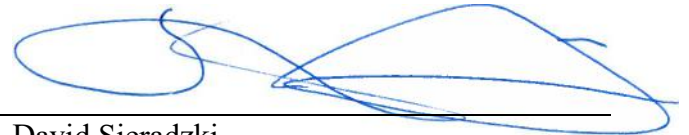
**CONSENT**

KSV Restructuring Inc. hereby consents to act as Receiver of the Respondent, if so appointed by the Court, in accordance with the terms substantially set out in the draft Order appointing Receiver attached as Schedule A hereto.

DATED AT TORONTO, ONTARIO this 10<sup>th</sup> day of February, 2021.

**KSV RESTRUCTURING INC.**

Per:



David Sieradzki  
Managing Director

*I have authority to bind the corporation.*

Applicant

Respondent

Court File No.

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

PROCEEDING COMMENCED AT  
TORONTO

**CONSENT**

**DICKINSON WRIGHT LLP**

Barristers & Solicitors  
199 Bay Street  
Suite 2200, P.O. Box 447  
Commerce Court Postal Station  
Toronto, Ontario, M5L 1G4

**JOHN D. LESLIE (29956P)**

Tel: (416) 646-3801  
Email: [jleslie@dickinsonwright.com](mailto:jleslie@dickinsonwright.com)

**LISA S. CORNE (27974M)**

Email: [lcorne@dickinsonwright.com](mailto:lcorne@dickinsonwright.com)  
Tel: (416) 646-4608

Lawyers for the Applicant

**CALLIDUS CAPITAL CORPORATION****-and- JD NORMAN CANADA, ULC**

Applicant

Respondent

Court File No.

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
**TORONTO**

**AFFIDAVIT OF JOHN HO**

**DICKINSON WRIGHT LLP**

Barristers &amp; Solicitors

199 Bay Street

Suite 2200, P.O. Box 447

Commerce Court Postal Station

Toronto, Ontario, M5L 1G4

**JOHN D. LESLIE (29956P)**

Tel: (416) 646-3801

Email: jleslie@dickinsonwright.com

**LISA S. CORNE (27974M)**

Email: lcorne@dickinsonwright.com

Tel: (416) 646-4608

Lawyers for the Applicant

**Tab 3**

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE	)	FRIDAY, THE 12 <sup>TH</sup> DAY
	)	
JUSTICE HAINEY	)	OF FEBRUARY, 2021

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 C. C.43, AS AMENDED**

B E T W E E N:

**CALLIDUS CAPITAL CORPORATION**

Applicant

- and -

**JD NORMAN CANADA, ULC**

Respondent

**ORDER  
(Appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) appointing KSV Restructuring Inc. as receiver (the “**Receiver**”) without security, of all of the assets, undertakings and properties of the Respondent, JD Norman Canada, ULC (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, was heard this day, via zoom videoconference due to the Covid-19 pandemic.

ON READING the Affidavit of John Ho sworn February 10, 2021 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and Bank of America, N.A., as agent (“**BofA**”), no one else on the service list appearing, although served as appears from the Affidavit of Service of Jennifer Samuels sworn February 10, 2021 and on reading the consent of KSV Restructuring Inc. to act as the Receiver,

### **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and Application Record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

### **APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, KSV Restructuring Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, and all proceeds thereof (the “**Property**”).

### **RECEIVER’S POWERS**

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

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

- (c) to wind up the business of the Debtor, including the powers to enter into any agreements, incur any obligations, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, supplies, or other assets to facilitate the wind up of the Debtor's business or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor other than any indebtedness that is Revolving Loan Priority Collateral (as defined in the Intercreditor Agreement dated as of July 10, 2018 between the Debtor, the Applicant and BofA), which may only be settled, extended or compromised with the consent of BofA;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) with the approval of this Court, to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, and in each such case, notice under subsection 63(4) of the Ontario *Personal Property Security Act* shall not be required;
- (l) without approval of this Court, to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business in respect of any transaction not exceeding \$125,000.00, provided that the aggregate consideration for all such transactions does not exceed \$250,000.00; and
- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;



- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.
- (t) and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees (including such employees' representatives or bargaining agents), agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall: (a) forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request; (b) not impede or delay access or egress by the Receiver to or from any Property; and (c) not impede or delay access or egress by the Receiver, or any other Person permitted such access or egress by the Receiver, to or from any of the Debtor's owned or leased premises including, without limitation, by any Person transporting any Property to or from the Debtor's owned or leased premises with the Receiver's permission.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to

make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

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

**NO PROCEEDINGS AGAINST THE RECEIVER**

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver or the Receiver’s employees, officers, directors, agents and representatives acting in such capacity, except with the written consent of the Receiver or with leave of this Court.

**NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY**

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH THE RECEIVER**

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

## **CONTINUATION OF SERVICES**

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

## **RECEIVER TO HOLD FUNDS**

13. THIS COURT ORDERS that, subject to paragraph 25 below, all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

## **EMPLOYEES**

14. THIS COURT ORDERS that all current employees of the Debtor actively providing services on the date hereof shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The employment of all other employees of the Debtor is hereby deemed terminated for all purposes

effective on the date hereof. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

## **PIPEDA**

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## **LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations

thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER’S LIABILITY**

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **RECEIVER’S ACCOUNTS**

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “**Receiver’s Charge**”) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that, subject to paragraph 25, the Receiver’s Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall, subject to paragraph 25, be at liberty from time to time to apply reasonable amounts, out of the

monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

### **FUNDING OF THE RECEIVERSHIP**

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that neither the Receiver’s Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

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

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver’s Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver’s Certificates.

**B of A RECEIVABLES**

25. **THIS COURT ORDERS** that the bank accounts held in the name of the Debtor (including without limitation those accounts that are the subject of any Deposit Account Control Agreement between the Debtor and BofA) into which the proceeds of any Revolving Loan Priority Collateral are paid or to be paid shall continue to operate, and be applied to obligations owing to BofA, in accordance with the terms of the Second Amended and Restated Loan and Security Agreement, dated as of July 10, 2018 between, among others, the Debtor and BofA (the “**BofA Loan Agreement**”) and in accordance with the terms of the Loan Documents (as defined in the BofA Loan Agreement); provided, however, that **\$(insert maximum amount of 81.4 priority claims for employee compensation)** of the current assets of the Debtor shall be segregated and held separate and apart in a trust account by the Receiver pending the determination of the amount of the BIA section 81.4 claims of the Debtor’s employees, on consent of the Receiver and BofA or as otherwise ordered by the Court. In the event that any proceeds from the Revolving Loan Priority Collateral are delivered to an account of the Receiver or an account of the Debtor other than an account of the Debtor at Bank of America, such proceeds shall be delivered to a bank account of the Debtor at Bank of America to be applied in accordance with this paragraph 25 or otherwise as directed by BofA. Those certain existing deposit agreements between the Debtor and BofA (including any deposit account control agreements) shall continue to govern the cash management relationship between the Receiver and BofA, and all of the provisions of such agreements shall remain in full force and effect.

26. **THIS COURT ORDERS** that, except as set out in Paragraph 25 above, BofA shall not be required to process, honor, debit or pay any cheques, drafts, ACH transfers or other withdrawals in connection with the Debtor’s accounts, whether made, drawn or issued prior to or after the date of this Order other than as identified by the Receiver to BofA in writing. BofA may rely on this Order and the representations of the Receiver regarding the foregoing, and BofA shall not have any liability to any party for relying on such representations by the Receiver or terms of this Order.



**SERVICE AND NOTICE**

27. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: [www.ksvadvisory.com/insolvency-cases/case/jd-norman-canada](http://www.ksvadvisory.com/insolvency-cases/case/jd-norman-canada) .

28. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor’s creditors or other interested parties at their respective addresses as last shown on the records of the Debtor’s and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

**GENERAL**

29. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

30. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor’s.

31. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this

Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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

33. THIS COURT ORDERS that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

34. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

---



**SCHEDULE “B”**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the receiver (the “**Receiver**”) of the assets, undertakings and properties of JD Norman, ULC (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the “**Property**”) appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated the 12<sup>th</sup> day of February , 2021 (the “**Order**”) made in an application having Court file number \_\_\_\_\_, has received as such Receiver from the holder of this certificate (the “**Lender**”) the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly not in advance on the \_\_\_\_\_ day of each month after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 2021

KSV Restructuring Inc., solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name:

Title:

**CALLIDUS CAPITAL CORPORATION****-and- JD NORMAN CANADA, ULC**

Applicant

Respondent

Court File No.

---

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

PROCEEDING COMMENCED AT  
TORONTO

---

**ORDER**

---

**DICKINSON WRIGHT LLP**

Barristers & Solicitors  
199 Bay Street  
Suite 2200, P.O. Box 447  
Commerce Court Postal Station  
Toronto, Ontario, M5L 1G4

**JOHN D. LESLIE (29956P)**

Email: [jleslie@dickinsonwright.com](mailto:jleslie@dickinsonwright.com)  
Tel: (416) 646-4603

**LISA S. CORNE (27974M)**

Email: [lcorne@dickinsonwright.com](mailto:lcorne@dickinsonwright.com)  
Tel: (416) 646-4608

Lawyers for the Applicant

**Tab 4**

Revised: January 21, 2014  
~~s.243(1) BIA (National Receiver) and s. 101 CJA (Ontario) Receiver~~

Court File No. —

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE — ) WEEKDAY, THE #  
 )  
JUSTICE — ) DAY OF MONTH, 20YR  
 )

**PLAINTIFF<sup>†</sup>**

THE HONOURABLE ) FRIDAY, THE 12<sup>TH</sup> DAY  
 )  
JUSTICE HAINES ) OF FEBRUARY, 2021  
**PLAINTIFF** )

IN THE MATTER OF SECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY  
ACT, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE COURTS OF  
JUSTICE ACT, R.S.O. 1990 C. C.43, AS AMENDED

BETWEEN:

CALLIDUS CAPITAL CORPORATION

Applicant

- and -

**DEFENDANT**

JD NORMAN CANADA, ULC

Defendant

Respondent

<sup>†</sup>The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.



- 2 -

**ORDER**  
**(Appointing Receiver)**

THIS ~~MOTION~~APPLICATION made by the ~~Plaintiff~~<sup>2</sup>Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing ~~[RECEIVER'S NAME]~~KSV Restructuring Inc. as receiver ~~[and manager]~~ ~~(in such capacities, the~~ ~~(the~~ ~~"Receiver"~~) without security, of all of the assets, undertakings and properties of ~~[DEBTOR'S NAME]~~ ~~(the~~ ~~"the Respondent, JD Norman Canada, ULC~~ ~~(the~~ ~~"Debtor"~~) acquired for, or used in relation to a business carried on by the Debtor, was heard this day ~~at 330 University Avenue, Toronto, Ontario,~~ via zoom videoconference due to the Covid-19 pandemic.

ON READING the Affidavit of ~~[NAME]~~John Ho sworn ~~[DATE]~~February 10, 2021 and the Exhibits thereto and on hearing the submissions of counsel for ~~[NAMES], no one appearing for [NAME]~~the Applicant and Bank of America, N.A., as agent ("BoFA"), no one else on the service list appearing, although ~~duly~~ served as appears from the Affidavit of Service of ~~[NAME]~~Jennifer Samuels sworn ~~[DATE]~~February 10, 2021 and on reading the consent of ~~[RECEIVER'S NAME]~~KSV Restructuring Inc. to act as the Receiver,

**SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of ~~Motion and the Motion~~Application and Application Record is hereby abridged and validated<sup>3</sup> so that this ~~motion~~application is properly returnable today and hereby dispenses with further service thereof.

## APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, ~~RECEIVER'S NAME~~ [KSV Restructuring Inc.](#) is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, ~~including~~ and all proceeds thereof (the "Property").

## RECEIVER'S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to ~~manage, operate, and carry on~~ wind up the business of the Debtor, including the powers to enter into any agreements, incur any obligations ~~in the ordinary course of business~~, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to purchase or lease such machinery, equipment, ~~inventories~~, supplies, ~~premises~~ or other assets to ~~continue~~facilitate the ~~business~~wind up of the Debtor's business or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor; other than any indebtedness that is Revolving Loan Priority Collateral (as defined in the Intercreditor Agreement dated as of July 10, 2018 between the Debtor, the Applicant and BofA), which may only be settled, extended or compromised with the consent of BofA;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings.<sup>4</sup> The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

~~<sup>4</sup>This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.~~

(k) with the approval of this Court, to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, and in each such case, notice under subsection 63(4) of the Ontario Personal Property Security Act shall not be required;

(l) ~~(i)~~ without ~~the~~ approval of this Court, to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business in respect of any transaction not exceeding \$~~\_\_\_\_\_~~125,000.00, provided that the aggregate consideration for all such transactions does not exceed \$~~\_\_\_\_\_~~250,000.00; and

~~(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;~~

~~and in each such case notice under subsection 63(4) of the Ontario Personal Property Security Act, [or section 31 of the Ontario Mortgages Act, as the case may be,]<sup>5</sup> shall not be required, and in each case the Ontario Bulk Sales Act shall not apply.~~

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

(n) ~~(m)~~ to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

<sup>5</sup> If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.

- (o) ~~(h)~~ to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) ~~(e)~~ to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (q) ~~(f)~~ to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) ~~(g)~~ to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) ~~(i)~~ to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.
- (t) and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees (including such employees' representatives or bargaining agents), agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall: (a) forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request; (b) not impede or delay access or egress by the Receiver to or from any

Property; and (c) not impede or delay access or egress by the Receiver, or any other Person permitted such access or egress by the Receiver, to or from any of the Debtor's owned or leased premises including, without limitation, by any Person transporting any Property to or from the Debtor's owned or leased premises with the Receiver's permission.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

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

**NO PROCEEDINGS AGAINST THE RECEIVER**

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver or the Receiver's employees, officers, directors, agents and representatives acting in such capacity, except with the written consent of the Receiver or with leave of this Court.

**NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY**

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH THE RECEIVER**

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



## CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

## RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that, subject to paragraph 25 below, all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

## EMPLOYEES

14. THIS COURT ORDERS that all current employees of the Debtor actively providing services on the date hereof shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The employment of all other employees of the Debtor is hereby deemed terminated for all purposes

effective on the date hereof. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

## PIPEDA

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## LIMITATION ON ENVIRONMENTAL LIABILITIES

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations

thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

### **LIMITATION ON THE RECEIVER'S LIABILITY**

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

### **RECEIVER'S ACCOUNTS**

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that, subject to paragraph 25, the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.<sup>6</sup>

~~<sup>6</sup>Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".~~

19. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall, subject to paragraph 25, be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

### FUNDING OF THE RECEIVERSHIP

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$~~\_\_\_\_\_~~250,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the Receiver's Borrowings Charge) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

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

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

### B of A RECEIVABLES

25. THIS COURT ORDERS that the bank accounts held in the name of the Debtor (including without limitation those accounts that are the subject of any Deposit Account Control Agreement between the Debtor and BofA) into which the proceeds of any Revolving Loan Priority Collateral are paid or to be paid shall continue to operate, and be applied to obligations owing to BofA, in accordance with the terms of the Second Amended and Restated Loan and Security Agreement, dated as of July 10, 2018 between, among others, the Debtor and BofA (the "BofA Loan Agreement") and in accordance with the terms of the Loan Documents (as defined in the BofA Loan Agreement); provided, however, that \$[insert maximum amount of 81.4 priority claims for employee compensation] of the current assets of the Debtor shall be segregated and held separate and apart in a trust account by the Receiver pending the determination of the amount of the BIA section 81.4 claims of the Debtor's employees, on consent of the Receiver and BofA or as otherwise ordered by the Court. In the event that any proceeds from the Revolving Loan Priority Collateral are delivered to an account of the Receiver or an account of the Debtor other than an account of the Debtor at Bank of America, such proceeds shall be delivered to a bank account of the Debtor at Bank of America to be applied in accordance with this paragraph 25 or otherwise as directed by BofA. Those certain existing deposit agreements between the Debtor and BofA (including any deposit account control agreements) shall continue to govern the cash management relationship between the Receiver and BofA, and all of the provisions of such agreements shall remain in full force and effect.

26. THIS COURT ORDERS that, except as set out in Paragraph 25 above, BofA shall not be required to process, honor, debit or pay any cheques, drafts, ACH transfers or other

withdrawals in connection with the Debtor's accounts, whether made, drawn or issued prior to or after the date of this Order other than as identified by the Receiver to BofA in writing. BofA may rely on this Order and the representations of the Receiver regarding the foregoing, and BofA shall not have any liability to any party for relying on such representations by the Receiver or terms of this Order.

## SERVICE AND NOTICE

27. ~~25.~~ THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/> ~~http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/~~) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ~~@~~: [www.ksvadvisory.com/insolvency-cases/case/jd-norman-canada](http://www.ksvadvisory.com/insolvency-cases/case/jd-norman-canada).

28. ~~26.~~ THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor's and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

**GENERAL**

29. ~~27.~~ THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

30. ~~28.~~ THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor's.

31. ~~29.~~ THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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

33. ~~31.~~ THIS COURT ORDERS that the ~~Plaintiff~~Applicant shall have its costs of this ~~motion~~application, up to and including entry and service of this Order, provided for by the terms of the ~~Plaintiff's~~Applicant's security or, if not so provided by the ~~Plaintiff's~~Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

34. ~~32.~~ THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.





|

|

- 2 -

**SCHEDULE "A""B"**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that ~~RECEIVER'S NAME~~ KSV Restructuring Inc., the receiver (the "Receiver") of the assets, undertakings and properties ~~of JD Norman, ULC (the "Debtor'S-NAME")~~ acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 12<sup>th</sup> day of February, ~~20~~ 2021 (the "Order") made in an action application having Court file number ~~CL~~ \_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded ~~daily~~ monthly not in advance on the \_\_\_\_\_ day of each month ~~after~~ after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent ~~above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.~~

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, ~~20\_\_~~2021

~~[RECEIVER'S NAME]~~KSV Restructuring Inc.,  
solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name:

Title:

Court File No.

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT  
TORONTO

ORDER

DICKINSON WRIGHT LLP

Barristers & Solicitors

199 Bay Street

Suite 2200, P.O. Box 447

Commerce Court Postal Station

Toronto, Ontario, M5L 1G4

JOHN D. LESLIE (29956P)

Email: [jleslie@dickinsonwright.com](mailto:jleslie@dickinsonwright.com)

Tel: (416) 646-4603

LISA S. CORNE (27974M)

Email: [lcorne@dickinsonwright.com](mailto:lcorne@dickinsonwright.com)

Tel: (416) 646-4608

Lawyers for the Applicant



CALLIDUS CAPITAL CORPORATION  
Applicant

-and- JD NORMAN CANADA, ULC  
Respondent

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**APPLICATION RECORD**

**DICKINSON WRIGHT LLP**

Barristers & Solicitors  
199 Bay Street  
Suite 2200, P.O. Box 447  
Commerce Court Postal Station  
Toronto, Ontario, M5L 1G4

**JOHN D. LESLIE (29956P)**

Tel: (416) 646-3801  
Email: [jleslie@dickinsonwright.com](mailto:jleslie@dickinsonwright.com)

**LISA S. CORNE (27974M)**

Email: [lcome@dickinsonwright.com](mailto:lcome@dickinsonwright.com)  
Tel: (416) 646-4608

Lawyers for the Applicant