



**First Report of  
KSV Restructuring Inc.  
as Receiver of  
JD Norman Canada, ULC**

**February 15, 2021**

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COURT FILE NO: CV-21-00656820-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

CALLIDUS CAPITAL CORPORATION

APPLICANT

- AND -

JD NORMAN CANADA, ULC

RESPONDENT

FIRST REPORT OF  
KSV RESTRUCTURING INC.  
AS RECEIVER

FEBRUARY 15, 2021

## 1.0 Introduction

1. This report (“Report”) is filed by KSV Restructuring Inc. (“KSV”) in its capacity as receiver (the “Receiver”) of the property, assets and undertaking of JD Norman Canada, ULC (the “Company”).
2. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “Court”) made on February 12, 2021 (the “Receivership Order”), KSV was appointed Receiver. A copy of the Receivership Order is attached as Appendix “A”.
3. The principal purpose of these receivership proceedings is to conduct a Court-supervised wind-down of the Company’s business and assets that maximizes value for the Company’s stakeholders, including Callidus Capital Corporation (“Callidus”) and Bank of America, N.A. (“BofA”), the Company’s principal secured creditors.

### 1.1 Purposes of this Report

1. The purpose of this Report is to seek advice and direction from the Court on the Receiver’s efforts to realize on certain of the Company’s inventory and the actions and positions taken by the union representing the Company’s former hourly workers, being Unifor Local 195 (the “Union”), which are preventing the Receiver from fulfilling the principal purpose of these proceedings .

### 1.2 Currency

1. All currency references in this Report are to Canadian dollars, unless otherwise noted.

### 1.3 Restrictions

1. In preparing this Report, the Receiver has relied upon financial and other information in the receivership application materials and information provided by former employees of the Company and representatives of the Company's US parent, JD Norman Industries, Inc. ("JDN").
2. The Receiver has not performed an audit or other verification of such information. The Receiver expresses no opinion or other form of assurance with respect to the Company's financial or other information presented in this Report.

### 2.0 Background

1. Until early February, 2021, the Company carried on business from its owned facility in Windsor, Ontario (the "Windsor Property") as a manufacturer of highly engineered metal components for the automotive industry. The Company's entire business was dedicated to the supply of components for General Motors Holdings LLC and its affiliates ("GM").
2. As a result of GM's resourcing of its supply to an alternative vendor, the Company discontinued its operations in early February, 2021. On or around February 5, 2021, the Company terminated its entire workforce, including 72 members of the Union.
3. As set out in the affidavit (the "Affidavit") of John Ho, Chief Financial Officer of Callidus, the Applicant in these proceedings, since February 8, 2021, representatives of the Union barricaded the entrance to the Windsor Property which has prevented the final scheduled shipment of inventory with a value of approximately \$500,000 (the "Inventory"). According to the Affidavit, *"ensuring final inventory shipments from JDN Canada to GM is integral to completing an orderly wind down of JDN Canada's business and operations."*
4. Callidus and BofA are JDN's principal secured creditors and the Company is an obligor on both the Callidus and BofA loan facilities. BofA is owed approximately US\$16.3 million (plus interest and costs which continue to accrue), secured by JDN's and the Company's accounts receivable and inventory. Callidus is owed approximately US\$146.4 million (plus interest and costs which continue to accrue), secured by JDN's and the Company's property, plant and equipment.
5. Other information about the Company and the issues leading to the Receiver's appointment are detailed in the Affidavit, and accordingly, are not repeated in this Report. Copies of Court materials filed in these proceedings, including the Affidavit, are available on the Receiver's website at <https://www.ksvadvisory.com/insolvency-cases/case/jd-norman-canada>.



### 3.0 Union Correspondence

1. Immediately following its appointment on February 12, 2021, the Receiver and its legal counsel, Osler Hoskin & Harcourt LLP (“Osler”), engaged in correspondence with the Union and its legal counsel, Dewart Gleason LLP (“Dewart”), to, *inter alia*: (a) access the Windsor Property for the Receiver to take possession and secure the Company’s property; and (b) arrange for the Inventory to be shipped on an urgent basis.
2. Since the date of its appointment (February 12, 2021), the Union has been cooperative with the Receiver in permitting the Receiver’s representatives certain access to the Windsor Property. However, the Union has refused to grant the Receiver access to the shipping docks or to remove its blockade of the shipping docks. Accordingly, the Inventory cannot be shipped from the Windsor Property.
3. The Receiver was (and remains) focused on arranging for the Inventory to be shipped from the Windsor Property to JDN’s plant in Michigan (and ultimately to GM). In this regard, the Receiver understands that:
  - a) the Inventory is subject to purchase orders issued pursuant to a Long-Term Supply and Accommodation Agreement dated February 18, 2020 among JDN, GM, BofA, Callidus and others (the “LTSA”);
  - b) the value of the Inventory, if shipped in accordance with the LTSA and corresponding purchase orders, is approximately \$500,000; and
  - c) the reason the shipment of the Inventory is critical and urgent at this time is because the LTSA and corresponding purchase orders expire on February 18, 2021. The Receiver understands that the customer is likely to cancel the purchase orders should it not receive the Inventory by February 18, 2021. Given that the Inventory is comprised of customized components for GM, the Inventory loses all of its value and is essentially “scrap value” should it not be shipped before February 18, 2021.
4. The Receiver’s correspondence with the Union in respect of the Inventory is summarized as follows:
  - a) in a telephone conversation on February 13, 2021, a representative of the Union (Chris Taylor) advised a representative of the Receiver (David Sieradzki) in no uncertain terms that the Union would not be removing its blockade to permit the Inventory to be shipped prior to February 18, 2021 unless the Union receives a substantial payment toward the Union’s unpaid severance and termination claims against the Company, which the Receiver has been advised total approximately \$1 million; and
  - b) between February 13, 2021 and the date of this Report, Osler and Dewart have had discussions regarding the Inventory shipment and the blockade at the Windsor Property but the Union has not confirmed it is willing to remove the blockade. A copy of the most recent letter dated February 15, 2021 from Osler to Dewart is attached as Appendix “B”. Dewart’s response is provided in Appendix “C”.

5. Notwithstanding the Receiver's efforts to coordinate the removal of the blockade so the Inventory can be shipped, the Receiver and the Union are at an impasse as at the date of this Report.

#### 4.0 Police Intervention

1. The Receiver has also contacted the Windsor Police and sent a letter to the Sherriff to request police assistance to access the shipping docks and ship the Inventory. A copy of the Receiver's letter dated February 15, 2021 to the Sherriff is attached as Appendix "D".
2. As at the date of this Report, the Receiver has not had any indication that the Windsor Police and/or the Sherriff will be able to assist the Receiver absent a further order of this Court.

#### 5.0 Advice and Direction

1. The Receiver is filing this Report with the Court at this time pursuant to Paragraph 29 of the Receivership Order to seek the Court's advice and direction in respect of the shipment of Inventory. The Receiver is of the view that the Court's intervention to provide for the removal of the Inventory is reasonable and appropriate in the circumstances for the following reasons:
  - a) in attempting to ship the Inventory prior to the date on which its value diminishes from approximately \$500,000 to scrap value, the Receiver is discharging its obligations in accordance with the Receivership Order;
  - b) the Receiver is not interested in interfering with the Union's rights to peacefully picket outside the Windsor Property. On the contrary, the Receiver is solely requesting that the blockade be removed to allow the Receiver access to the shipping docks to allow one shipment of Inventory prior to February 18, 2021;
  - c) it is unclear to the Receiver the legal basis on which the Union is preventing the shipment of Inventory,
  - d) the Union's actions appear to be in breach of Paragraph 4 of the Receivership Order (which is unchanged from the "model order"), which requires parties to "...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"; and
  - e) in the Receiver's view, no party is prejudiced if the Union moves the blockade to allow the Receiver full access to the Property to monetize the Inventory. On the other hand, the Company's estate is materially prejudiced (i.e. loss of value of up to \$500,000) should the Receiver not be able to ship the Inventory prior to February 18, 2021. In this regard, legal counsel to BofA, whose collateral includes the Inventory, wrote a letter to the Receiver on February 15, 2021, a copy of which is attached as Appendix "E".

2. Based on the foregoing, the Receiver respectfully requests the Court's advice and direction in the circumstances.
3. The Union has advised that it is unable to respond before February 17, 2021. Given the urgency of this situation, the Receiver is amenable to attending a case conference on February 16, 2021, should the Court believe it might be helpful in the circumstances.

\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

**KSV RESTRUCTURING INC.,  
SOLELY IN ITS CAPACITY AS COURT APPOINTED RECEIVER OF  
JD NORMAN CANADA, ULC  
AND NOT IN ITS PERSONAL CAPACITY**

## **Appendix “A”**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**



THE HONOURABLE  
JUSTICE HAINES

)  
)  
)

FRIDAY, THE 12<sup>TH</sup> DAY  
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**

BETWEEN:

**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, the Respondent, Bank of America, N.A., as agent ("**BofA**"), Unifor local 195, and KSV Restructuring Inc., 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 the 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, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

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 \$166,000.00 or such other amount as the Receiver deems advisable 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.

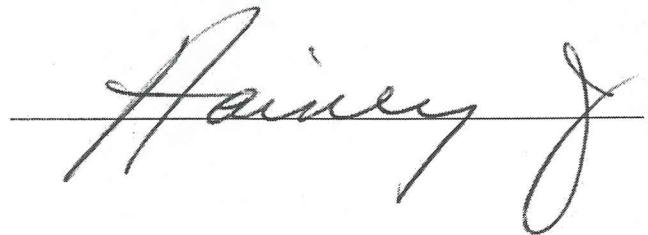
31. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this

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.

A handwritten signature in black ink, appearing to read "Ainey J.", is written over a horizontal line.

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

FEB 12 2021

PER / PAR:

Handwritten initials in blue ink, possibly "ML", are written next to the "PER / PAR:" label.



**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**

Applicant

-and-

**JD NORMAN CANADA, ULC**

Respondent

Court File No. CV-21-00656820-00CL

**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

## **Appendix “B”**

Toronto

February 15, 2021

Montréal

Sven Poysa  
Direct Dial: 416.862.5934  
SPoysa@osler.com  
Our Matter Number: 1214361

Calgary

**Sent By Email** (sdewart@dglp.ca)

Ottawa

Sean Dewart  
Dewart Gleason LLP  
366 Adelaide St. W., Suite 102  
M5V 1R9

Vancouver

New York

Dear Mr. Dewart:

**In the matter of the receivership of JD Norman Canada, ULC pursuant to section 243(1) of the *Bankruptcy and Insolvency Act***

As you know, we are counsel for KSV Restructuring Inc. in its capacity as court-appointed receiver of all of the assets, undertakings and properties of JD Norman Canada, ULC (the “**Debtor**”) pursuant to an order (the “**Order**”) under section 243(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”) dated February 12, 2021 (in such capacity and not in its personal capacity, the “**Receiver**”). We are writing to you in your capacity as legal counsel for Unifor, Local 195 (the “**Union**”).

We confirm that:

- We have advised the Union that (i) in accordance with its obligations under the Order and the BIA, the Receiver is looking to sell certain customized inventory components of the Debtor located at the Debtor’s premises in Windsor, Ontario, which inventory the Receiver understands is packed and ready for shipment pursuant to a purchase order/supply agreement with an approximate value of \$500,000, and (ii) the inventory must be shipped from the premises to the customer before February 18, 2021, failing which the inventory will be essentially worthless as the purchase order/supply agreement expires on that date;
- The Union has blocked the shipping docks and otherwise engaged in actions preventing the Receiver from accessing the shipping docks, which is preventing the removal of the inventory; and
- We have asked you to confirm by yesterday whether or not the Union will move, prior to February 18<sup>th</sup>, the Union trailer that is currently blocking the loading dock and preventing the Receiver from shipping inventory, whose value essentially evaporates on February 18<sup>th</sup>.

We also note that both in the media and on Unifor twitter accounts, Union President Emile Nabbout has said that the Union will not permit the shipment of any inventory (“Nothing in, nothing out!”) until the Debtor negotiates a closure agreement with the Union – although we appreciate that President Nabbout’s public statements may not necessarily reflect the Union’s formal legal position.

Given the circumstances, we are writing to ask you – again – whether the Union will move the Unifor trailer that is blocking access to the loading dock and thus permit the shipment of the inventory prior to February 18<sup>th</sup>. Please note that if you fail to provide such written confirmation by 2 p.m. today, the Receiver will assume that the Union has no intention of allowing the Receiver to ship the inventory, thereby preventing the Receiver from fulfilling its duty to maximize the value of the estate, in accordance with the BIA and the Order. In such event, the Receiver reserves all rights, including the right to seek appropriate advice and direction from the Court – in which event we may rely on this communication as well as any failure by the Union to provide the requested confirmation that it will allow access to the loading dock so as to permit the Receiver to ship the inventory by February 18<sup>th</sup>.

The Receiver understands the impact the Receivership has had on the members of the Union, and remains committed to working with the Union, in accordance with its obligations, and remains prepared to explore a reasonable consensual solution.

Yours very truly,



for

Sven Poysa  
[spoysa@osler.com](mailto:spoysa@osler.com)

and

Marc Wasserman  
[mwasserman@osler.com](mailto:mwasserman@osler.com)

c: *Evan Cobb;*  
*John Leslie*



## **Appendix “C”**



## Dewart Gleason LLP *Lawyers*

T: 416.971.8000  
F: 416.971.8001

Suite 102-366 Adelaide Street West  
Toronto ON M5V 1R9

[www.dgllp.ca](http://www.dgllp.ca)

Sean Dewart  
Direct: 416.583.5755  
Email: [sdewart@dgllp.ca](mailto:sdewart@dgllp.ca)

February 15, 2021

### **BY EMAIL**

Sven Poysa  
Osler, Hoskin & Harcourt LLP  
Box 50 - 1 First Canadian Place  
Toronto, ON  
M5X 1B8

Dear Mr. Poysa:

### **RE: JD Norman Canada, ULC - In Receivership**

This is further to the letter you sent earlier today.

As I advised in an email sent late yesterday, my understanding is that there is a peaceful picket by members of Unifor Local 195. This form of expression enjoys the protection of the *Canadian Charter of Rights and Freedoms*. Whether this expression may cause delays from time to time will obviously depend on the prevailing circumstances at any given moment. As is noted in much of the applicable caselaw, labour pickets are dynamic.

Although you were not present when the matter was before Justice Hainey last week, you may wish to review the factum filed on my client's behalf at that time.

If your client is aggrieved by the picketing, its remedies are subject to s. 102 of the *Courts of Justice Act*. Our explicit submission to the Court last week was that it should dismiss the relief sought being sought at that time with respect to the picketing, without prejudice to your client's right to return on proper notice, with a proper record pursuant to the proper statutory provision.

On the topic of resolution, the Union understands that the constitutionally protected activities of its members might affect creditors. It remains ready, willing and able to meet (virtually) with your client to explore settlement. It goes without saying that any such communications will be the subject of settlement privilege.

I believe your client has contact information for Shane Wark, who is the Assistant to Unifor's National President responsible for this matter. If not, please let me know.



# Dewart Gleason LLP *Lawyers*

T: 416.971.8000

F: 416.971.8001

Suite 102-366 Adelaide Street West

Toronto ON M5V 1R9

[www.dgllp.ca](http://www.dgllp.ca)

Sincerely,

A handwritten signature in black ink, appearing to read 'Sean Dewart'.

Sean Dewart

SD/taw

cc. Marc Wasserman  
Evan Cobb  
John Leslie

## **Appendix “D”**



**David Sieradzki**

**kvs advisory inc.**

150 King Street West, Suite 2308

Toronto, Ontario, M5H 1J9

T +1 416 932 6030

F +1 416 932 6266

dsieradzki@kvsadvisory.com

kvsadvisory.com

February 15, 2021

Ontario Superior Court of Justice  
245 Windsor Avenue  
Windsor, ON N9A 1J2

**Attention: Sheriff's Office**

To whom it may concern:

**Re: JD Norman Canada, ULC (the "Company")**

KSV Restructuring Inc. is the court appointed receiver (the "Receiver") of the property, assets and undertaking of JD Norman Canada, ULC (the "Company"), located at 6845 Hawthorne Drive, Windsor, ON N8T 3B8, pursuant to the attached February 12, 2021 Order of the Honorable Justice Hainey (the "Receivership Order").

Immediately upon its appointment, the Receiver initiated efforts to realize on certain of the Company's inventory in accordance with paragraph 4 of the Receivership Order. However, the Receiver has been prevented by the Union representing the Company's former hourly workers (Unifor Local 195) from accessing the premises as required to deal with the inventory. The Receiver must realize on the inventory on an urgent basis and requires access to the Company's premises for this purpose no later than February 18, 2021.

The Receiver is therefore seeking your assistance under Section 141 of the *Courts of Justice Act* in enforcing the Receivership Order terms and allowing the Receiver access provided by the Court Order.

Given the urgency, we would appreciate your contacting the writer at (416) 428 7211 immediately on receipt of this letter and thank you in advance for your anticipated cooperation.

Yours very truly,

**KSV RESTRUCTURING INC.  
SOLELY IN ITS CAPACITY AS COURT APPOINTED RECEIVER OF  
JD NORMAN CANADA, ULC  
AND NOT IN ITS PERSONAL CAPACITY**

Per: David Sieradzki

## **Appendix “E”**

February 15, 2021

**Sent by Email**

KSV Restructuring Inc.,  
in its capacity as Receiver of the assets, undertakings and  
properties of JD Norman Canada, ULC  
150 King Street West, Suite 2308  
Toronto, Ontario  
M5H 1J9

Norton Rose Fulbright Canada LLP  
222 Bay Street, Suite 3000, P.O. Box 53  
Toronto, Ontario M5K 1E7 Canada

F: +1 416.216.3930  
[nortonrosefulbright.com](http://nortonrosefulbright.com)

**Evan Cobb**  
+1 416.216.1929  
Evan.Cobb@nortonrosefulbright.com

**Attention: David Sieradzki, Managing Director**

Dear Mr. Sieradzki:

**Callidus Capital Corporation and JD Norman Canada, ULC (CV-21-00656820-00CL)**

We are counsel to Bank of America, N.A., as Agent (the "**Agent**"), under the Second Amended and Restated Loan and Security Agreement between, among others, JD Norman Canada, ULC ("**JDN Canada**"), the Agent, and the financial institutions party thereto from time to time as lenders, dated July 10, 2018 (the "**JDN Loan Agreement**").

The balance currently owing by JDN Canada and the other obligors under the JDN Loan Agreement is approximately US\$16.3 million (plus interest, fees and expenses). These obligations are secured by a perfected first priority security interest granted to the Agent on, among other things, all inventory, merchandise, raw materials, work in process and finished goods of JDN Canada (collectively, "**Inventory**").

The Agent understands that the Receiver is unable to access certain finished goods Inventory located at the JDN Canada site at this time.

The Agent further understands that if such Inventory located at the JDN Canada site is not delivered to JDN Canada's customers by February 18<sup>th</sup>, there is a significant risk that such customers will refuse to accept and pay for this Inventory based upon an assertion that their supply contract with JDN Canada (or its affiliates) terminated on that date.

In these circumstances, the Agent is concerned that if the Receiver cannot access this Inventory collateral immediately, no recovery may be obtained from this collateral, resulting in material prejudice to the stakeholders of JDN Canada.

Yours Truly,

A handwritten signature in black ink, appearing to read "Evan Cobb".

Evan Cobb