



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

April 27, 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

SECOND REPORT OF
KSV RESTRUCTURING INC.
AS RECEIVER

APRIL 27, 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 undertakings 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 purposes of these receivership proceedings are to conduct a Court-supervised wind-down of the Company’s business and a liquidation of its 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 purposes of this Report are to:
 - a) provide background information about the Company and these proceedings;
 - b) summarize the process carried out by the Receiver, in accordance with the Receivership Order, to solicit liquidation proposals for the Company’s machinery and equipment (the “M&E Assets”) located at its owned manufacturing facility in Windsor, Ontario (the “Windsor Property”);

- c) summarize a proposed transaction (the “Transaction”) with Corporate Assets Inc. (the “Liquidator”) for the liquidation of the M&E Assets pursuant to a Liquidation Services Agreement dated April 20, 2021 between the Liquidator and the Receiver (the “LSA”);
- d) summarize the status of the Receiver’s marketing process for the Windsor Property; and
- e) recommend that this Honourable Court make an order, among other things:
 - i. approving the Transaction and the LSA;
 - ii. vesting the Company’s right, title and interest in the M&E Assets in the ultimate purchasers of those assets;
 - iii. sealing the Confidential Appendices to this Report pending further Court order; and
 - iv. approving this Report and the Receiver’s activities described herein.

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 materials served in support of the Receivership Order and information provided by former employees of the Company.
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. The Company’s parent company is JD Norman Industries, Inc. (“JDN”), a US based automotive parts manufacturer.
2. Until early February 2021, the Company carried on business from 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”).
3. 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 Unifor Local 195 (the “Union”).

4. Callidus and BofA are JDN's principal secured creditors and the Company is an obligor on both the Callidus and BofA loan facilities. At the commencement of these proceedings, BofA was 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 was 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, including the M&E Assets and the Windsor Property.
5. Additional information about the Company and the issues leading to the Receiver's appointment are set out in the affidavit (the "Affidavit") of John Ho, Chief Financial Officer of Callidus, the Applicant in these proceedings, sworn February 8, 2021. Accordingly, that information is 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>.

2.1 The Union

1. As set out in the Affidavit, in the days prior to the granting of the Receivership Order, representatives of the Union barricaded the entrance to the Windsor Property which prevented the delivery of the final scheduled inventory shipments from that facility.
2. On February 17, 2021, the Receiver, the Union and BofA agreed to a consensual resolution of the dispute, resulting in the Union's removal of the barricade and allowing the Receiver to facilitate the final inventory shipments.
3. As at the date of this Report, the Receiver is in the process of collecting the proceeds of those inventory shipments, following which it will remit to the Union its agreed upon share of inventory realizations.
4. The Receiver is also presently carrying out its obligations under the *Wage Earner Protection Program Act* ("WEPPA"), including for the 54 eligible members of the Union.

2.2 Funding of these Proceedings

1. As at the date of this Report, Callidus and BofA have advanced \$37,500¹ and \$20,000, respectively. These advances have been necessary to contribute to the funding of these proceedings, which advances are secured by the Receiver's Borrowings Charge created under the Receivership Order.
2. At the outset of these proceedings, BofA also funded \$166,000 to the Receiver as required under Paragraph 25 of the Receivership Order. These funds are being held to satisfy priority employee claims under WEPPA or otherwise. As at the date of this Report, the Receiver is not aware of any such priority claims.

¹ Includes US\$10,000 translated to Canadian currency at a rate of \$1.25 : \$1.00.

3.0 Liquidation Bid Solicitation Process

3.1 Overview

1. On February 23, 2021, the Receiver commenced a process to solicit liquidation bids for the M&E Assets in accordance with Paragraph 3(j) of the Receivership Order. The solicitation process is summarized as follows:
 - a) on February 23, 2021, the Receiver sent a letter (the “Solicitation Letter”) to nineteen liquidation firms with experience liquidating equipment similar in nature to the M&E Assets. A copy of the Solicitation Letter is attached as Appendix “B”;
 - b) attached to the Solicitation Letter was a confidentiality agreement (“CA”) that interested parties were required to sign prior to performing diligence. Thirteen liquidators executed the CA and participated in the process;
 - c) interested parties were provided with a detailed asset listing and an opportunity to tour the Windsor Property to view and inspect the assets. Tours were conducted by a former Company employee retained on a “term and task” basis to assist the Receiver in carrying out its mandate; and
 - d) offers were due on March 24, 2021 (the “Offer Deadline”).

3.2 Results

1. Six liquidation proposals were submitted to the Receiver on the Offer Deadline. Of the six bids, five were submitted on a net minimum guarantee (“NMG”) basis and one was commission-based.
2. A summary of the offers is attached as Confidential Appendix “1” which is subject to a request for a sealing order. The rationale for the Receiver’s request that the bid summary be sealed subject to further Court order is provided below in Section 4.1 of this Report.
3. The offer submitted by the Liquidator was the highest of the six bids submitted and was on a NMG basis. With the consent of Callidus, the Receiver proceeded to negotiate the LSA with the Liquidator. The LSA was executed on April 20, 2021 subject to Court approval.

4.0 Transaction²

1. A summary of the terms and conditions of the LSA is provided below.
 - a) Assets subject to the LSA: The M&E Assets, including the production lines and related equipment at the Windsor Property.

² Defined terms in this section of the Report have the meanings provided to them in the LSA.

b) Basis of Offer and Payment Mechanism: The Liquidator has funded 20% of the NMG as a deposit which is being held in the Receiver's trust account. The balance of the NMG is to be paid by the Liquidator no later than one week prior to the Scheduled Auction Date (which is presently scheduled to take place on June 9, 2021). Sale proceeds in excess of the NMG and an agreed-upon amount to cover the Liquidator's expenses shall be split on a 95/5 basis, in favour of the Receiver.

c) Other:

- The Liquidator shall be entitled to charge any Purchaser and retain, free of any claim of the Receiver, a Buyer's Premium.
- Should any of the M&E Assets be excluded, omitted or missing at the time of conducting the auction for any reason, the NMG would be reduced by the amount of the NMG allocated to such excluded M&E Asset. Attached as a schedule to the LSA is a listing of the M&E Assets and the portion of the NMG allocated by the Liquidator to each of the M&E Assets for the purposes of determining the reduction of the NMG in such circumstances.
- All M&E Assets are to be removed from the Windsor Property by the Removal Date (July 19, 2021), or such later date as may be agreed to in writing by the Receiver and Liquidator.
- The Liquidator is responsible for the collection and remittance of any applicable taxes on the sale of the M&E Assets. In addition to its other indemnification obligations under the LSA, the Liquidator has indemnified the Receiver for any taxes that may be assessed resulting therefrom as well as any claims which the Receiver incurs as a direct or indirect consequence of the Liquidator failing to report or remit such taxes.
- The Liquidator is responsible for the Liquidator Expenses, including but not limited to, supervision expenses related to the Auction, advertising and promotional expenses and insurance costs.
- The LSA requires the Receiver to seek and obtain one or more approval and vesting orders from the Court, which will vest the M&E Assets in each respective purchaser free and clear of any claims and encumbrances.
- The LSA contains standard provisions for the basis on which the M&E Assets are to be removed.
- The LSA contemplates that sales to the ultimate purchasers of the M&E Assets are to be on an "as is, where is" basis.
- The LSA remains subject only to the approval of this Court.

2. A copy of the redacted version of the LSA is attached as Appendix "C". A copy of the unredacted version of the LSA is attached as Confidential Appendix "2" and is subject to a request for a sealing order. The rationale for the Receiver's request that the unredacted copy be sealed subject to further Court order is provided below in Section 4.1 of this Report.

4.1 The Need for Confidentiality

1. In the event the Transaction does not close for any reason, another tender process will be required. If the economic terms of the LSA are not sealed, future bidders would have access to the amount that was accepted by the Receiver, which will undermine any future tender process to the detriment of the Company's stakeholders. The Receiver believes that no party will be prejudiced if the economic terms of the LSA and the bid summary are sealed until further Order of the Court at this time.
2. Accordingly, the Receiver believes the proposed sealing order is reasonable and appropriate in the circumstances.

4.2 Recommendation

1. The Receiver recommends that this Court approve the LSA and authorize and direct the Receiver to complete the Transaction contemplated thereby for the following reasons:
 - a) in the Receiver's view, the process to solicit liquidation proposals was conducted on a commercially reasonable basis. There were 19 liquidators contacted, 13 of which executed the CA and performed diligence;
 - b) the Transaction provides for the greatest recovery available for the assets subject to the LSA;
 - c) the Receiver believes that the terms of the LSA are reasonable, including the amount of the NMG, the NMG payment mechanism, the Liquidator Expenses, the Buyer's Premium and the sharing formula for proceeds in excess of the NMG (if any);
 - d) the M&E Assets are subject to Callidus' security. Callidus was involved in the bid review process and has consented to the Transaction; and
 - e) the LSA contemplates the Receiver obtaining an approval and vesting order and the value of the Transaction exceeds the thresholds under the Receivership Order whereby Court approval is required.
2. Prior to the Receiver making any distributions in these proceedings from the Transaction proceeds or otherwise, the Receiver's legal counsel, Osler, Hoskin & Harcourt LLP, will be reviewing and providing an opinion on the validity and enforceability of Callidus' security.

5.0 The Windsor Property

1. In accordance with Paragraph 3(j) of the Receivership Order, the Receiver solicited listing proposals from four commercial realtors with experience in the Windsor area to act as listing agent for the Windsor Property. The Receiver requested that each realtor provide by March 15, 2021: their work plan; an estimate of the value of the Windsor Property; their background and experience; their liability insurance certificate; their proposed commission structure; and a statement confirming they are clear of any conflicts.

2. On March 15, 2021, four listing proposals were submitted from such commercial realtors. Following interviews with the realtors and consultation with Callidus, the Receiver entered into a listing agreement for the Windsor Property on April 19, 2021 with Colliers International London Ontario, Brokerage (“Colliers”).
3. Colliers has set June 3, 2021 as the preliminary bid deadline in its sale process.
4. All of Colliers’ marketing materials will indicate that any transaction for the Windsor Property is subject to Court approval.

6.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that this Court make an order granting the relief detailed in Section 1.1 (1)(e) of this Report.

* * *

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

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FRIDAY, THE 12TH 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.

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.

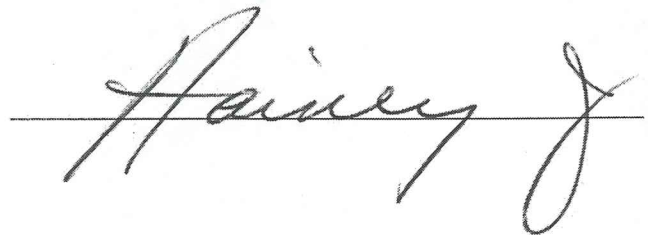
31. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this

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 12th 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)
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LISA S. CORNE (27974M)
Email: lcorne@dickinsonwright.com
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Lawyers for the Applicant

Appendix “B”



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T +1 416 932 6259
F +1 416 932 6266

eklein@ksvadvisory.com
ksvadvisory.com

February 23, 2021

DELIVERED BY EMAIL

Dear Sir or Madam:

Re: JD Norman Canada, ULC (the “Company”)

Pursuant to an order of the Ontario Superior Court of Justice (the “Court”) made on February 12, 2021 (the “Receivership Order”), KSV Restructuring Inc. (“KSV”) was appointed receiver (“Receiver”) of the Company’s property, assets and undertaking. A copy of the Receivership Order is available at <https://www.ksvadvisory.com/insolvency-cases/case/jd-norman-canada>.

As part of the Receivership proceedings, the Receiver is soliciting liquidation proposals for the Company’s fixed assets, which are principally comprised of machining and equipment for the manufacturing of connecting rods located at its facility in Windsor, Ontario.

This letter is an invitation to participate in the process. The submission procedures are provided below:

- The deadline for offers: **March 24, 2021 at 5:00 p.m. (EST)**;
- Offers are to indicate:
 - a) the terms on which you would be prepared to conduct an auction pursuant to a Liquidation Services Agreement, including commission percentage, buyer’s premium and any expenses to be deducted from the gross sale proceeds; and/or
 - b) whether you are prepared to offer a net minimum guarantee (“NMG”) for the assets and, if so, the profit participation split between the Receiver and your firm;
- Offers submitted on an NMG basis must allocate a purchase price for each piece of equipment indicating the specific deductions to the NMG resulting from the removal of such asset from the sale. Please note any pieces of equipment integral to the sale which, if removed, would make the sale uneconomic for you;
- The Liquidation Services Agreement will be subject to Court approval. It will contemplate that assets would be sold to the successful bidder on an “as is, where is” basis, without representations and warranties, including as to the salability, merchantability, etc. of any of the Company’s assets; and
- Please advise of the terms of occupancy of the Company’s premises that you require, including the amount of time needed to conduct a sale from the Windsor premises.

Please contact the undersigned should you have any questions or wish to arrange a viewing of the assets. An asset listing will be provided to you upon execution of the attached confidentiality agreement.

The Receiver notes that the process detailed in this letter may be amended, supplemented or terminated at any time, in the Receiver's sole and absolute discretion.

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**

A handwritten signature in black ink, appearing to read "Emily Klein". The signature is written in a cursive, flowing style.

Per: Emily Klein

EK:rk
Encl.

CONFIDENTIALITY AGREEMENT

In connection with your possible interest in exploring a transaction (a "Transaction") involving the fixed assets of JD Norman Canada, ULC (the "Company"), you have requested certain oral and written information from KSV Restructuring Inc., in its capacity as receiver (the "Receiver") of the Company's property, assets and undertaking. All such information furnished to you or your Representatives (as defined below) by or on behalf of the Receiver (irrespective of the form of communication and whether such information is so furnished before, on or after the date hereof), and all analyses, compilations, data, studies, notes, interpretations, memoranda or other documents prepared by you or your Representatives containing or based in whole or in part on any such furnished information are collectively referred to herein as the "Information." In consideration of furnishing you with the Information, the Receiver requests your agreement to, and you agree to and will cause your Representatives to comply with, the following:

1. The Information will be used solely for the purpose of evaluating a Transaction, and the Information will be kept strictly confidential and will not be disclosed by you or your Representatives, except that you may disclose the Information or portions thereof to those of your directors, officers and employees and representatives of your legal, accounting and financial advisors (the persons to whom such disclosure is permissible being collectively referred to herein as the "Representatives") who need to know such information for the purpose of evaluating such Transaction; provided that such Representatives are informed of the confidential and proprietary nature of the Information and agree to comply with the terms of this Agreement. You agree to be responsible for any breach of this Agreement by your Representatives (it being understood that such responsibility shall be in addition to and not by way of limitation of any right or remedy the Receiver may have against such Representatives with respect to any such breach).
2. Except with the prior written consent of the Receiver, neither you nor your Representatives will disclose to any person either the fact that any investigations, discussions or negotiations are taking place concerning a Transaction, or that you have received Information from the Receiver, or any of the terms, conditions or other facts with respect to any such possible Transaction or involvement, including the status thereof. The term "person" as used in this Agreement will be interpreted broadly to include the media and any corporation, company, group, partnership, limited liability company, trust or other entity or individual.
3. If you or any of your Representatives become legally compelled (including by deposition, discovery, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any of the Information, you shall provide the Receiver with prompt prior written notice of such requirement so that the Receiver may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement. If such protective order or other remedy is not obtained, or if the Receiver waives compliance with the provisions hereof, both you and your Representatives shall disclose only that portion of the Information which is legally required to be disclosed and to take all reasonable steps to attempt to preserve the confidentiality of the Information.
4. The term "Information" does not include any information which (i) at the time of disclosure is generally available to the public (other than as a result of a disclosure directly or indirectly by you or your Representatives) or (ii) was available to you on a non-confidential basis from a source other than any of the Receiver or their respective advisors, provided that such source is not and was not known by you after due inquiry to be bound by a confidentiality obligation owed to the Receiver.

5. If you determine not to pursue a Transaction, you will promptly notify the Receiver of your determination. At the time of such notice, or if, at any earlier time, the Receiver so directs (whether or not you determine to pursue a Transaction), you and your Representatives will, at your option, promptly return to the Receiver, or destroy, all Information and all copies, extracts or other reproductions in whole or in part thereof. Notwithstanding the return of the Information, you and your Representatives will continue to be bound by this Agreement. Notwithstanding the foregoing, (a) you may retain a copy of the Information to the extent that such retention is required to demonstrate compliance with applicable law, regulation or professional standards, provided that it is kept strictly confidential; and (b) Information that is electronically stored may be retained in back-up servers if it is not intentionally made available to any person, and is deleted in accordance with your normal policies with respect to the retention of electronic records. Notwithstanding the return or destruction of the Information, you and your Representatives shall continue to be bound by the confidentiality and other obligations hereunder.
6. None of the Receiver, or any of their officers, directors, employees, representatives or agents is making any representation or warranty, express or implied, as to the accuracy or completeness of the Information, and none of the Receiver, or any of their officers, directors, employees, representatives or agents, will have any liability to you or any other person resulting from your use of the Information. Only those representations or warranties that are made to you in a definitive written agreement regarding a Transaction (a "Definitive Agreement") when, as, and if it is executed, and subject to such limitations and restrictions as may be specified in such Definitive Agreement, will have any legal effect.
7. Unless and until a Definitive Agreement with respect to a Transaction has been executed and delivered, the Receiver has no legal obligation of any kind whatsoever with respect to a Transaction by virtue of this Agreement or any other written or oral expression with respect to a Transaction except, in the case of this Agreement, for the matters specifically agreed to herein.
8. This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein without regard to the conflicts of law principles thereof.
9. If you agree with the foregoing, please sign and return a copy of this letter, which will constitute our agreement with respect to the subject matter hereof.

Confirmed and Acknowledged

Corporation:

Authorized Signing Officer:

Date:

Appendix “C”

LIQUIDATION SERVICES AGREEMENT

THIS AGREEMENT is made as of this 20th day of April, 2021 (the "Effective Date").

B E T W E E N:

KSV RESTRUCTURING INC., in its capacity as the court-appointed receiver of all of the assets, undertakings and properties of JD Norman Canada, ULC (the "**Debtor**") and not in its personal or corporate capacity (the "**Receiver**")

- and -

CORPORATE ASSETS INC., a corporation incorporated under the laws of the Province of Ontario (the "**Liquidator**")

RECITALS:

- A. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated February 12, 2021, the Receiver was appointed as receiver of all of the assets, undertakings and properties of the Debtor, with the power to, among other things, market any or all of the Debtor's property, including advertising and soliciting offers in respect of the property and negotiating such terms and conditions of sale as the Receiver, in its discretion, deems appropriate; and
- B. The Liquidator and the Receiver have each agreed to enter into this Agreement respecting the sale of the Assets (as defined herein) by the Liquidator as agent for and on behalf of the Receiver, upon the terms and conditions hereinafter set forth.

NOW THEREFORE IN CONSIDERATION of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to the terms and conditions set forth below.

ARTICLE 1 - INTERPRETATION

1.01 Definitions

In this Agreement, unless something in the subject matter or context is inconsistent therewith:

- (a) "**Agreement**" means this agreement, including its recitals and schedules, as amended from time to time.
- (b) "**Applicable Law**" means, at any time, with respect to any Person, property, transaction or event, all applicable laws, statutes, regulations, treaties, judgments and decrees and (whether or not having the force of law) all applicable official directives, rules, consents, approvals, by-laws, permits,



authorizations, guidelines, order and policies of any Governmental Authority having authority over that Person, property, transaction or event.

- (c) **“Approval Order”** has the meaning ascribed thereto in Section 6.01(a)(iii).
- (d) **“Assets”** means the assets listed in Schedule “A” attached hereto.
- (e) **“Business Day”** means any day excluding a Saturday, Sunday or statutory holiday in the Province of Ontario, and also excluding any day on which the principal chartered banks located in the City of Toronto are not open for business during normal banking hours.
- (f) **“Buyer’s Premium”** has the meaning ascribed thereto in Section 2.04.
- (g) **“Claims”** means all losses, damages, expenses, liabilities (whether accrued, actual, contingent, latent or otherwise), interest, penalties, costs, claims, complaints and demands of whatever nature or kind, including all legal fees and costs on a full indemnity basis.
- (h) **“Condition Date”** means the date on which all of the conditions set out in Article 6 have been satisfied or waived.
- (i) **“Court”** has the meaning set out in the recitals to this Agreement.
- (j) **“Debtor”** has the meaning set out in the recitals to this Agreement.
- (k) **“Effective Date”** has the meaning set out in the recitals to this Agreement.
- (l) **“Excluded Assets”** has the meaning ascribed thereto in Section 2.01(b).
- (m) **“Expense Amount”** means [REDACTED].
- (n) **“Force Majeure”** has the meaning ascribed thereto in Section 7.01.
- (o) **“Governmental Authority”** means:
 - (i) any federal, provincial, local, municipal, regional, territorial, aboriginal, or other government, governmental or public department, branch, ministry, or court, domestic or foreign, including any district, agency, commission, board, arbitration panel or authority and any subdivision of the foregoing exercising or entitled to exercise any administrative, executive, judicial, ministerial, prerogative, legislative, regulatory or taxing authority or power of any nature; or
 - (ii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing.
- (p) **“Gross Proceeds”** means, collectively, the proceeds from the sale of Assets, including the Buyer’s Premium and all Transfer Taxes.
- (q) **“Liquidation Period”** has the meaning ascribed thereto in Section 2.01(c).



- (r) **“Liquidator”** has the meaning set out in the recitals to this Agreement.
- (s) **“Liquidator Expenses”** means all sale and marketing expenses, including but not limited to:
- (i) Commission expenses related to the Auction;
 - (ii) all advertising, promotional and signage expenses related to the Liquidation Period and the Auction;
 - (iii) the Liquidator’s legal fees and insurance costs related to the Liquidation Period and the Auction;
 - (iv) costs and expenses associated with the Liquidator’s supervision and travel related to the Auction; and
 - (v) credit card fees, charge backs, discounts and bank service charges relating to the Sales and/or the transfers of proceeds.
- (t) **“Net Minimum Guarantee”** has the meaning ascribed thereto in Section 2.02(a).
- (u) **“Net Proceeds”** means the Gross Proceeds from the Sales of Assets less any Transfer Taxes and any Buyer’s Premiums.
- (v) **“Occupancy Costs”** has the meaning ascribed thereto in Section 3.02 (b).
- (w) **“Occupancy Period”** has the meaning ascribed thereto in Section 3.02 (a).
- (x) **“Person”** means an individual, body corporate, sole proprietorship, partnership or trust or unincorporated association, unincorporated syndicate, unincorporated organization, or another entity, and a natural person, acting in his or her individual capacity or in his or her capacity as executor, trustee, administrator or legal representative, and any Governmental Authority.
- (y) **“Premises”** means the premises located at 6845 Hawthorne Drive, Windsor, Ontario, including the contiguous yards and storage areas.
- (z) **“Purchaser”** means a Person who purchases any Assets from the Liquidator and “Purchasers” means all of them.
- (aa) **“Receiver”** has the meaning set out in the recitals to this Agreement.
- (bb) **“Receiver Indemnified Parties”** has the meaning ascribed thereto in Section 5.02(a).
- (cc) **“Regulated Materials”** means any substance or material that is or becomes prohibited, controlled or regulated by any Governmental Authority, including, without limitation, any paints, solvents, PCB’s, asbestos, contaminants, pollutants, dangerous substances, toxic substances, designated substances, controlled products, wastes, hazardous wastes, subject wastes, regulated materials, dangerous goods or petroleum, its derivatives, by-products or other hydrocarbons, all as defined in or pursuant to Applicable Laws.



- (dd) “**Removal Deadline**” means 90 days after the Effective Date, or such later date as may be agreed to in writing by the Receiver and the Liquidator.
- (ee) “**Sales**” means, collectively, all of the sales of the Assets to the Purchasers during the Liquidation Period or otherwise.
- (ff) “**Sales Statement**” has the meaning ascribed thereto in Section 2.05(b).
- (gg) “**Survival Date**” means the date that the Receiver is discharged in that capacity by the Court.
- (hh) “**Transfer Taxes**” has the meaning ascribed thereto in Section 2.05(d).

1.02 Headings

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections and Schedules are to Articles and Sections of and Schedules to this Agreement.

1.03 Extended Meanings

In this Agreement words importing the singular number only include the plural and *vice versa*, words importing any gender include all genders and the term “including” means “including without limiting the generality of the foregoing”.

1.04 Statutory References

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as now enacted or as the same may from time to time be amended, re-enacted or replaced and includes any regulations made thereunder.

1.05 Currency

All references to currency or dollars (\$) herein are to lawful money of Canada.

1.06 Schedules

The following are the Schedules to this Agreement:

Schedule A - Assets

ARTICLE 2 - SALE OF ASSETS

2.01 Appointment of Liquidator

- (a) Upon and subject to the terms and conditions hereof, the Liquidator agrees to sell as agent for and on behalf of the Receiver, and the Receiver appoints the Liquidator as its exclusive agent to sell to Purchasers, all of the right, title, benefit and interest of the Debtor, if any, in and to all of the Assets listed in Schedule "A" attached hereto.
- (b) In the event that the Receiver, through no fault of its own, is not entitled to sell any of the Assets by reason of a third party claim to any such Assets, or otherwise, the Receiver will advise the Liquidator in writing and such items will be excluded from the Assets to be sold by the Liquidator (the "**Excluded Assets**"), and the Net Minimum Guarantee, if applicable, shall be reduced in accordance with Section 2.02(b).
- (c) The Liquidator shall be entitled to sell the Assets to Purchasers from the Premises on an on-going basis from the Effective Date to the Removal Deadline, or such later date as may be agreed upon in writing by the Receiver and Liquidator, subject to the terms of this Agreement (the "**Liquidation Period**"). All Assets shall be removed by the Purchasers and/or by the Liquidator by the Removal Deadline.
- (d) The Liquidator shall be entitled to use the name of the Debtor for the purpose of the Sales, including marketing materials, which shall be approved by the Receiver, in advance. Marketing materials shall be approved within one day from the date of presentment, unless the Receiver and the Liquidator agree otherwise.
- (e) The Liquidator will not, and will have no authority to, incur any liability or obligation on behalf of the Receiver. The sole authority of the Liquidator, as agent of the Receiver, is to conduct the Sales and thereby convey to Purchasers, as agent for the Receiver, the right, title, interest and benefit, if any, of the Debtor in and to the Assets to the Purchasers.

2.02 Net Minimum Guarantee

- (a) Subject to Section 2.08, the Liquidator covenants and guarantees in favour of the Receiver that the Net Proceeds to be received by the Receiver from all Sales will not be less than [REDACTED] (the "**Net Minimum Guarantee**").
- (b) In the event that the Receiver advises the Liquidator in accordance with Section 2.01(b) as to any Excluded Assets, the Net Minimum Guarantee will be reduced by an amount equal to the value allocated to the respective Excluded Assets on Schedule "A".
- (c) The Liquidator shall advance a deposit, which shall be twenty percent (20%) of the Net Minimum Guarantee to the Receiver at the time of executing this Agreement. The Liquidator shall pay the balance of the Net Minimum Guarantee to the Receiver no later than one week prior to the Scheduled Auction Date by way of bank draft, wire transfer or certified cheque.



2.03 Expenses

The Liquidator shall be responsible for the Liquidator Expenses commencing on the Effective Date.

2.04 Buyer's Premium

The Liquidator shall be entitled to charge to any Purchaser and retain, free of any claim of the Receiver, a buyer's premium in the maximum amount of [REDACTED] of the selling price of any Asset, provided that such amount is specifically invoiced by the Liquidator to the Purchaser over and above the purchase price for such Asset (the "Buyer's Premium").

2.05 Proceeds of Sales and Payment of Taxes

- (a) The Liquidator will be responsible for the collection of the Gross Proceeds.
- (b) The Liquidator will prepare and provide to the Receiver:
no later than 5 Business Days after the Liquidation Period, a DRAFT Sales Statement reflecting all Sales to date, which shall include a detailed listing of every unit sold, and the amount each individual item was sold for, and a final Sales Statement no later than 30 Business Days after the Liquidation Period.
- (c) The Receiver will have the right to audit all Sales Statements.
- (d) The Liquidator will collect from the Purchasers and will remit, or cause to be remitted and paid, any applicable federal and provincial sales taxes, goods and services taxes or harmonized sales taxes payable under any Applicable Law on or with respect to any of the Sales (collectively, "Transfer Taxes"). The Liquidator will pay the Transfer Taxes in accordance with the relevant taxing legislation when due and deliver to the Receiver evidence confirming the Liquidator's payment of, or exemption from payment of, the Transfer Taxes in form and substance acceptable to the Receiver. The Liquidator will prepare and file any affidavits or returns required in connection with the foregoing at its own cost and expense. The Liquidator will indemnify and hold the Receiver harmless in respect of any Transfer Taxes, penalties, interest and other amounts that may be assessed against the Receiver under any Applicable Law as a result of the sale of the Assets by the Liquidator to the Purchasers on behalf of the Receiver.
- (e) **Expense Amount** – Provided that the Receiver shall have received payment of the Net Minimum Guarantee when due, the Liquidator shall be entitled to retain the Expense Amount from the Net Proceeds, to reimburse the Liquidator for its expenses.
- (f) **Proceeds Sharing Formula** – Provided that the Receiver shall have received payment of the Net Minimum Guarantee when due, and that the Liquidator shall have been reimbursed for its Expense Amount, any remaining Net Proceeds shall be paid based on the following:

if the Net Proceeds are [REDACTED] or greater, [REDACTED]
[REDACTED] to the Receiver, and [REDACTED] to the Liquidator.

2.06 All Sales to be "As Is, Where Is"

- (a) Notwithstanding any other provision of this Agreement, the Liquidator acknowledges that it has inspected the Assets and, except as otherwise expressly provided in this Agreement, no representation, warranty or condition, whether statutory (including under the *Sale of Goods Act* (Ontario) and the *International Sale of Goods Contracts Convention Act* (Canada) or any international equivalent act which may be applicable to the subject matter pursuant to the provisions of this Agreement, including the United Nations Convention on Contracts for the International Sale of Goods), expressed or implied, oral or written, legal, equitable, conventional, collateral or otherwise will be given by the Receiver as to title, outstanding liens or encumbrances, description, fitness for purpose, merchantability, quantity, condition, quality, suitability, durability, assignability, or marketability thereof or any other matter or thing whatsoever, and all of the same are expressly excluded. The Liquidator acknowledges and agrees that it has inspected the Assets and has relied on its own investigations as to the matters set out above and in determining to enter this Agreement. The description of the Assets contained herein (including Schedule "A" hereto) is for the purpose of identification only. No representation, warranty or condition has or will be given by the Receiver concerning completeness or accuracy of such description.
- (b) The Liquidator agrees that all Sales of the Assets to the Purchasers will be on an "as is, where is" basis in accordance with Section 2.06(a) and shall be final once payment of the sale price is collected in full by the Liquidator from the Purchasers. The Liquidator will ensure that all advertising signs and promotional materials in connection with the Assets advise Purchasers that all Sales are made on an "as is, where is" basis and are final, and the Liquidator agrees that all receipts or bills of sale will contain similar language.
- (c) The Liquidator agrees that no representation or warranty will be given by it or the Receiver to Purchasers, whether statutory, express or implied, oral or written, legal, equitable, collateral or otherwise, as to fitness for purpose, suitability, durability, marketability, condition, quantity or quality of the Assets or in respect of any other matter or thing whatsoever.

2.07 Obligations and Liabilities Not Assumed

Except as provided in this Agreement, by Applicable Law or as a result of an action or commitment made by the Liquidator, the Liquidator does not assume and shall not be liable for any obligations or liabilities of the Receiver, or the Debtor whatsoever, including, without limitation, any and all environmental obligations or liabilities of the Debtor relating to the Assets or the Premises.

2.08 Title to the Assets and Risk of Loss

- (a) Until sold to Purchasers, the Assets shall remain at the risk of the Receiver. In the event of any loss of or damage to some or all of the Assets prior to the sale of such Assets to Purchasers:
- (i) where all or substantially all of the Assets are lost or damaged, for the purposes of this Agreement, the Liquidator shall have the option to: (A) accept the insurance

proceeds, if any, which shall be considered Gross Proceeds from the sale of Assets for the purpose of the calculation of the Net Minimum Guarantee and complete the transaction contemplated herein; or (B) terminate this Agreement, in which case all parties shall be released from all obligations hereunder other than the obligation of the Receiver to refund the Net Minimum Guarantee to the Liquidator. In the event that the Liquidator chooses option (B) above, the Receiver would be entitled to receive all proceeds from Sales made prior to the termination of this Agreement; and

- (ii) in the event of the loss of or damage to some but not all or substantially all of the Assets, an amount equal to the amount of insurance proceeds received in respect of such lost or damaged Assets shall be deducted from the Net Minimum Guarantee and such lost or damaged Assets shall become Excluded Assets (and, for greater certainty, the insurance proceeds of such Excluded Assets shall accrue to the benefit of the Receiver).
- (b) The Receiver will maintain combined public liability and property damage insurance equal to the amount of \$2 million until and including the Removal Deadline.
- (c) The Liquidator will provide a minimum of \$2 million of public liability coverage until and including the Removal Deadline.

2.09 Liquidator Dealing with Assets

The Liquidator will deal with the Assets in accordance with proper liquidation industry practices using qualified personnel, processes and systems to maximize realization.

ARTICLE 3 - POSSESSION, DELIVERY AND REMOVAL OF ASSETS

3.01 Delivery of the Assets

The Assets sold by the Liquidator shall be surrendered by the Liquidator to the Purchasers following the collection by the Liquidator of the purchase price in respect of the Asset Sales.

3.02 Access to the Premises and Occupancy Costs

- (a) For the purposes of viewing and inspecting the Assets, showing the Assets to prospective purchasers, preparing for and conducting the liquidation of the Assets during the Liquidation Period, conducting the Auction, and attending to the removal of the Assets, the Receiver shall provide the Liquidator and its agents, employees and representatives with unrestricted access to the Premises from the Effective Date to the Removal Deadline (the "Occupancy Period").
- (b) During the Occupancy Period, the Liquidator will not be responsible for any rent or overhead costs relating to the Premises, including, without limitation, gas, water, heat, hydro, and property and third-party liability insurance (the "Occupancy Costs").



3.03 Removal of Assets and Disposal Costs

- (a) The Liquidator shall be responsible, at its cost and expense, for removing any sold Assets from the Premises, by the Removal Deadline, and shall leave the Premises in an orderly and broom-swept condition, including removal of any debris arising from or caused by the Sale or removal of the Assets from their location. The Liquidator shall be responsible to ensure that the removal of the Assets shall be done in a workmanlike manner, consistent with good industry practice.
- (b) The Receiver shall reimburse the Liquidator for: (i) the cost of waste bins used to remove debris, waste or books and records of the Debtors; and (ii) the cost of third-party charges relating to such removal costs provided that such costs shall not exceed \$5,000 without the express prior written consent of the Receiver.
- (c) The Receiver shall be entitled to be present during the removal of the Assets from the Premises. A property manager, to be designated by the Receiver, will be made available to assist with the supervision of the removal of Assets from the Premises, if needed by the Liquidator. The Liquidator will be responsible for the costs of the property manager. Any disassembling and moving of Assets will be done at the expense of the Liquidator.
- (d) Should the Liquidator: (i) abandon, or fail to remove Assets, which are sold from the Premises; or (ii) fail to leave either the Premises in an orderly and broom-swept condition, the Liquidator shall reimburse the Receiver for all such costs, which are incurred by the Receiver.
- (e) The Liquidator shall, at its own cost, clean any spills or oil, lubricants, grease or any other liquid remaining after removal of any of the Assets.
- (f) The Liquidator shall remedy or repair any condition resulting from the removal of Assets, including without limitation, removing or capping all electrical wires and air/water/other lines to the buss bar/nearest wall and all bolts "blown off", placing safety barriers around any pits. The Liquidator shall have no responsibility to remedy any damages or condition to the Premises existing prior to the date of its access thereto.

3.04 Regulated Materials

- (a) No provision of this Agreement shall be construed so as to require the Liquidator to investigate, clean up, remove or remedy any adverse or other environmental condition existing at the Premises, or to be responsible for any environmental liabilities, or be liable for the investigation, clean up or remediation of any environmental liabilities, including any cost relating to any investigation, clean up or remediation of such environmental condition or liability or any Regulated Materials or other adverse environmental condition existing at, under, on or near the Premises, or contained in the Assets save and except to the extent that the Liquidator or its agents, employees, invitees and guests have caused such adverse or other environmental condition at, under, on or near the Premises due to their negligence.
- (b) Nothing in this Agreement shall oblige the Liquidator and the Liquidator shall not, in fact, be liable for any environmental obligations or liabilities which are existing obligations or liabilities of the Debtor.

ARTICLE 4 - REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGEMENTS

4.01 Receiver's Representations and Warranties

The Receiver represents and warrants to the Liquidator that:

- (a) subject to the issuance of the Approval Order, the Receiver has good and sufficient power, authority and right to enter into and deliver this Agreement and to complete the transactions to be completed by the Receiver contemplated hereunder;
- (b) the Receiver has not encumbered, sold or agreed to sell any of the Assets owned by the Debtors;
- (c) the recitals to this Agreement are true and correct; and
- (d) the Receiver is not a non-resident Person within the meaning of section 116 of the *Income Tax Act* (Canada).

4.02 Survival of Representations, Warranties and Covenants of Receiver

- (a) The representations and warranties of the Receiver set forth in Section 4.01 will survive the completion of the transactions contemplated hereunder. However, the Receiver will not be liable to the Liquidator for any inaccuracy or misrepresentation in any representation or warranty set forth in Section 4.01 after the Survival Date.
- (b) The covenants of the Receiver set forth in this Agreement will survive the transactions contemplated hereunder and, notwithstanding such completion, will continue in full force and effect for the benefit of the Liquidator in accordance with the terms of this Agreement until the Survival Date.

4.03 Liquidator's Representations, Warranties and Acknowledgements

The Liquidator represents, warrants and acknowledges to the Receiver that:

- (a) the Liquidator is a corporation duly incorporated, organized and subsisting under the laws of the Province of Ontario and has all the necessary corporate power and authority to enter into this Agreement and to carry out its obligations hereunder;
- (b) the Liquidator has good and sufficient power, authority and right to enter into and deliver this Agreement and to complete the transactions to be completed by the Liquidator contemplated hereunder;
- (c) this Agreement constitutes a valid and legally binding obligation of the Liquidator, enforceable against the Liquidator in accordance with its terms;
- (d) neither the entering into nor the delivery of this Agreement nor the completion of the transactions contemplated hereby by the Liquidator will result in a violation of: (i) any of the provisions of the constating documents or by-laws of the Liquidator; (ii) any agreement

or other instrument to which the Liquidator is a party or by which the Liquidator is bound; or (iii) any Applicable Law;

- (e) no authorizations, consents or approvals of, or filing with or notice to, any Governmental Authority is required in connection with the execution, delivery or performance of this Agreement;
- (f) the Liquidator is registered under Part IX of the *Excise Tax Act* (Canada) with registration number R138105861;
- (g) the Liquidator acknowledges that it or its representatives have been furnished with all information regarding the Assets and that it has performed investigations as it determined necessary, and the Liquidator therefore has the knowledge it requires to enable it to enter into this Agreement; and
- (h) the Liquidator has the financial capacity to honour all of the financial commitments in this Agreement.

4.04 Survival of Liquidator's Representations, Warranties and Covenants

- (a) The representations and warranties of the Liquidator set forth in Section 4.03 will survive the completion of the transactions contemplated hereunder.
- (b) The covenants of the Liquidator set forth in this Agreement will survive the completion of the transactions contemplated hereunder and, notwithstanding such completion, will continue in full force and effect for the benefit of the Receiver.

ARTICLE 5 - OTHER COVENANTS OF THE LIQUIDATOR AND THE RECEIVER

5.01 Additional Covenants of Liquidator

- (a) The Liquidator shall not dispose or destroy any of the Debtor's books and records without the written consent of the Receiver.
- (b) The Liquidator will provide to the Receiver copies of all filings or notices to any Governmental Authority relating to the transaction contemplated by this Agreement.
- (c) The Liquidator will promptly notify the Receiver of any material fact or circumstance that would prevent it from satisfying the conditions precedent set out in this Agreement.

5.02 Indemnities

The Liquidator agrees to indemnify and save harmless the Receiver and its respective representatives and advisors from and against all Claims, suffered or incurred by any of them from and after the date hereof as a result of or arising directly or indirectly out of or in connection with any negligence or willful misconduct of the Liquidator or its employees, contractors, licensees, agents or invitees, which shall exclude the employees, contractors, licensees, agents or invitees of the Receiver (the "**Receiver Indemnified Parties**"), including all Claims incurred by the Receiver



Indemnified Parties, directly or indirectly, as a result of the Liquidator not collecting or remitting the Transfer Taxes upon sale of the Assets by the Liquidator on behalf of the Receiver. The provisions of this Section 5.02 will inure to the benefit of the Receiver and its respective representatives and advisors and their respective successors and assigns.

5.03 Cooperation on Tax Matters

- (a) Each of the Liquidator and the Receiver agree to make, execute and file with the appropriate taxing authorities all elections or purchase exemption certificates as the parties hereto agree are mutually desirable, if any, in prescribed form and within the prescribed time.
- (b) Each of the Receiver and the Liquidator will furnish or cause to be furnished to each other, at the expense of the requesting party, as promptly as practicable, such information and assistance, and provide additional information and explanations of any material provided, relating to the Assets as is reasonably necessary for the filing of any tax returns, for the preparation of any audit, and for the prosecution or defence of any claim, suit or proceeding relating to any adjustment or proposed adjustment with respect to Transfer Taxes.

ARTICLE 6 - CONDITIONS

6.01 Conditions for the Benefit of the Liquidator

- (a) The transactions contemplated hereunder are subject to the following conditions, which are for the exclusive benefit of the Liquidator and which are to be performed or complied with at or prior to the Condition Date:
 - (i) the representations and warranties of the Receiver set forth in Section 4.01 will be true and correct with the same force and effect as if made at and as of such time;
 - (ii) the Receiver will have performed or complied with all of the terms, covenants and conditions of this Agreement to be performed or complied with by the Receiver;
 - (iii) an order of the Court approving this Agreement and vesting title in each Asset in any Purchaser, free and clear of all claims, shall have been granted (the "**Approval Order**"), and;
 - (iv) no order will have been made to restrain, enjoin or prohibit the purchase and sale of all or substantially all of the Assets.
- (b) In case any material term or covenant of the Receiver or material condition to be performed or complied with for the benefit of the Liquidator at or prior to the Condition Date has not been performed or complied with at or prior to the Condition Date, the Liquidator, without limiting any other right that the Liquidator has, may at its sole option acting reasonably, either:
 - (i) terminate this Agreement by notice to the Receiver and, in such event, the Liquidator will be released from all obligations hereunder; or

- (ii) waive compliance with any such term, covenant or condition in whole or in part with respect to any such non-compliance on such terms as may be agreed upon without prejudice to any of its rights of termination in the event of the non-performance of a term, covenant or condition in whole or in part which has not been waived by the Liquidator, and, if the Liquidator terminates this Agreement pursuant to Section 6.01(b)(i), the Receiver will be released from all obligations hereunder, save and except for the Receiver's obligation to return the Net Minimum Guarantee to the Liquidator within seven (7) days of the date of termination by the Liquidator.

6.02 Conditions for the Benefit of the Receiver

- (a) The transactions contemplated hereunder are subject to the following conditions, which are for the exclusive benefit of the Receiver and which are to be performed or complied with at or prior to the Condition Date:
 - (i) the representations and warranties of the Liquidator set forth in Section 4.03 will be true and correct with the same force and effect as if made at and as of such time;
 - (ii) the Liquidator will have performed or complied with all of the terms, covenants and conditions of this Agreement to be performed or complied with by the Liquidator at such time;
 - (iii) an order of the Court approving this Agreement and vesting title in any Purchaser, free and clear of all claims, shall have been granted; and
 - (iv) no order will have been made to restrain, enjoin or prohibit the purchase and sale of all or substantially all of the Assets.
- (b) In case any material term or covenant of the Liquidator or material condition to be performed or complied with for the benefit of the Receiver at or prior to the Condition Date has not been performed or complied with at or prior to the Condition Date, the Receiver, without limiting any other right that the Receiver has, may at its sole option acting reasonably, either:
 - (i) terminate this Agreement by notice to the Liquidator, and, in such event, the Receiver will be released from all obligations hereunder; or
 - (ii) waive compliance with any such term, covenant or condition in whole or in part with respect to any such non-compliance on such terms as may be agreed upon without prejudice to any of its rights of termination in the event of non-performance of a term, covenant or condition in whole or in part which has not been waived by the Receiver,

and, if the Receiver terminates this Agreement pursuant to Section 6.02(b)(i) the Liquidator will be released from all obligations hereunder unless the term, covenant or condition for which the Receiver has terminated this Agreement was one that the Liquidator had covenanted hereunder to ensure had been performed or complied with, in which event the Liquidator will be liable to the Receiver for any Claims incurred by the Receiver, directly or indirectly, as a result of such breach. In that event, the Assets may

be resold by the Receiver and all money paid by the Liquidator under this Agreement shall be forfeited, but such forfeiture will not be deemed to constitute the full extent of liquidated damages payable by the Liquidator as a result of the termination by the Receiver.

6.03 Proceeds of Sales Made Prior to Termination

In the event that the Agreement is terminated by either party pursuant to Article 6, notwithstanding such termination, the Gross Proceeds of any Sales made by the Liquidator prior to the date of such termination shall be paid in accordance with Section 2.05(e). The Liquidator shall be responsible for and shall remit all Transfer Taxes in respect of any Sales made by the Liquidator prior to the date of such termination.

ARTICLE 7 - FORCE MAJEURE

7.01 Force Majeure

A failure by a party to perform any obligation under this Agreement as a result (in whole or in part) of *force majeure* will not constitute a default under this Agreement, and neither party will have any liability to the other as a result of any such failure to perform. A party who contends that its performance is excused by reason of *force majeure* must give prompt written notice to the other party specifying the condition constituting the same and use all commercially reasonable efforts to rectify such condition as soon as possible. For the purposes hereof, *force majeure* means any of the following: lightning, storms, earthquakes, floods, droughts, fires, explosions, shortages of labour, strikes, protests, lock-outs or other labour disturbances (whether or not under a party's control), acts of war or terrorism, riots, or any other action taken by any Person in connection therewith, expropriation, action of any government or governmental body or court, acts of God or any other cause, whether similar to or dissimilar from the foregoing, beyond the reasonable control of the party seeking to take advantage of *force majeure* and affecting performance by such party.

As a result of the current COVID-19 global pandemic, the parties acknowledge that certain restrictions are in place for social distancing and that the Liquidator will likely have to conduct the Auction online only, with small group visitations to the Premises held by appointment only, and in accordance with the 14-day quarantine imposed upon visitors who have travelled outside of the country. If any additional lockdowns are put into place during the term of this Agreement, which prohibit or hinder the performance by either party of their obligations, the parties agree to extend the time for performance by a time period equivalent to any additional lockdowns, on the same terms and conditions and at no additional cost.

7.02 Assistance

Each of the Liquidator and the Receiver will co-operate with each other in a commercially reasonable manner in the event of any labour disruption or *force majeure* that interferes with the sale of the Assets or the ability of the Liquidator to perform its obligations hereunder with a view to alleviating such interference.



ARTICLE 8 - GENERAL

8.01 Further Assurances

Each of the Receiver and the Liquidator shall from time to time execute and deliver all such further documents and instruments and do all acts and things as the other party may, at such requesting party's cost, reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

8.02 Time of the Essence

Time shall be of the essence of this Agreement.

8.03 Benefit of the Agreement

This Agreement shall inure to the benefit of and be binding upon the respective administrators, successors and permitted assigns of the parties hereto.

8.04 Fees and Commissions

Except as expressly provided herein, each of the Receiver and the Liquidator will pay its respective legal and accounting costs and expenses incurred in connection with the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant to this Agreement and any other costs and expenses whatsoever and howsoever incurred.

8.05 Entire Agreement

This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties hereto with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than as expressly set forth in this Agreement.

8.06 Amendments and Waiver

No modification of or amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by both of the parties hereto and no waiver of any breach of any term or provision of this Agreement shall be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided, shall be limited to the specific breach waived.

8.07 Assignment

This Agreement may not be assigned by either party hereto without the prior written consent of the other party.



8.08 Notices

Any demand, notice or other communication to be given in connection with this Agreement shall be given in writing and shall be given by personal delivery, by registered mail or by electronic means of communication addressed to the recipient as follows:

To the Receiver:

KSV Restructuring Inc.
150 King Street West
Suite 2308
Toronto, ON M5H 1J9

Attention: David Sieradzki, Managing Director
Phone: 416.932.6030
Email: dsieradzki@ksvadvisory.com

With a copy to:

Dickinson Wright LLP
199 Bay Street
Suite 2200
Commerce Court West
Toronto, ON M5L 1G4

Attention: John D. Leslie
Phone: (416) 646-3801
Email: jleslie@dickinsonwright.com

To the Liquidator:

Corporate Assets Inc.
373 Munster Avenue
Toronto, Ontario, M8Z 3C8

Attention: Joe Lizewski, Vice President - Sales
Phone: (416) 962-9600 Ext. 228
Email: jlizewski@corpassets.com

or to such other address, individual or electronic communication number as may be designated by notice given by either party to the other. Any demand, notice or other communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered mail, on the fourth Business Day following the deposit thereof in the mail and, if given by electronic communication, on the day of transmittal thereof if given during the normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not given during such hours on any day. If the party giving any



demand, notice or other communication knows or ought reasonably to know of any difficulties with the postal system which might affect the delivery of mail, any such demand, notice or other communication shall not be mailed but shall be given by personal delivery or by electronic communication.

8.09 Counterparts

This Agreement may be executed in several counterparts and all counterparts when taken together shall comprise one and the same instrument, and facsimile or other electronic copies of signatures shall be treated as originals for all purposes.

8.10 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

8.11 Attornment

This Agreement will be deemed to have been performed in the Province of Ontario for the purpose of all legal proceedings. The parties hereto each attorn to the exclusive jurisdiction of the courts of the Province of Ontario sitting in Toronto (Commercial List) to entertain any action arising under this Agreement.

8.12 Severability

If any provision of this Agreement or any document delivered in connection with this Agreement is partially or completely invalid or unenforceable, the invalidity or unenforceability of that provision will not affect the validity or enforceability of any other provision of this Agreement, all of which will be construed and enforced as if that invalid or unenforceable provision were omitted. The invalidity or unenforceability of any provision in one jurisdiction will not affect such provision validity or enforceability in any other jurisdiction.

8.13 Acknowledgement of the Liquidator

The Liquidator acknowledges that the Receiver has entered into this Agreement solely in its capacity as the court-appointed receiver of the Debtor, and not in its personal or corporate capacity.



8.14 Confidentiality

Each of the Liquidator and the Receiver shall keep confidential this Agreement and all information and documents which may have been or may hereafter be exchanged between them or their representatives or may have been retained by the Liquidator or the Receiver, except for such information and documents as are available to the public, required to be disclosed by applicable law or court order, or as required to be disclosed by the Receiver under Applicable Law. The Receiver will redact the economic terms of the transactions contemplated herein from any material to be filed with the Court and shall use its commercially reasonable efforts to obtain a sealing order for any unredacted versions.

8.15 Supplemental Assets

The Receiver acknowledges that the Liquidator may enter into one or more separate agreements with third parties to sell assets (the “**Consigned Assets**”) owned by such third parties (the “**Consignors**”) in connection with the sale of the Assets. The Liquidator shall provide notice of all such Consigned Assets in advance of the sale. If the Receiver reasonably believes that the sale of the Consigned Assets would have a material negative impact on the sale of the Assets, the Receiver may notify the Liquidator and the Consigned Assets will only be included in the sale if the Receiver agrees. Subject to the above, the Receiver agrees not to interfere with the sale of the Consigned Assets or the removal of the Consigned Assets from the Premises, provided that the Consigned Assets are removed by the Removal Deadline. The Receiver acknowledges that any proceeds from the sale of the Consigned Assets will be remitted by the Liquidator to the Consignors in accordance with the agreements between the Liquidator and the Consignors.

9. Conduct of Sale – All matters relating to the conduct of the sale or re-sale, including advertising, marketing, the preparation of Assets for sale, inspection arrangements, and the timing and duration of the sale, shall be at the sole discretion of the Liquidator, completed in the manner and at the times directed by it. The Liquidator may establish a reserve bid for any or all Assets, and may itself, or through a designated person, bid for any Asset. If the reserve bid is not met, the Asset shall be deemed unsold for the purposes of this agreement.

[Remainder of page intentionally left blank]



IN WITNESS WHEREOF the parties have executed this Agreement as of the date first written above.

KSV RESTRUCTURING INC.,

in its capacity as the court-appointed receiver of all of the assets, undertakings and properties of JD Norman Canada, ULC and not in its personal or corporate capacity



By: _____
(I have authority to bind the corporation)

Name: David Sieradzki

Title: Managing Director

CORPORATE ASSETS INC.,

a corporation incorporated under the laws of the Province of Ontario



By: _____
(I have authority to bind the corporation)

Name: Ryan Haas

Title: President