

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

ECOHOME FINANCIAL INC.

Applicant

- and -

ECO ENERGY HOME SERVICES INC.

Respondent

SIXTH REPORT OF THE RECEIVER

September 17, 2019

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I. INTRODUCTION AND PURPOSE OF THE SIXTH REPORT

1. RSM Canada Limited was appointed as receiver and manager (the “**Receiver**”) of the assets, undertakings and properties of Eco Energy Home Services Inc. (the “**Debtor**”) pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated April 3, 2019 (the “**Appointment Order**”) on application made by EcoHome Financial Inc. (“**EcoHome**”). A copy of the Appointment Order is attached hereto as Appendix “A”.
2. Since its appointment, the Receiver has worked to take control of the property and assets of the Debtor, obtain access to the information and records needed to administer the Debtor’s estate, and review actions taken by the Debtor and its affiliates and representatives to improperly remove value and assets from the Debtor’s estate in advance of the Receiver’s appointment. The activities of the Receiver and the improper actions taken by the Debtor and its affiliates and representatives are described in additional detail in the Fifth Report of the Receiver dated July 25, 2019, a copy of which (without appendices) is attached hereto as Appendix “B”.
3. During the course of these proceedings, the Receiver has reached agreement with a number of third parties to settle claims of the Debtor and the Receiver and to obtain the repayment of amounts that were improperly paid by the Debtor in advance of these proceedings. As a result of these settlements and repayments, there is now a positive cash balance in the Debtor’s estate.
4. This Sixth Report is filed by the Receiver in support of a motion seeking an order (the “**Distribution Order**”) authorizing the Receiver to distribute from time to time

the funds and proceeds in the Debtor's estate to EcoHome, the Debtor's senior secured creditor, subject to the reserve of certain funds by the Receiver to undertake and complete the administration of the Debtor's estate. While the Receiver intends to continue its efforts to recover additional amounts owing to the Debtor's estate, the Receiver expects that EcoHome will suffer a significant deficiency on the amounts owing to it by the Debtor pursuant to the Program Agreement (as defined below) and otherwise.

5. The Receiver believes that the distribution of the proceeds of the Debtor's estate to EcoHome from time to time is appropriate having regard to the amount and priority of EcoHome's claims against the Debtor. The proposed Distribution Order will facilitate the repayment of amounts owing to the Debtor's senior secured creditor and the orderly administration of the Debtor's estate.

Terms of Reference

6. In preparing this Sixth Report and making the comments herein, the Receiver has relied upon certain unaudited financial information and documentation obtained from the Debtor's records and information and documentation received from third party sources, including the principal and other employees of the Debtor and the Debtor's affiliates (collectively, the "**Information**"). The Receiver has, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook and,

accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

7. Unless otherwise stated, all dollar amounts contained in this report are expressed in Canadian dollars.

II. RECOVERY OF IMPROPER PAYMENTS AND SETTLEMENT OF CLAIMS

8. Since its appointment, the Receiver has taken steps to recover improper payments made by the Debtor in advance of the receivership proceedings and to advance, and where appropriate settle, claims of the Debtor and the Receiver against third parties. These efforts have resulted in a number of repayments and settlements, including:

- a. a settlement between the Receiver and Crown Crest Funding Corp., in its capacity as trustee of Crown Crest Capital Trust ("**Crown Crest**"), relating to a transaction undertaken between Crown Crest and an affiliate of the Debtor in advance of the receivership proceedings which had the effect of removing value from the Debtor's estate. The Crown Crest settlement was approved by this Court pursuant to an order dated June 26, 2019;
- b. the repayment of \$574,250 by Royal Bank of Canada ("**RBC**") to the Receiver, in reimbursement of payments made by the Debtor on its line of credit with RBC in the two-week period prior to the receivership;
- c. the payment of \$110,000 by Michael Sifontes to the Receiver, in settlement of payments made by the Debtor to Mr. Sifontes and certain of his companies in advance of the receivership proceedings; and

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- d. an agreement in principle regarding a settlement of litigation claims between the Debtor and Vista Credit Corporation (“**Vista**”), with no admission of liability, for a payment to the Receiver.
9. The Receiver continues to review transactions undertaken and payments made by the Debtor in advance of the receivership proceedings and may pursue compensation for the Debtor’s estate in respect of such transactions and payments where warranted.

III. DISTRIBUTABLE FUNDS

10. As of September 16, 2019, the Debtor’s estate has total cash on hand of approximately \$510,000, certain of which funds will be used to repay professional fees incurred to date. In addition, the Receiver’s counsel is holding in trust for the Receiver the proceeds from the settlement with Mr. Sifontes until the conditions of the settlement are satisfied, which is expected to occur in the near term. The Receiver also expects to receive the settlement payment from Vista in the near term, subject to the finalization of standard settlement documentation.
11. Prior to the receipt of the settlements and repayments referenced above, the receivership proceedings were funded through amounts advanced by EcoHome pursuant to Receiver’s Certificates, as authorized pursuant to the Receivership Order. The Receiver has since repaid the Receivership Certificates in full, with interest, from proceeds obtained through the settlements and repayments described above.

IV. THE DISTRIBUTION ORDER

12. The proposed Distribution Order authorizes the Receiver to distribute to EcoHome, from time to time and in one or more distributions, all funds or proceeds in respect of the Debtor's estate, provided that the aggregate of all distributions made to EcoHome shall not, without further Court order, exceed the aggregate obligations owing by the Debtor to EcoHome pursuant to the Amended and Restated Consumer Lease Program Agreement dated as of November 12, 2015 (the "**Program Agreement**").
13. The proposed Distribution Order also authorizes the Receiver to hold a reserve of funds from the proceeds of the Debtor's estate from time to time in an amount determined by the Receiver to undertake and complete the administration of the Debtor's estate and receivership and bankruptcy proceedings.
14. The Receiver continues to review the aggregate obligations owing by the Debtor to EcoHome pursuant to the Program Agreement and otherwise. There are a number of elements of EcoHome's claims against the Debtor under the Program Agreement, as more fully set out in the February 7, 2019 affidavit of Brent Houlden (the "**Houlden Affidavit**"), the chief executive officer of EcoHome, sworn in support of EcoHome's application for a receivership order in respect of the Debtor. A copy of the Houlden Affidavit (without exhibits) is attached hereto as Appendix "C". The elements of EcoHome's claim include deficiencies in the cash reserve account that the Debtor is required to maintain pursuant to the Program Agreement (the "**Cash Reserve Account**"), and funds received by the Debtor in respect of contracts

purchased by EcoHome that the Debtor was required, but failed, to hold in trust for and punctually remit to EcoHome.

15. The Houlden Affidavit indicated that in January 2019 the Cash Reserve Account was calculated as being deficient by \$2,010,500. While the required amount of the reserve account (and thus the related deficiency) fluctuates based on payments by the Debtor and developments regarding the underlying contracts and the Receiver has not undertaken an independent review of the current Cash Reserve Account deficiency, the Receiver believes that the current deficiency in the Cash Reserve Account is likely to exceed the deficiency as at January 2019 in light of the fact that the Debtor has not funded any amounts to the Cash Reserve Account during the receivership proceedings.
16. As set out in the Receiver's Fifth Report, the Receiver believes that the unremitted trust funds under the Program Agreement are at least \$685,913. Accordingly, the Receiver understands that total obligations owing to EcoHome under the Program Agreement in respect of the Cash Reserve Account deficiency and unremitted trust funds are at least \$2,696,413, which obligations do not include other amounts owing by the Debtor to EcoHome pursuant to the Program Agreement (including legal costs) or otherwise.
17. Given the current value of the Debtor's estate and the extent of the obligations owing to EcoHome, EcoHome will suffer a significant deficiency in the amounts owed to it by the Debtor.
18. Goodmans LLP, in its capacity as independent legal counsel to the Receiver, conducted a review of the general security agreement granted by the Debtor to

secure its obligations owing to EcoHome, a copy of which is available to this Court on request. Subject to standard assumptions and qualifications set forth in the security review, the security review concludes that, *inter alia*:

- a. the general security agreement creates a valid security interest in favour of EcoHome in the Collateral (as defined in the general security agreement) to which the Ontario *Personal Property Security Act* (the “**PPSA**”) applies; and
 - b. registration has been made in all public offices provided for under Ontario law where such registration is necessary to perfect the security interests created by the general security agreement in favour of EcoHome in the Collateral.
19. The only PPSA registration made prior to the registration of EcoHome is in favour of Enbridge Gas Distribution Inc. (“**Enbridge**”). The Receiver is not aware of any obligations owing by the Debtor to Enbridge. The Receiver’s counsel will serve Enbridge with a copy of the within motion for the Distribution Order.

V. CONCLUSION

20. The Receiver believes that it is appropriate in the circumstances for the Court to authorize the Receiver to distribute proceeds from the Debtor's estate to its senior secured creditor, which will suffer a significant deficiency on the amounts owed to it. Accordingly, the Receiver recommends that the Court grant the proposed Distribution Order.

All of which is respectfully submitted to this Court as of this 17th day of September, 2019.

RSM CANADA LIMITED

In its capacity as Court Appointed Receiver
of Eco Energy Home Services Inc. and
not in its personal capacity



Per: Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT
President

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ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE **MADAM**)

WEDNESDAY, THE 3RD **DAY**

~~DAY~~

JUSTICE **CONWAY**)

OF APRIL, 2019

ECOHOME FINANCIAL INC.

Applicant

- and -

ECO ENERGY HOME SERVICES INC.

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 RSM Canada Limited ("**RSM**") as receiver and manager (in such capacity, the "**Receiver**") without security, of all of the assets, undertakings and properties of Eco Energy Home Services Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

THIS CROSS APPLICATION made by the Debtor to adjourn the Applicant's application.

ON READING the affidavit of Brent Houlden sworn February 7, 2019 and the Exhibits thereto, the consent endorsement of the Honourable Mr. Justice McEwen made February 13, 2019, the endorsement of the Honourable Mr. Justice McEwen made February 21, 2019, the

affidavit of Wei (David) Ouyang sworn February 25, 2019 and the Exhibits thereto, the affidavit of Brent Houlden sworn February 28, 2019, the Report of Investigative Procedures of BDO Canada LLP dated March 8, 2019, the factum of the Applicant dated March 8, 2019, the factum of the Debtor dated March 12, 2019, the endorsement of the Honourable Madam Justice Conway made March 14, 2019 and the affidavit of Jonathan Yantzi sworn March 28, 2019, and on hearing the submissions of counsel for the Applicant, counsel for the Debtor and such other counsel as were present as indicated on the counsel slip, no one else appearing although duly served as appears from the affidavit of service of Jenaya McLean sworn February 8, 2019, and on reading the consent of RSM to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application, the Notice of Cross Application, the Application and the Cross Application is hereby abridged and validated so that this application and this cross-application are 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, RSM is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor 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;
- (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) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

(i) without the approval of this Court in respect of any transaction not exceeding \$50,000.00, provided that the aggregate consideration for all such transactions does not exceed \$200,000.00; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;

(l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) 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;
- (p) to make an assignment in bankruptcy on behalf of the Debtor and to consent, on behalf of the Debtor, to the bankruptcy application currently outstanding against the Debtor bearing court file number 31-OR-208359-T (the "**Bankruptcy Application**");
- (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.

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, save and except for the Bankruptcy Application, no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. THIS COURT ORDERS that, save and except for the Bankruptcy Application: (i) 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 (ii) 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, save and except for the Bankruptcy Application, all rights and remedies against the Debtor, the Receiver or affecting the Property, including, without limiting the generality of the foregoing, all rights and remedies of Enbridge Gas Distribution Inc. under its agreements with EcoHome or the Debtor, 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 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 employees of the Debtor shall remain the employees of the Debtor until such time as: (i) the Receiver, on the Debtor's behalf, may terminate the employment of such employees; or (ii) the employees of the Debtor are otherwise terminated by operation of law. 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 be permitted to 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 the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts (including statutory, deemed and

constructive 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 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 \$500,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" 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.

SERVICE AND NOTICE

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (Ontario) (the "**Rules**"), this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules 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.rsmcanada.com/eco-energy-home-services-inc.

26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor 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

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

28. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor, including, without limitation, as a result of the Bankruptcy Application.

29. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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

31. THIS COURT ORDERS that the Debtor's cross application be and is dismissed.

32. THIS COURT ORDERS that the Applicant shall have its costs of this application and the Debtor's cross 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.

33. 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.



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

APR 03 2019

PER/PAR: *um*

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that RSM Canada Limited, the receiver (the "**Receiver**") of the assets, undertakings and properties of Eco Energy Home Services Inc. 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 ___ day of _____, 20__ (the "Order") made in an action having Court file number __-CL-_____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself 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 _____, 20__.

RSM Canada Limited, solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

ECOHOME FINANCIAL INC.

and

ECO ENERGY HOME SERVICES INC.

Applicant

Respondent

Court File No. CV-19-614122-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT TORONTO**

RECEIVERSHIP ORDER

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
Suite 1800, Box 754
181 Bay Street
Toronto, ON M5J 2T9

Tel: 416.863.1500

Fax: 416.863.1515

Email: sgraff@airdberlis.com / sjohn@airdberlis.com

**Steven L. Graff – LSO# 31871V
Shakaira L. John – LSO# 72263D**

Lawyers for the Applicant

B

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

ECOHOME FINANCIAL INC.

Applicant

- and -

ECO ENERGY HOME SERVICES INC.

Respondent

FIFTH REPORT OF THE RECEIVER

July 25, 2019

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I. INTRODUCTION

1. RSM Canada Limited (“**RSM**”) was appointed as receiver and manager of all assets, undertakings and properties of Eco Energy Home Services Inc. (the “**Debtor**”) pursuant to an Order of the Ontario Superior Court of Justice (the “**Court**”) dated April 3, 2019 (the “**Appointment Order**”) on application made by EcoHome Financial Inc. (“**EcoHome**”). A copy of the Appointment Order is attached as Appendix “**A**”.
2. The purpose of this Report (the “**Fifth Report**”) is to report to the Court and the Debtor’s stakeholders regarding:
 - a. the activities of the Receiver since the issuance of the Third Report;
 - b. payments, transactions and other actions made or taken by the Debtor prior to the issuance of the Appointment Order to transfer value from the Debtor’s estate, and actions by the Receiver to recover the assets and property of the Debtor; and
 - c. the conduct of certain of the principals, shareholders, directors, officers, employees, consultants and advisors of the Debtor and the Debtor Affiliates (as defined below) in the pre- and post-receivership period.

II. BACKGROUND TO THE RECEIVERSHIP

3. The Debtor and EcoHome were parties to an Amended and Restated Consumer Lease Program Agreement dated as of November 12, 2015 (the “**Program Agreement**”) pursuant to which the Debtor assisted with the servicing of certain consumer finance lease contracts owned by EcoHome. Under the Program Agreement, the Debtor was required to receive in trust and

punctually pay over to EcoHome all amounts received by the Debtor from time to time on account of the contracts owned by EcoHome.

4. EcoHome issued a demand letter to the Debtor on January 14, 2019 and a second demand letter on January 22, 2019. On January 22, 2019 EcoHome delivered a Notice of Intention to Enforce its Security pursuant to Subsection 244(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”). The receivership application was filed by EcoHome on February 8, 2019.
5. The Debtor initially contested the application by, among other things, claiming that no amounts were owing to EcoHome. As a result, between February and March 2019 numerous Court hearings were held, including the Debtor’s cross-application for an audit of certain amounts owing between the parties under the Program Agreement. The Receiver has reviewed documentation indicating that principals of the Debtor believed that amounts were owing to EcoHome despite the position taken by the Debtor in contesting the receivership application.
6. As a result of the Debtor’s opposition to the application, an audit was ordered and conducted by BDO Canada. The audit cost EcoHome and the Debtor in excess of \$185,000. BDO Canada determined that the Debtor had collected and not remitted at least \$409,775 in funds relating to contracts owned by EcoHome. A copy of the BDO Canada Report of Investigative Procedures (the “**BDO Report**”) is attached as Appendix “**B**”.
7. The Receiver was ultimately appointed on an unopposed basis on April 3, 2019. As set out in this Fifth Report and in the Receiver’s previous reports,

the Debtor and certain of its affiliates controlled or managed by David Ouyang took deliberate actions during the period between January 22, 2019 (the date that EcoHome issued its Notice of Intention to Enforce its Security pursuant to the BIA) and April 3, 2019 (the date of the Appointment Order) (the “**Pre- Receivership Period**”) to transfer substantially all of the Debtor’s assets from its estate. They also intentionally took steps to delete, conceal, transfer, alter and/or remove records and information of the Debtor prior to the Receiver’s appointment, which has impaired the Receiver’s ability to effectively review the Debtor’s pre-receivership transactions and collect and realize on the Debtor’s assets. In addition, certain of the Debtor’s employees either did not co-operate with the Receiver or provided very limited or non-responsive support. These actions have significantly increased the costs of administering the receivership. Copies of email correspondence and other records evidencing such actions are attached as Appendix “**C**”.

III. SUMMARY OF COURT ORDERS ISSUED TO DATE

8. Following its appointment on April 3, 2019, the Receiver attended at the Debtor’s head office premises located at 3761 Victoria Park Avenue, Toronto, Ontario (the “**Head Office**”) to take control of the premises in accordance with the Appointment Order. However, the Receiver was denied access to the premises and was told by the Debtor’s management that it could not change the locks and alarm codes at the Head Office. The Debtor’s management also denied the Receiver access to the books and records of the Debtor on the basis that such records were comingled with the records of related parties.

The report of the Receiver dated April 3, 2019 (the “**First Report**”) describes the issues experienced by the Receiver in attempting to take possession and control of the assets and property of the Debtor as authorized pursuant to the Appointment Order. A copy of the Receiver’s First Report, without appendices, is attached as Appendix “D”.

9. On a motion brought by the Receiver on April 4, 2019 – the day after its appointment – the Court granted an order (the “**Access Order**”) providing the Receiver with the authority to, *inter alia*:
 - a. have full and unfettered access to and take possession and control of the Head Office and to change the locks and security and alarm codes at the Head Office;
 - b. have full and unfettered access to the operating, accounting and other systems of the Debtor and any affiliated or related entity; and
 - c. engage EcoHome as an agent to assist with the exercise of the Receiver’s powers and duties and to undertake such actions on behalf of the Receiver as the Receiver may direct.

A copy of the Access Order is attached as Appendix “E”.

10. On April 8, 2019 – five days following the appointment of the Receiver – the Receiver filed its second report (the “**Second Report**”) with the Court. The Second Report describes deliberate actions taken by the Debtor and its principals, employees and agents to prevent the Receiver from obtaining information and records in respect of the Debtor, realizing on the assets of the

Debtor, and administering the receivership. The issues identified by the Receiver in the Second Report included, *inter alia*, the following:

- a. information provided to the Receiver was either limited in scope, outdated or intentionally misleading;
- b. the Debtor effected the transfer of data from the customer relationship management (“**CRM**”) system of the Debtor to the CRM system of 2360777 Ontario Inc., operating as Global Eco Energy Group (“**Global Eco**”), and employees of the Debtor had been instructed to use the Global Eco CRM system to record all ‘deals’ going forward;
- c. the password that the Debtor’s management provided to the Receiver on April 4, 2019 to access the Global Eco CRM had been changed, after the granting of the Appointment Order, which prevented the Receiver from accessing the CRM system to obtain information regarding the portfolio of contracts owned or serviced by the Debtor;
- d. nearly all of the data and records on computers that remained at the Head Office after the Receiver’s appointment had been erased, either partially or completely, prior to the Receiver’s attendance at the Head Office. E-mail profiles had been erased from personal computers. In some cases, the computers the Debtor provided to the Receiver as being the computers of the Debtor’s key employees contained no material data and showed no evidence of having been used prior to February 5, 2019, suggesting they were decoys;

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- e. on March 27, 2019 the Debtor had submitted a request to Equifax – which billed customers in respect of certain contracts owned by the Debtor – to have the authorizations on the Debtor’s accounts changed to Greensaving Group Inc. (“**Greensaving**”), for the apparent purpose of enabling Greensaving to manage billings in respect of the Debtor’s contracts on the eve of the receivership; and
 - f. the Debtor had completed a number of transactions, payments and other steps during the Pre-Receivership Period to transfer value from the Debtor’s estate.

A copy of the Receiver’s Second Report (without appendices) is attached as Appendix “**F**”.

11. On April 8, 2019, the Court issued the Access and Preservation Order on an *ex parte* motion brought by the Receiver. The Access and Preservation Order provides, *inter alia*, that:

- a. the Receiver shall have access to the premises of Global Eco, Greensaving, D&G Enterprises Inc. (“**D&G**”), Can-Service Inc. (“**Can-Service**”) and 2586322 Ontario Inc. o/a Air Quality Dunrite (“**AQD**”) (collectively, the “**Debtor Affiliates**”) for the purpose of obtaining records of the Debtor, investigating whether the Debtor Affiliates are in possession of any Property of the Debtor, and investigating whether the Debtor Affiliates or their representatives have engaged in conduct that constitutes a fraudulent conveyance, transfer at undervalue, or other

prohibited, illegal or fraudulent transaction to the detriment of the Debtor and its estate;

- b. the Receiver shall have access to all servers and operating, accounting, computer and information technology systems located at the premises of the Debtor Affiliates and to make and retain a copy of any data or information on such computer systems;
- c. the Debtor Affiliates and their representatives shall not receive or convey any property of the Debtor and shall promptly furnish to the Receiver any property of the Debtor previously transferred or conveyed to the Debtor Affiliates or their representatives; and
- d. the Debtor Affiliates are subject to freezing provisions in respect of any dissipation or transfer of their assets during a Restricted Period (as defined in the Order) that was subsequently extended on two occasions by the Court.

A copy of the Access and Preservation Order is attached as Appendix “G”.

12. At a comeback hearing in respect of the Access and Preservation Order held on April 10, 2019, the Court issued an endorsement on consent of the Receiver, the Debtor and the Debtor Affiliates (the “**April 10 Endorsement**”) pursuant to which, *inter alia*, the Restricted Period was extended to April 30, 2019 and the Debtor and Debtor Affiliates agreed to provide the information requested by the Receiver in the Priority Request List dated April 9, 2019 (the “**Priority Request List**”) by no later than April 11, 2019. A copy of the April 10 Endorsement is attached as Appendix “H”.

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13. On April 25, 2019, the Receiver filed its third report (the “**Third Report**”) with the Court. The Third Report reported on a number of issues identified by the Receiver, including:
- a. the refusal of the Debtor and certain Debtor Affiliates to provide information to the Receiver as required pursuant to the Appointment Order and the April 10 Endorsement;
 - b. intercompany transactions undertaken between the Debtor and certain of the Debtor Affiliates during the Pre-Receivership Period that removed substantial value from the Debtor’s estate, including the transfer of the Debtor’s self-billing portfolio of contracts (the “**Self-Billing Portfolio**”) to Global Eco on or about February 1, 2019 and thereafter the receipt by Global Eco of ongoing customer payments in respect of the Self-Billing Portfolio;
 - c. a transaction undertaken between Global Eco and Crown Crest Capital Trust (“**Crown Crest**”) during the Pre-Receivership Period (the “**Crown Crest Transaction**”) under which Global Eco sold 326 lease contracts to Crown Crest. Based on the Receiver’s review of the transaction, the Receiver determined that: at least 75% of the contracts sold were in fact owned by the Debtor; EcoHome and other third parties had ownership interests in certain contracts; and the Transaction may have been completed at undervalue to the detriment of the Debtor’s estate;
- and

-
- d. payments totaling at least \$1,192,350.45 made by the Debtor during the two weeks prior to the appointment of the Receiver to junior secured or unsecured creditors or other persons despite the pending receivership application by the Debtor's senior secured creditor, EcoHome.

A copy of the Receiver's Third Report (without appendices) is attached as Appendix "I".

14. On April 29, 2019, the Court granted Extension Order No. 2 extending the Restricted Period to June 15, 2019 and releasing Can-Service and AQD from the asset freezing provisions in the Access and Preservation Order. The Court also granted a Standstill Approval Order approving a standstill agreement between the Receiver, Global Eco and Crown Crest (the "**Standstill Agreement**") providing for a standstill period in respect of the Crown Crest Transaction until June 28, 2019 pending ongoing review and discussions in respect of the transaction.
15. On May 3, 2019, the Court granted an Amendment Order on consent of the Receiver and Global Eco, Greensaving and D&G (the "**Specified Affiliates**"). The Amendment Order terminated the applicability of the freezing provisions in the Access and Preservation Order with respect to the Specified Affiliates and confirmed that all other provisions in the Access and Preservation Order would continue to apply to the Specified Affiliates. The Amendment Order also ordered, *inter alia*, that:

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- a. the Specified Affiliates shall not disburse, pay or transfer any funds from an account in the name of a Specified Affiliate, other than Payroll Payments (as defined therein), without the prior written consent of the Receiver;
 - b. the Specified Affiliates shall provide the Receiver with all credentials and passwords necessary to enable the Receiver to obtain online access to the bank accounts of the Specified Affiliates for the purpose of enabling the Receiver to monitor the Specified Affiliates' compliance with the terms of the Amendment Order; and
 - c. David Ouyang shall be responsible for ensuring that the Specified Affiliates and their representatives comply with the Amendment Order.

A copy of the Amendment Order is attached as Appendix "J".

16. On June 26, 2019, the Receiver filed its fourth report (the "**Fourth Report**") with the Court. The Fourth Report described a settlement reached between the Receiver and Crown Crest (the "**Crown Crest Settlement**") with respect to the Crown Crest Transaction. Under the settlement, Crown Crest agreed to make a settlement payment to the Receiver for the benefit of the Debtor's estate and the parties agreed to the transfer of the purchased contracts to Crown Crest (other than eight excluded contracts which were owned by EcoHome and not the Debtor) on June 28, 2019. The Crown Crest Settlement was approved by the Court pursuant to a Settlement Approval Order dated June 26, 2019.

A copy of the Fourth Report (without appendices) is attached as Appendix "K".

IV. TERMS OF REFERENCE

17. In preparing this report and making the comments herein, the Receiver has relied upon certain unaudited financial information and documentation obtained by the Receiver and its agents from the Debtor and the Debtor Affiliates and their respective principals, employees and representatives and from other third-party sources (collectively, the “**Information**”). The Receiver has, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has serious concerns with respect to the veracity of certain information provided by the Debtor and Debtor Affiliates and has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook. Accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.
18. Unless otherwise stated, all dollar amounts contained in this report are expressed in Canadian dollars.

V. ACTIVITIES OF THE RECEIVER

19. The Receiver’s activities since the Third Report include the following:
- a. responding to inquiries and communicating with customers and other stakeholders of the Debtor regarding the receivership and related matters;

-
- b. reviewing employee claims and administering the WEPPA submission process;
 - c. liquidating the Debtor's physical assets;
 - d. reviewing payments by, and payment requests from, the Specified Affiliates pursuant to the terms of the Amendment Order;
 - e. reviewing financial, accounting, business and other records and documents relating to the Debtor and the Debtor Affiliates and the business and affairs of the Debtor;
 - f. reviewing litigation claims of the Debtor and advancing efforts to obtain recoveries or continue the prosecution of such claims;
 - g. advancing efforts to obtain the repayment of preferential and other improper payments made by the Debtor in advance of the receivership; and
 - h. investigating and reviewing actions taken by the Debtor, certain Debtor Affiliates and certain Affiliate Representatives that have diminished the value of the Debtor's estate, impaired the ability of the Receiver to administer the receivership, and/or contravened the terms of the Court orders or the BIA.
20. Pursuant to the Access Order, EcoHome is entitled to assist with the exercise of the Receiver's powers and duties and to undertake actions on behalf of the Receiver as the Receiver may direct. Given its industry knowledge and the limited resources of the Debtor's estate, EcoHome has assisted the Receiver in servicing customer contracts, reviewing records and documentation, and

determining assets and property of the Debtor. As the Debtor's senior secured creditor with the remaining economic interest in its estate, EcoHome has also participated in or been consulted by the Receiver with respect to settlement discussions involving the Debtor's estate.

VI. RECEIVER'S INFORMATION REQUESTS

21. As described in the Receiver's previous reports, the Receiver has expended significant time and resources in an effort to obtain the records and information in respect of the Debtor to which it is entitled pursuant to the Appointment Order. These efforts have included, *inter alia*, obtaining the Access Order and the Access and Preservation Order and filing reports in support thereof; reviewing records of the Debtor Affiliates, which was made necessary by the significant comingling of the businesses of the Debtor and the Debtor Affiliates and the intentional efforts of the Debtor and its representatives to transfer records of the Debtor to the Debtor Affiliates; and making repeated requests to obtain information in the Priority Request List.
22. Pursuant to the April 10 Endorsement, the Debtor and Debtor Affiliates agreed to provide the information in the Priority Request List by no later than April 11, 2019. After failing to meet that deadline, they agreed pursuant to a consent endorsement dated April 29, 2019 to provide the information to the Receiver by no later than May 3, 2019. A further two months have passed and certain information required pursuant to the Priority Request List has still not been provided to the satisfaction of the Receiver. Certain of the information provided is only partially responsive to the requests, is incomplete, or is

unusable to the Receiver without expending significant resources to construct the information in a useful form.

23. The fourth item in the Priority Request List is “digital copies of all warranties, and an excel file which ties each warranty to a specific contract held by the Debtor or a Debtor Affiliate”. This warranty information, presented in a useful electronic form that reconciles each warranty to a particular contract, is needed by the Receiver to maximize the value of the Debtor’s remaining contracts and by EcoHome to support its own portfolio that was being managed by the Debtor pursuant to the Program Agreement. In response to the Receiver’s repeated requests for the warranty information, counsel to the Debtor has now informed the Receiver on June 4, 2019 that only some of the warranties are available, that certain warranties are only maintained in hard copy, and that there is no document reconciling the warranties to the applicable contracts. If this statement is accurate, it appears that the Debtor’s and Debtor Affiliates’ representations to the Receiver and the Court pursuant to two consent endorsements to provide the Receiver with digital copies and reconciliations of all warranties pursuant to the Priority Request List was false or misleading.
24. The intentional failure of the Debtor and the Debtor Affiliates to provide the Receiver with complete and accurate records on a timely basis has significantly impaired the Receiver’s ability to administer the receivership and realize on the assets of the Debtor, and has materially increased the costs of the receivership. EcoHome has informed the Receiver that the information

provided by the Debtor and its representatives in respect of contracts owned by EcoHome is insufficient for EcoHome to fully service and enforce its \$28 million portfolio.

VII. PRE-RECEIVERSHIP TRANSFERS OF THE DEBTOR'S PROPERTY

25. As set out in the Receiver's previous reports, the Receiver has identified a number of transactions undertaken and payments made by the Debtor during the Pre-Receivership Period that transferred significant value from the Debtor's estate to certain affiliated entities and third parties in advance of the Receiver's appointment. The following is an update with respect to the status of certain of these transactions.

Transfer of the Self-Billing Portfolio

26. In advance of the receivership, the Debtor assisted with the servicing of certain lease contracts owned by EcoHome pursuant to the Program Agreement. The Debtor also owned its own portfolio of contracts, referred to as the Self-Billing Portfolio. The Receiver estimates that prior to the Pre-Receivership Period, the Self-Billing Portfolio consisted of at least 506 contracts, but it has been unable to verify the precise number of contracts given conflicting and incomplete information. The contracts in the Self-Billing Portfolio are the property of the Debtor and the Debtor is the beneficiary of payments made by customers under these owned contracts.
27. Mr. Ouyang has advised the Receiver that the entirety of the Debtor's Self-Billing Portfolio was "transferred" to Global Eco on or about February 1, 2019,

which was during the Pre-Receivership Period. The Self-Billing Portfolio forms part of the collateral over which EcoHome has a first-ranking security interest. Following the transfer, Global Eco and Greensaving began to collect customer payments relating to the Self-Billing Portfolio. The Receiver has not been provided with, nor is the Receiver aware of, any contemporaneous documentation or consideration at the time of the purported transfer of the Self-Billing Portfolio. Global Eco and Greensaving simply received the Self-Billing Portfolio from the Debtor and began collecting customer payments relating to assets belonging to the Debtor.

28. The Receiver has concluded that, based on the Debtor's internal allocations and other evidence, more than 75% of the contracts sold by Global Eco to Crown Crest in the Crown Crest Transaction were in fact contracts in the Self-Billing Portfolio owned by the Debtor. This conclusion is supported by the fact that Global Eco transferred a significant portion of the proceeds from the Crown Crest Transaction to the Debtor (which then promptly disbursed such funds to junior secured and unsecured creditors and other third parties in advance of the Receiver's appointment). As described more fully in the Fourth Report, the Receiver and Crown Crest ultimately reached agreement on the Crown Crest Settlement providing for a payment by Crown Crest to the Receiver in settlement of the Receiver's claims against Crown Crest in respect of the transaction.
29. Global Eco and/or Greensaving continued to bill and collect funds on the Self-Billing Portfolio during April, May and June, 2019 on behalf of the Receiver.

Global Eco and Greensaving and certain of their representatives have provided conflicting information to the Receiver regarding the remaining number of contracts in the Self-Billing Portfolio that were not sold to Crown Crest. On June 13, 2019, Mr. Ouyang provided the Receiver with a reconciliation in respect of amounts collected by Greensaving in the Self-Billing Portfolio suggesting there were 106 contracts. On June 21, 2019, Bianca Myles-Jansen, a former employee of the Debtor that now works for certain of the Debtor Affiliates, provided the Receiver with billing information for 180 contracts in the Self-Billing Portfolio. By email dated July 5, 2019, a copy of which is attached as Appendix "L", the Receiver requested an explanation for the discrepancy in the number of contracts in the Self-Billing Portfolio and an updated schedule showing the full amount of proceeds collected by Greensaving and Global Eco in respect of the Self-Billing Portfolio. The Receiver has not received a satisfactory response to date.

30. In late June 2019, Global Eco and Greensaving began to provide limited cooperation to the Receiver in order to transition the billing and collection activities in respect of the remaining Self-Billing Portfolio to EcoHome, as agent for the Receiver, for billings and collections commencing in July 2019. Global Eco and Greensaving have provided only minimal information to date and have failed to provide important information that the Receiver believes is or ought to be in the possession of these parties, including copies of all pre-authorized payment files submitted to the processing bank and remittance requests submitted to Enbridge for the collection periods October 1, 2018 to

May 31, 2019. These files would have been produced by Global Eco or Greensaving to bill customers during the October-May billing period and should be readily available. The Receiver does not believe that Global Eco has provided the same level of support and information in respect of the Self-Billing Portfolio as it provided to Crown Crest to transition contracts sold under the Crown Crest Transaction. Attached as Appendix “M” is a post-acquisition project plan between Global Eco and Crown Crest indicating the significant transition support that Global Eco was prepared to provide to Crown Crest.

31. Based on the incomplete and contradictory information provided by Global Eco and Greensaving to date, the Receiver has the following concerns with respect to the Self-Billing Portfolio:
- a. Global Eco and Greensaving have failed to provide or maintain appropriate records to facilitate the transfer of the Self-Billing Portfolio to the Receiver on an orderly basis;
 - b. Global Eco and Greensaving have provided conflicting information and have not been sufficiently forthcoming regarding billing and collection activities to enable the Receiver to determine the total number of Self-Billing Contracts;
 - c. Global Eco and Greensaving have failed to properly account for, preserve and promptly remit to the Receiver all collections and other proceeds received by them in respect of the remaining Self-Billing Portfolio (both during the Pre-Receivership Period and during the receivership);

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- d. since assuming servicing and collection efforts in respect of the Self-Billing Portfolio, Global Eco and Greensaving have failed to service the portfolio in accordance with prudent industry practice; and
 - e. the failure of Global Eco and Greensaving to properly service and maintain records for the remaining Self-Billing Portfolio has impaired the value of the Self-Billing Portfolio to the detriment of the Debtor and its estate.
32. The Receiver believes that Global Eco and Greensaving and certain of their representatives have failed to comply with the Appointment Order, the Access and Preservation Order and the BIA by failing to promptly transfer to the Receiver the entire Self-Billing Portfolio and all proceeds and other amounts collected in respect of the Self-Billing Portfolio.

Payments to Subordinate Creditors

33. On March 19, 2019 (during the Pre-Receivership Period), EcoHome's counsel advised counsel to the Debtor that in view of the impending appointment of the Receiver no steps should be taken by the Debtor out of the ordinary course of business. A copy of such email correspondence is attached as Appendix "N".
34. On March 22, 2019, Global Eco assigned certain contracts in the Self-Billing Portfolio to Crown Crest and transferred \$936,000 of the proceeds of the Crown Crest Transaction to the Debtor. During the following 11 days prior to the appointment of the Receiver, the Debtor disbursed these and other funds to subordinate creditors of the Debtor and other persons, such that the

aggregate funds in the Debtor's account upon the Receiver taking possession of the Debtor's bank accounts on April 3, 2019 was approximately \$5,500.

35. As set out at paragraph 55 of the Receiver's Third Report, Mr. Ouyang provided the Receiver with a summary of payments totaling \$1,192,350.45 made by the Debtor in the two-week period prior to the appointment of the Receiver. These payments include, *inter alia*, \$514,250 paid to Royal Bank of Canada ("**RBC**"), \$150,935.87 paid to the Canada Revenue Agency, \$116,841.28 paid to the Debtor Affiliates, \$100,000 paid to a company controlled by Michael Sifontes, and \$179,820.26 paid to a shareholder, contractors and trade creditors (including a \$10,857.13 payment to Yuzhou (Grace) Liu, Mr. Ouyang's wife). The Receiver also identified a \$24,000 payment that was made to Mr. Tam on February 11, 2019. No payments were made to EcoHome, the Debtor's senior secured creditor, even though as described below Mr. Ouyang and Mr. Tam had previously been advised by the Debtor's financial advisor that EcoHome had a priority security interest in the Debtor's assets.
36. The Receiver continues to advance efforts to recover amounts owing to the Debtor, including, *inter alia*, amounts that the Receiver believes were paid by the Debtor in contravention of the restrictions on preference payments in section 95 of the BIA. In particular:
- a. during the Pre-Receivership Period, the Debtor paid RBC \$684,250 to repay in full a line of credit (the "**LOC**"). The Receiver understands that the LOC is personally guaranteed by Mr. Ouyang. The Receiver has

reviewed email correspondence that indicates that Mr. Ouyang, Mr. Tam and other representatives of the Debtor were informed on January 25, 2019 by the Debtor's financial advisor that the obligations owing to EcoHome ranked in priority to the obligations owing to RBC. The Debtor and Mr. Ouyang were therefore aware when repaying the LOC that the Debtor was preferring RBC at the expense of EcoHome, a prior ranking creditor. The Receiver demanded repayment of \$684,250 from RBC on May 1, 2019 and counsel to the parties have discussed the demand. The Receiver continues to wait for a response from RBC regarding the demand. A copy of the demand letter is attached as Appendix "O".

- b. the Debtor made a \$100,000 payment to a corporation owned by Michael Sifontes on March 29, 2019. Mr. Sifontes is a business partner of Mr. Ouyang. Mr. Ouyang has advised the Receiver that the payment was issued to repay an unsecured loan. The Receiver is also in the process of challenging other payments made to Mr. Sifontes or entities owned by him in the Pre-Receivership Period and is in discussions with counsel to Mr. Sifontes regarding the various payments made by the Debtor.

VIII. INTERCOMPANY ACCOUNTS AND OTHER IMPROPER TRANSACTIONS

- 37. The Receiver's review of the financial and other records of the Debtor and Debtor Affiliates indicates that the entities frequently engaged in transactions and made accounting entries to transfer value within the corporate group. As

described in more detail in the Third Report, certain of these intercompany transactions and adjustments appear to have been undertaken in advance of the receivership in order to remove value from the Debtor's estate during the Pre- Receivership Period. The Receiver has identified a number of accounting adjustments that in its view are improper or not supported by evidence available to the Receiver. Copies of email correspondence and documentation in respect of such adjustments are attached as Appendix "P".

38. On June 11, 2019, after significant efforts were expended to reconstruct the intercompany accounts, the Receiver issued initial demands for payment to the following entities (the "**Demand Notices**") seeking repayment of the following amounts:

Company	Amount
D&G Enterprise Inc.	93,061.35
Global Eco Energy Group	25,667.08
Greensaving Group Inc.	78,380.74
Enterprise Portal Solutions Inc. ¹	<u>16,872.08</u>
Total	<u>213,981.25</u>

39. On June 25, 2019, counsel to the Debtor Affiliates responded to the Demand Notices by providing certain documentation to the Receiver relating to the adjustments challenged by the Receiver in the Demand Notices. Counsel to the Debtor Affiliates provided additional information on July 24, 2019. The Receiver continues to review the documentation provided by counsel to the Debtor Affiliates and to cross-reference such documentation to the Debtor's

¹ Enterprise Portal Solutions Inc. is a corporation of which Raza Farooq is a director and officer. Mr. Farooq is a consultant to certain of the Debtor Affiliates.

records. Given the record keeping practices of the Debtor and the Debtor Affiliates and past actions taken by their principals and representatives to withhold, falsify or provide misleading documentation, the Receiver cannot be certain of the veracity of all of the documentation provided.

40. Based on its review of the intercompany accounts and information provided by counsel to the Debtor Affiliates, the Receiver observes the following:
- a. On March 22, 2019, an adjusting entry was posted to reduce the amount owing from D&G to the Debtor by \$92,468.08 by reducing a shareholder loan payable balance owing to Mr. Ouyang. This accounting adjustment had the effect of diverting value (an intercompany receivable) from the Debtor's estate on the eve of the receivership, in exchange for the reduction of an unsecured loan payable to Mr. Ouyang that ranked behind the interests of the Debtor's secured creditors. Mr. Ouyang indicates that no documentation exists for the adjustment but takes the position that the adjustment is not improper because Mr. Ouyang and his wife are the owners of D&G, which in turn owns the Debtor. The Receiver believes that the write-off of a significant intercompany receivable by the Debtor at a time when the receivership application was pending is improper and contrary to the BIA. The Receiver intends to pursue the collection of this balance, in full, from D&G.
 - b. In response to the Receiver's demand for Global Eco to repay \$25,667.08 to the Debtor, counsel to Global Eco provided the Receiver

with various customer contracts, invoices, bank statements, and general ledger details relating to the intercompany account. Based on the information provided, the Receiver is unable to confirm whether or not the majority of the cash receipts relating to these contracts were in fact received by the Debtor. The Receiver has requested this information from the Debtor and its counsel on several occasions.

- c. In response to the Receiver's demand for repayment from Enterprise Portal Solutions ("**Enterprise**") in the amount of \$16,872.08 (the "**Enterprise Receivable**"), counsel to Mr. Ouyang provided the Receiver with details of a batch deposit in the Debtor's bank account, completed on March 27, 2019, which purportedly includes the repayment of Enterprise's debt to the Debtor. The Receiver notes that details of the batch deposit have not been provided, and therefore the Receiver cannot make a determination as to the status of the Enterprise Receivable at this time. The Receiver will investigate this matter further.
- d. The Receiver investigated the support provided by counsel to Greensaving in respect of the claim asserted by the Receiver in the Greensaving Demand Notice, and has determined not to pursue the claim at this time. However, the Receiver reserves all of its rights as against Greensaving in respect of this claim.

- 41. The Receiver has reason to believe that other transactions or arrangements have given rise to additional amounts owing by the Debtor Affiliates to the Debtor that are not reflected in the Demand Notices, but has not obtained

sufficient information to date to quantify their financial impact. In particular, the Receiver has identified the following intercompany transactions and arrangements that may give rise to additional amounts owing to the Debtor:

- a. certain former employees of the Debtor devoted significant portions of their time on work performed for the benefit of the Debtor Affiliates rather than the Debtor. The Receiver understands that these employees were paid solely by the Debtor and that no amounts were reimbursed by the Debtor Affiliates. Email correspondence indicating that payroll amounts were paid by the Debtor for the benefit of the Debtor Affiliates is attached as Appendix "Q";
- b. as indicated in the e-mail correspondence attached as Appendix "R", employees and advisors of the Debtor discussed transferring inventory from the Debtor to certain Debtor Affiliates for cash and with no records;
- c. the Receiver has not been provided sufficient information by Global Eco and Greensaving to determine the amounts collected by those entities in respect of the remaining Self-Billing Portfolio in advance of and during the receivership proceedings, all of which are property of the Debtor;
- d. though it has settled its claims against Crown Crest in relation to the Crown Crest Transaction, the Receiver continues to review and consider the amount of its claim against Global Eco and Mr. Ouyang arising from the improper transfer of the Debtor's property at undervalue pursuant to the transaction;

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- e. the Debtor's books and records indicate, and Mr. Ouyang has confirmed to the Receiver, that the Debtor paid for certain expenses for the benefit of the Debtor Affiliates for which it did not receive reimbursement. For instance, prior to the assignment of the tenancy interest in the Head Office lease from the Debtor to D&G in February 2019 (as described at paragraph 12 of the First Report), each of Global Eco, Greensaving and D&G operated from the Head Office. The Debtor paid all rent for the lease of the Head Office; the other entities did not pay any rent or reimburse the Debtor despite benefiting from their occupation of the leased premises; and
- f. the Receiver continues to review payments made by the Debtor to the Debtor Affiliates during the Pre-Receivership Period to determine whether such payments constitute preferences or transfers at undervalue pursuant to the BIA.
42. At this time, the Receiver has been unable to quantify the amount of salaries, rent, inventory and other expenses paid by the Debtor for the benefit of the Debtor Affiliates.
43. Additionally, the Receiver has reviewed email correspondence that suggests that certain principals of and advisors to Greensaving misrepresented Greensaving's financial situation to secure a bank loan. A copy of the email correspondence in which they describe adjusting the actual financial performance of Greensaving to report higher sales for the purpose of obtaining a bank loan is attached as Appendix "S". If true, such actions may prejudice

the Debtor's ability to recover intercompany and shareholder indebtedness as a result of the incurrence of priority secured debt.

44. The Receiver continues to review intercompany transactions, arrangements and accounting adjustments involving the Debtor and the Debtor Affiliates to determine and quantify the amounts owing to the Debtor.

IX. NON-COMPLIANCE WITH COURT ORDERS

45. During the course of the receivership, the Debtor, Global Eco, Greensaving and certain of their principals and management have taken actions, or intentionally failed to take actions, that have undermined, delayed and impeded the Receiver's ability to administer the receivership and exercise the authority given to it pursuant to the Appointment Order and the other Orders issued in the proceedings. In certain cases, the actions of such parties are in direct contravention of the Court's Orders, including, *inter alia*, the following:
- a. as set out in the First Report, on April 3, 2019 the Debtor and its representatives refused to permit the Receiver to access and take possession of the Head Office premises in contravention of the Appointment Order.
 - b. the Debtor and its representatives failed to promptly provide the Receiver with all documents, corporate and accounting records and other information related to the business and affairs of the Debtor, in contravention of the Appointment Order. This necessitated the Receiver to obtain two additional orders – the Access Order and the

Access and Preservation Order – within five days of the appointment of the Receiver to obtain records that such parties were required to provide pursuant to the Appointment Order.

- c. the Debtor and the Debtor Affiliates agreed pursuant to the April 10 Endorsement to provide all of the information in the Priority Request List by April 11, 2019 and then failed to do so. The Debtor and the Debtor Affiliates agreed pursuant to a consent endorsement dated April 29, 2019 to provide all of the information in the Priority Request List by May 3, 2019 and then failed to do so. The parties now indicate that they will not or cannot provide the warranty information required pursuant to the Priority Request List despite committing to the Receiver and the Court on multiple occasions that they would do so. Other information provided by the Debtor and Debtor Affiliates pursuant to the Priority Request List is incomplete and not fully responsive to the requests.
- d. pursuant to paragraph 3 of the Amendment Order, the Specified Affiliates are prohibited from disbursing, paying or transferring any funds from their bank accounts, other than Payroll Payments, without the prior written consent of the Receiver. The Specified Affiliates have repeatedly contravened the Amendment Order by making payments without the prior written consent of the Receiver. The Receiver believes that the Specified Affiliates are continuing to contravene the Appointment Order by making unauthorized payments, but the Receiver is unable to verify the extent of such non-compliance because

the Specified Affiliates have cut-off the Receiver's access to their banking information, in direct violation of the Amendment Order (as noted below);

- e. pursuant to paragraph 7 of the Amendment Order, the Specified Affiliates are required to provide the Receiver with login information necessary to enable the Receiver to obtain online access to the bank accounts of the Specified Affiliates for purposes of enabling the Receiver to monitor their compliance with the terms of the Amendment Order. The Specified Affiliates changed their login credentials and terminated the Receiver's access to their online banking information on or prior to June 20, 2019. Counsel to the Specified Affiliates wrote to the Receiver on June 20, 2019 to indicate that the Receiver's access to the Specified Affiliates' online banking information would be terminated on June 21, 2019. Counsel to the Receiver wrote to counsel to the Specified Affiliates on June 20, 2019 to demand that the Receiver's access be reinstated in accordance with paragraph 7 of the Amendment Order. As of the date of this Report, access to the Specified Affiliates' online banking information has not been restored and no response has been received from counsel to the Specified Affiliates. The Specified Affiliates are therefore in continuing breach of the Amendment Order.
- f. paragraph 13 of the Access and Preservation Order prohibits the Debtor Affiliates and Affiliate Representatives (which definition

expressly names Ms. Myles-Jansen) from requesting that a notice of security interest (a “**NOSI**”) be registered, altered or transferred and from effecting or recognizing the alteration or transfer of a NOSI in the name of the Debtor or a Debtor Affiliate without the consent of the Receiver. On or about April 17, 2019, Ms. Myles-Jansen, a Commissioner of Oaths, executed a postponement document, in the name and on behalf of the Debtor, relating to a NOSI registered to the Debtor. A copy of the postponement document signed by Ms. Myles-Jansen is attached as Appendix “**T**”. This action was in direct violation of paragraph 13 of the Access and Preservation Order and paragraph 3 of the Appointment Order, which provides the Receiver with the authority to execute documents in the name of the Debtor to the exclusion of all other persons.

- g. pursuant to paragraph 4 of the Receivership Order and paragraph 12 of the Access and Preservation Order, the Debtor Affiliates and the Affiliate Representatives are required to promptly furnish to the Receiver any property of the Debtor in their possession. Global Eco and/or Greensaving are in possession of proceeds collected under the Self-Billing Portfolio. These proceeds, together with the entire Self-Billing Portfolio, are assets of the Debtor. Despite repeated demands by the Receiver, Mr. Ouyang has not caused these proceeds to be transferred to the Receiver. Mr. Ouyang has taken the position that the Receiver must first agree to compensate Global Eco for the costs it has

incurred in managing the Self-Billing Portfolio (including the contracts acquired by Crown Crest) despite the fact that Global Eco improperly appropriated these contracts from the Debtor. The Receiver has indicated that it is not prepared to do so and that Global Eco is not permitted to any such serving costs in respect of the contracts acquired by Crown Crest pursuant to the terms of the Court-approved Standstill Agreement. The Receiver continues to demand that Global Eco and/or Greensaving turn over the proceeds from the Self-Billing Portfolio that are in their possession.

- h. on or about April 22, 2019, Ms. Liu attempted to return certain equipment of the Debtor to a vendor for credit, and requested that the credit be issued to Greensaving rather than the Debtor. This request appears to have been an attempt to divert value from the Debtor to Greensaving. The Receiver has not been able to determine the extent of this kind of activity.

X. OTHER ACTIVITIES OF THE RECEIVER

- 46. The Receiver continues to take steps to realize on the assets of the Debtor. The Receiver solicited offers from a number of liquidators for the sale of the Debtor's physical assets, which consisted primarily of furniture and equipment at the Debtor's Head Office and a vehicle. The Receiver reviewed with EcoHome the offers received in the marketing process and Ecohome concluded that the consideration was inadequate. EcoHome elected to purchase the assets in exchange for the cancellation of secured obligations

owing by the Debtor to EcoHome in an amount equal to the purchase price of the assets. The Receiver sold the Debtor's office furniture and equipment to EcoHome for \$50,000 pursuant to a bill of sale dated May 10, 2019 and sold a vehicle owned by the Debtor to EcoHome for \$30,000 pursuant to a bill of sale dated May 21, 2019.

47. On May 6, 2019, EcoHome filed a Statement of Claim to initiate a lawsuit against Mr. Ouyang, Ms. Myles-Jansen, Mr. Tam, Trent Knackstedt, Benedict Leung, Ms. Liu and the Debtor (the "**EcoHome Action**"). On May 24, 2019, counsel to Mr. Ouyang wrote to the Receiver seeking confirmation with respect to representation of the Debtor in the EcoHome Action. By reply letter dated June 7, 2019, a copy of which is attached as Appendix "**U**", the Receiver (in its capacity as bankruptcy trustee) indicated that:
- a. it consented to the lifting of the stay of proceedings in respect of the Debtor solely for the purpose of enabling EcoHome to issue its statement of claim;
 - b. the Ecohome Action is stayed for all other purposes pursuant to the Appointment Order and the BIA and that the Receiver understands that EcoHome does not intend at this time to move for an order to enable EcoHome to advance the EcoHome Action against the Debtor;
 - c. the Receiver does not intend to defend the Debtor in the EcoHome action and will not be asserting a counterclaim against EcoHome (as counsel to Mr. Ouyang had requested it to do); and

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- d. the Receiver does not consent to Mr. Ouyang taking on the defence of the Debtor in the EcoHome Action or asserting a counterclaim against EcoHome on behalf of the Debtor.
48. In its May 24, 2019 letter, counsel to the Debtor asserted that Mr. Ouyang and the Debtor believe that there is a positive balance in favour of the Debtor for which EcoHome is liable once all obligations between the parties are reconciled. Having regard to the results of the BDO Report and its own review, the Receiver does not believe this to be the case; rather, the Receiver is of the view that the Debtor is indebted to EcoHome in a significant amount and EcoHome will suffer a significant deficiency on its secured claim.
49. The Receiver understands that one aspect of EcoHome's claim against the debtor relates to the misappropriation of trust funds that the Debtor was required to hold in trust for EcoHome pursuant to the Program Agreement. The BDO Report, which was prepared as of March 8, 2019, indicated that the Debtor had collected but failed to remit to EcoHome a total of \$409,775.61. The Receiver has reviewed the books and records of the Debtor and has identified an additional \$276,137.85 in funds that appear to have been collected by the Debtor in trust for EcoHome and not remitted to EcoHome as required pursuant to the Program Agreement. In summary, unremitted trust funds currently total in excess of \$685,913.46
50. The Receiver intends to continue its review of the claims between the Debtor and EcoHome and will provide a further update to the Court.

All of which is respectfully submitted to this Court as of this 25th day of July, 2019.

RSM CANADA LIMITED

In its capacity as Court Appointed Receiver
of Eco Energy Home Services Inc. and
not in its personal capacity



Per: Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT
President

C

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

BETWEEN:

ECOHOME FINANCIAL INC.

Applicant

- and -

ECO ENERGY HOME SERVICES INC.

Respondent

**APPLICATION UNDER SUBSECTION 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**

**AFFIDAVIT OF BRENT HOULDEN
(sworn February 7, 2019)**

I, **Brent Houlden**, of the City of Toronto, in the Province of Ontario, **MAKE OATH
AND SAY AS FOLLOWS:**

1. I am the Chief Executive Officer of EcoHome Financial Inc. ("**EcoHome**"), an Ontario corporation that carries on business as a financing company providing consumer financing and loan products to the HVAC and home improvement markets.
2. EcoHome is a secured creditor of Eco Energy Home Services Inc. ("**Eco Energy**" or the "**Debtor**"), the respondent herein, and I am directly involved in the management of EcoHome's arrangements with the Debtor. As such, I have personal knowledge of the matters to which I

hereinafter depose. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all such cases, believe it to be true.

PURPOSE

3. I am swearing this Affidavit in support of an application by EcoHome for an order, amongst other things, appointing RSM Canada Limited (“**RSM**”) as receiver and manager of the assets, undertaking and properties of the Debtor (the “**Property**”).

DESCRIPTION OF THE RESPONDENT AND ITS BUSINESS

4. The Debtor is a privately-owned Ontario corporation, incorporated on May 29, 2009. The Debtor’s corporate profile report is attached as **Exhibit “A”** to this Affidavit.

5. The Debtor’s corporate profile report indicates that its registered office is located at 3761 Victoria Park Avenue in Toronto, Ontario, and that Wei Ouyang is the sole director and officer of The Debtor.

6. It is my understanding that the Debtor provides home services rentals, installations and maintenance, including HVAC, plumbing and electrical services to its customers. A printout describing the business found on Eco Energy’s website is attached as **Exhibit “B”** to this Affidavit.

ECOHOME’S PROGRAM AGREEMENT WITH THE DEBTOR AND RELATED SECURITY

7. The Debtor is directly indebted to EcoHome pursuant to and under the terms of an Amended and Restated Consumer Lease Program Agreement between the Debtor and EcoHome

dated November 23, 2015 (the “**Program Agreement**”), a copy of which Program Agreement is attached as **Exhibit “C”** to this Affidavit.

8. Pursuant to the Program Agreement and its predecessor contracts, EcoHome purchased from the Debtor, among other assets, the rights and interests of the Debtor under certain lease contracts entered into by the Debtor or one of its sub-dealers with third party customers (the “**Relevant Lease Contracts**”), including the right to receive payments from the customers thereunder and the right and interest in the related HVAC equipment which is the subject of each Relevant Lease Contract (collectively, the “**Purchased Assets**”).

9. The Relevant Lease Contracts are included as “Purchased Assets” under Section 2.01(1) of the Program Agreement and, accordingly, the Debtor has no remaining ownership interest in such Relevant Lease Contracts.

10. The Debtor’s obligations to EcoHome pursuant to the Program Agreement include, but were not limited to, the following:

- (a) pursuant to Section 6.02 of the Program Agreement, EcoHome was responsible for the billing and collection of all Relevant Lease Contracts, while the Debtor had an obligation to assist EcoHome in this undertaking by using commercially reasonable efforts to enforce the rights of the lessor under each Relevant Lease Contract pursuant to which a customer default has occurred, including as may be required by EcoHome;
- (b) pursuant to Section 5.01(d) of the Program Agreement, if any monies were received by the Debtor on account of any Relevant Lease Contracts (the “**Trust**

Funds”), such monies were received in trust by the Debtor for EcoHome and were to be punctually remitted to EcoHome;

- (c) pursuant to the Program Agreement, an account was to be maintained by EcoHome as a reserve against various payment obligations of the Debtor to EcoHome (the “**Cash Reserve Account**”). For example, a percentage of the purchase price of each Relevant Lease Contract was to be entered into the Cash Reserve Account. Pursuant to Section 2.02(a) of the Program Agreement, if at any time the amount of funds in the Cash Reserve Account fell below the Required Reserve Amount (as defined in the Program Agreement), the Debtor was obligated to remit funds to EcoHome to restore the Cash Reserve Account to the Required Reserve Amount;
- (d) pursuant to Section 6.02 of the Program Agreement, the Debtor was responsible for the payment of all fees, expenses and costs payable under the Open Bill Agreement and all PAPP accounts (as such capitalized terms are defined in the Program Agreement) (collectively, the “**OBA and PAPP Amounts**”); and
- (e) pursuant to Section 5.01(h) of the Program Agreement, the Debtor was required to reimburse EcoHome for all out-of-pocket expenses incurred by EcoHome in connection with the enforcement of EcoHome’s rights under the Program Agreement, including, without limitation, the fees and disbursements of counsel to EcoHome (collectively and together with the OBA and PAPP Amounts, the “**Unpaid Amounts**”) within three business days of a request for same by EcoHome.

11. As security for its obligations to EcoHome, including, without limitation, its obligations under the Program Agreement, the Debtor provided security in favour of EcoHome (the “**Security**”), including a general security agreement dated January 29, 2015 (the “**GSA**”), registration in respect of which was duly made pursuant to the *Personal Property Security Act* (Ontario) (the “**PPSA**”). A copy of the GSA is attached as **Exhibit “D”** to this Affidavit.

THE OTHER SECURED CREDITORS

12. A copy of the PPSA search results for the Debtor, with currency to February 3, 2019, are attached as **Exhibit “E”** to this Affidavit. These PPSA search results show that Enbridge Gas Distribution Inc. (“**Enbridge**”) has made a registration under the PPSA against the Debtor, covering only “Accounts” and “Other”, in priority to EcoHome’s registration against the Debtor.

13. The registration in favour of Enbridge is the only prior ranking registration to EcoHome’s registration against the Debtor.

14. The relationship between the Debtor and Enbridge is governed by an Amended and Restated Open Bill Access Billing and Collection Services Agreement (the “**Debtor-Enbridge Agreement**”), which is a standard form agreement that is substantively identical to an agreement between EcoHome and Enbridge dated January 1, 2019 (the “**EcoHome-Enbridge Agreement**”). A copy of the EcoHome-Enbridge Agreement is attached as **Exhibit “F”** to this affidavit. The PPSA registration by Enbridge against the Debtor is intended to perfect Enbridge’s interests arising from the sale to Enbridge of all the Debtor’s right, title and interest in and to all payment obligations of its customers (who receive services from Enbridge).

15. In addition to the registrations in favour of Enbridge and EcoHome, the PPSA search results show that Royal Bank of Canada (“**RBC**”) has made registrations under the PPSA against

the Debtor. The registrations in favour of RBC were each made subsequent to EcoHome's blanket PPSA registration against the Debtor.

DEFAULT AND DEMAND

16. In the spring of 2017, EcoHome became aware that the Debtor was in breach of the Program Agreement in that it, among other things, failed to remit Trust Funds to EcoHome in accordance with the terms thereof.

17. On September 17, 2017, EcoHome issued a letter to the Debtor (the "**September 17 Letter**") indicating that the Debtor was in default of the Program Agreement by, *inter alia*:

- (a) accepting Trust Funds from customers and failing to remit such funds to EcoHome, contrary to section 5.01(d) of the Program Agreement; and
- (b) failing to remit funds to the Cash Reserve Account such that, as at August 31, 2017, the Cash Reserve Account was in a deficit of approximately \$2.7 million. A copy of the September 17 Letter is attached as **Exhibit "G"** to this affidavit.

18. In the September 17 Letter, EcoHome required the Debtor to remit \$500,000.00 by September 29, 2017 to partially cover the amounts of unremitted Trust Funds and as a preliminary top-up of the Cash Reserve Account, but with reservation of its rights to fully enforce all remedies available to it under the Program Agreement.

19. The Debtor failed to remit funds as required by the September 17 Letter.

20. At a meeting between representatives of EcoHome and the Debtor on November 30, 2018, the Debtor admitted to receiving monies on account of Relevant Lease Contracts and not

remitting such Trust Funds to EcoHome. Following this admission and at the request of EcoHome, the Debtor agreed to meet with EcoHome to advise EcoHome of the Relevant Lease Contracts pursuant to which the Debtor had received monies which were not remitted.

21. I am advised by Gary Abel, an employee of EcoHome, that in December 2018, Mr. Abel conducted a review with Bianca Myles-Jansen, an employee of the Debtor, of the list of Relevant Lease Contracts which had been terminated in 2017 (the “**2017 Relevant Lease Contracts**”). As part of such review, Ms. Myles-Jansen confirmed that the Debtor had received \$175,103.62 that it had not remitted to EcoHome in respect of the 2017 Relevant Lease Contracts (the “**Trust Funds Indebtedness**”). A chart prepared by Mr. Abel containing a detailed breakdown of the Trust Funds Indebtedness is attached as **Exhibit “H”** to this Affidavit.

22. I am advised by Mr. Abel that he was scheduled to attend at the Debtor’s offices on January 14, 2019 to commence a review of the Relevant Lease Contracts which had been terminated in 2016, to identify other Relevant Lease Contracts in respect of which the Debtor had received funds on behalf of EcoHome, However, this meeting was unilaterally cancelled by the Debtor.

23. As at the date of this affidavit, EcoEnergy has been unwilling to arrange an alternate date to conduct a further review of the Debtor’s books and records, including an additional audit of the 2014-2015 and 2018 terminated Relevant Lease Contracts..

24. I believe that there are likely further unremitted Trust Funds from the years 2014-2016 and 2018 relating to terminated Relevant Lease Contracts that have been received by the Debtor, the quantum of which Trust Funds EcoHome has been unable to ascertain as a result of the Debtor’s failure or refusal to cooperate in giving EcoHome access to its books and records.

25. Moreover, in January 2019, the Cash Reserve Account was calculated as being deficient by \$2,010,500.00. The monthly December 2018 Cash Reserve Account Report is attached as **Exhibit "I"** to this affidavit.

26. There are a number of items set out in the Program Agreement that enter into the calculation of the Cash Reserve Account's deficiency, but this deficiency is largely attributable to the high level of defaults and delinquencies under the Relevant Lease Contracts sold to EcoHome by the Debtor.

27. On January 4, 2019, by email correspondence to Tony Tam, an employee of the Debtor, from Peter Soon, Vice President of Operations at EcoHome, EcoHome demanded reimbursement of certain legal fees incurred by it (being Unpaid Amounts) totalling \$23,072.85, pursuant to the Program Agreement, and attached invoices identifying this amount (the "**Legal Fees Demand**"). Copies of the Legal Fees Demand and attached invoices are attached collectively as **Exhibit "J"** to this Affidavit.

28. The Debtor failed to honour the Legal Fees Demand. On January 14, 2019, EcoHome issued a letter (the "**January 14 Letter**") to the Debtor advising the Debtor of several defaults under the Program Agreement and requiring the Debtor to, among other things: (i) remit \$795,960.00 to EcoHome which would, in part, cover the amounts the Debtor received in trust on EcoHome's behalf, and also as a preliminary top-up to the Cash Reserve Account to reduce the Cash Reserve Account's deficiency; (ii) provide EcoHome with a full and complete accounting of monies that have been received from Customers; (iii) remit to EcoHome all Trust Funds; (iv) deliver to EcoHome copies of Eco Energy's insurance policies; (v) furnish to the Debtor the annual and quarterly financial statements of Eco Energy for the last three years; and

(vi) work forthwith towards curing the Debtor's other breaches of the Program Agreement. A copy of the January 14 Letter is attached as **Exhibit "K"** to this Affidavit.

29. The Debtor failed to honour the requests made in the January 14 Letter.

30. The failures on the part of the Debtor constitute Events of Termination under the Program Agreement (as defined therein), and events of default under the GSA, including, but are not limited to (collectively, the "**Defaults**");

- (a) failing to remit the Trust Funds Indebtedness to EcoHome;
- (b) failing to remit funds to cure the Cash Reserve Account's deficiency;
- (c) failing to remit legal fees within three business days of the Legal Fees Demand;
- (d) failing to provide EcoHome with annual and quarterly financial statements; and
- (e) failing to provide EcoHome with copies of the Debtor's insurance policies upon request by EcoHome.

31. Accordingly, EcoHome made formal written demand on the Debtor for payment of its indebtedness to EcoHome by letter dated January 22, 2019 (the "**Demand Letter**", and together with the Legal Fees Demand and the January 14 Letter, the "**Demands**"), which letter also advised the Debtor of the termination of the Program Agreement, effective immediately. A copy of the January 14 Letter and a Notice of Intention to Enforce Security (the "**BIA Notice**") pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), accompanied the Demand Letter. Copies of the Demand Letter and BIA Notice are attached collectively as **Exhibit "L"** to this Affidavit.

32. On January 25, 2019, representatives of EcoHome and the Debtor met to discuss the potential for the Debtor entering into a payment plan (the "**Payment Plan**") with EcoHome, through the implementation of a forbearance agreement. At this meeting the Debtor raised concerns about the calculation of the Cash Reserve Account's deficiency.

33. Since the date of the Demand Letter and in response to the Debtor's concern that the Cash Reserve Account's deficiency was not calculated correctly, EcoHome has recalculated the Cash Reserve Account and determined that the total amount of indebtedness owing by the Debtor is \$1,614,855.95 consisting of \$1,591,783.10 in respect of the Cash Reserve Account's deficiency (which includes the Trust Funds Indebtedness) and \$23,072.85 in respect of the Legal Fees Demand (collectively, the "**Indebtedness**"). A copy of the report reflecting the entire movement of the Cash Reserve Account is attached as **Exhibit "M"** to this affidavit.

APPOINTMENT OF A RECEIVER

34. As of the time of swearing this Affidavit, the Debtor has failed to make payment in accordance with the Demands, or made alternative arrangements acceptable to EcoHome.

35. EcoHome could suffer serious additional damages due to the consequent risk of its failure to meet its obligations under its own securitization arrangements with its lenders, for which the Relevant Lease Contracts stand as security.

36. On January 30, 2019, EcoHome attempted to enter into the Payment Plan with the Debtor. However, on January 31, 2019, the Debtor advised EcoHome that it could not enter into any Payment Plan with EcoHome, as the Debtor was not in a financial position to comply with the payment schedule proposed therein.

37. At this stage, EcoHome wishes to take any and all steps necessary to enforce its Security and realize on same.

38. EcoHome considers it reasonable and prudent to begin the enforcement of its Security in an effort to recover the indebtedness owed by the Debtor to EcoHome, and it is within EcoHome's rights under the Program Agreement and the Security to do so.

39. In the circumstances set out above, I believe that it is just and equitable that a receiver be appointed. A receiver is necessary for the protection of the estate of the Debtor, the interests of EcoHome and, perhaps, other stakeholders. EcoHome believes that the appointment of a receiver would enhance the prospect of recovery by EcoHome and protect all stakeholders.

40. EcoHome proposes that RSM be appointed as the Receiver.

41. RSM is a licensed insolvency trustee and is familiar with the circumstances of the Debtor and its arrangements with EcoHome.

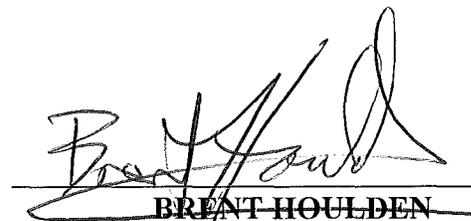
42. RSM has consented to act as receiver should the Court so appoint it. A copy of RSM's consent will be provided to the Court on the return of this application.

43. This Affidavit is made in support of the within application, and for no other or improper purpose whatsoever.

SWORN before me at the City of Toronto, in the Province of Ontario, this 7th day of February, 2019)



Commissioner for taking affidavits, etc.
SHAKIRA JOHN

) 
) _____
) **BRENT HOULDEN**