Court File No. CV-21-00658423-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JUST ENERGY GROUP INC., JUST ENERGY CORP., ONTARIO ENERGY COMMODITIES INC., UNIVERSAL ENERGY CORPORATION, JUST ENERGY FINANCE CANADA ULC, HUDSON ENERGY CANADA CORP., JUST MANAGEMENT CORP., JUST ENERGY FINANCE HOLDING INC., 11929747 CANADA INC., 12175592 CANADA INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC., 8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP., JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST ENERGY INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY SERVICES LLC, HUDSON ENERGY CORP., INTERACTIVE ENERGY GROUP LLC, HUDSON PARENT HOLDINGS LLC, DRAG MARKETING LLC, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. AND JUST ENERGY (FINANCE) HUNGARY ZRT.

APPLICANTS

MOTION RECORD OF THE APPLICANTS

(Motion for Approval of ecobee Inc. Support Agreement and Related Relief)

November 8, 2021

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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JUST ENERGY GROUP INC.**, JUST ENERGY CORP., ONTARIO ENERGY COMMODITIES INC., UNIVERSAL ENERGY CORPORATION, JUST ENERGY FINANCE CANADA ULC, HUDSON ENERGY CANADA CORP., JUST MANAGEMENT CORP., JUST ENERGY FINANCE HOLDING INC., 11929747 CANADA INC., 12175592 CANADA INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC., 8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP., JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST ENERGY INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY SERVICES LLC, HUDSON ENERGY CORP., INTERACTIVE ENERGY GROUP LLC, HUDSON PARENT HOLDINGS LLC, DRAG MARKETING LLC, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. AND JUST ENERGY (FINANCE) HUNGARY ZRT.
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Court File No. CV-21-00658423-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JUST ENERGY GROUP INC., JUST ENERGY CORP., ONTARIO ENERGY COMMODITIES INC., UNIVERSAL ENERGY CORPORATION, JUST ENERGY FINANCE CANADA ULC, HUDSON ENERGY CANADA CORP., JUST MANAGEMENT CORP., JUST ENERGY FINANCE HOLDING INC., 11929747 CANADA INC., 12175592 CANADA INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC., 8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP., JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST ENERGY INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY SERVICES LLC, HUDSON ENERGY CORP., INTERACTIVE ENERGY GROUP LLC, HUDSON PARENT HOLDINGS LLC, DRAG MARKETING LLC, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. AND JUST ENERGY (FINANCE) HUNGARY ZRT.

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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JUST ENERGY GROUP INC., JUST ENERGY CORP., ONTARIO ENERGY COMMODITIES INC., UNIVERSAL ENERGY CORPORATION, JUST ENERGY FINANCE CANADA ULC, HUDSON ENERGY CANADA CORP., JUST MANAGEMENT CORP., JUST ENERGY FINANCE HOLDING INC., 11929747 CANADA INC., 12175592 CANADA INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC., 8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP., JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST ENERGY INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY SERVICES LLC, HUDSON ENERGY CORP., INTERACTIVE ENERGY GROUP LLC, HUDSON PARENT HOLDINGS LLC, DRAG MARKETING LLC, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. AND JUST ENERGY (FINANCE) HUNGARY ZRT.

APPLICANTS

NOTICE OF MOTION

(Motion for Approval of ecobee Inc. Support Agreement and Related Relief)

The Applicants will make a motion before the Honourable Justice Koehnen of the Ontario Superior Court of Justice (Commercial List) on November 10, 2021 at 2:00 p.m., or as soon after that time as the motion may be heard by judicial videoconference via Zoom at Toronto, Ontario. The videoconference details are appended as Schedule "A" to this Notice of Motion.

PROPOSED METHOD OF HEARING: The motion is to be heard by videoconference.

THE MOTION IS FOR:

1. An Order substantially in the form included at Tab 3 of the Motion Record:

   (a) authorizing and empowering Just Management Corporation ("**JMC**") to enter into the Support and Voting Agreement (the "**Support Agreement**") relating to the Arrangement Agreement (as defined below) between ecobee Inc. (the Seller, "**ecobee**"), Shareholder Representative Services LLC, in its capacity as shareholder representative ("**Shareholder Representative**"), 13462234 Canada Inc. (the "**Purchaser**") and Generac Power Systems, Inc. ("**Generac Power**");

   (b) authorizing and empowering the Just Energy Entities to enter into the Wind-Up and Dissolution Transactions (as defined below) prior to the closing of the Transaction (as defined below), and ordering that the completion of the Wind-Up and Dissolution Transactions is deemed to be in compliance with sections 34 and 38 of the *Canada Business Corporations Act*, RSC 1985, c C-44 ("**CBCA**");

   (c) authorizing and directing the Just Energy Entities to take all steps necessary to effect the dissolution of JMC in accordance with the Wind-Up and Dissolution Transactions;

   (d) authorizing Just Energy Group Inc. ("**Just Energy**") to sell and transfer all right, title and interest in and to the ecobee Shares (as defined below), following the completion of the Wind-Up and Dissolution Transactions, to the Purchaser, free and clear of all claims and encumbrances; and

(e) authorizing Just Energy, in consultation with the Monitor, to sell the Consideration Shares (as defined below) to a third-party purchaser free and clear of all claims and encumbrances, at any time following closing of the Transaction.

2. Capitalized terms used but not defined in this Notice of Motion shall have the meanings given to them in the Sixth Carter Affidavit.

THE GROUNDS FOR THE MOTION ARE:

3. The Applicants were granted protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the "**CCAA**") pursuant to the Initial Order of the Ontario Superior Court of Justice (Commercial List) dated March 9, 2021, as amended and restated. The Initial Order has twice been amended and restated, and the CCAA Court granted an Amended and Restated Initial Order and the Second Amended and Restated Initial Order (**"SARIO**") on March 19, 2021, and May 26, 2021, respectively.

4. FTI Consulting Canada Inc. was appointed to act as the Monitor in the CCAA proceeding.

Background on ecobee

5. ecobee is a private Canadian federally incorporated company engaged in the business of developing and selling smart home devices (including smart thermostats, room sensors, smart light switches and smart cameras) and related services.

Just Energy's Interest in ecobee

6. JMC currently owns approximately 8% of ecobee, on a fully diluted basis, which includes approximately 2.34% of the ecobee Common Shares, 19.33% of the Class A Preferred Shares and 13.48% of the Class B Preferred Shares (collectively, the "**ecobee Shares**").

7. As at June 30, 2021, the fair value of JMC's investment in ecobee was recorded as $32.9 million.

8. The Just Energy Entities have been actively attempting to sell JMC's 8% interest in ecobee for several years, and has declined to participate in the most recent capital raises of ecobee, as this was no longer deemed a core asset of the Just Energy Entities.

Unanimous Shareholders Agreement

9. ecobee, and all of its shareholders, including JMC, are parties to ecobee's Seventh Amended and Restated Unanimous Shareholder Agreement (the "**USA**") dated as of April 24, 2018.

10. Pursuant to Article 7.5 of the USA, if ecobee receives a qualifying offer from a third party that it wishes to accept, which is approved by the ecobee Board and a majority of the votes cast by holders of Common Shares at a meeting of common shareholders, and approved in writing by the holders of a majority of the Class B Preferred Shares and Class C Preferred Shares, voting together on an as-converted basis, and which will provide a specified return to Class C Investors (as defined in the USA), ecobee is entitled to require all shareholders, on 10 days' prior notice in writing, to sell their shares to the third party for the amount set forth in the qualifying offer (the "**Drag Along Rights**").

Transaction with Generac

11. On November 1, 2021, ecobee entered into an agreement (the "**Arrangement Agreement**") with the Purchaser, Generac Power (a wholly owned subsidiary of Generac Holdings Inc. ("**Generac Holdings**")), and the Shareholder Representative, to sell all of the issued and outstanding shares of ecobee (the "**Shares**") to the Purchaser. The Transaction is proposed to be

effected pursuant to a court approved arrangement (the "**Arrangement**") under Section 192 of the CBCA.

12. The Transaction is valued at up to US$770 million, contingent on the achievement of certain performance targets.

13. At closing of the Transaction ("**Closing**"), the Purchaser will pay the sellers of the shares an aggregate of US$200 million in cash, subject to customary adjustments, along with US$450 million in Generac Holding's common stock (the "**Generac Common Stock**"). Additionally, upon achievement of certain performance targets in the fiscal years ending June 30, 2022 and 2023, the selling ecobee shareholders may receive an "earnout" of up to an aggregate of US$120 million in additional shares of Generac Common Stock.

14. Upon completion of the Arrangement, ecobee will become a wholly-owned subsidiary of the Purchaser and indirectly a subsidiary of Generac Power.

15. The terms of the Arrangement are the result of arm's length negotiations between representatives of ecobee, Generac Power, the Purchaser, and their respective advisors.

16. On November 8, 2021, ecobee obtained an interim order pursuant to Section 192 of the CBCA. A final order hearing has been scheduled on November 26, 2021.

17. ecobee has announced that it intends to hold a special meeting of shareholders (the "**Special Meeting**") on Monday, November 22, 2021 at 10:00 a.m. in connection with the Transaction, unless 100% of ecobee shareholders provide written support of the Arrangement, in which case the Special Meeting will not be necessary.

Support Agreement

18. In connection with the Arrangement, the majority of ecobee's securityholders, with the exception of JMC, entered a Support Agreement wherein such supporting shareholder acknowledged that they support and agree to be bound by the Arrangement Agreement and will vote in favour of the approval, ratification and adoption of the Arrangement.

19. Each signatory of the Support Agreement has agreed to provide certain representations and warranties to the Purchaser and the Securityholder Representative, including ownership of undersigned's interests and authority and ability to convey title.

20. In the case of JMC, in light of the ongoing CCAA Proceedings and the provisions of the SARIO that restrict any material refinancing, restructuring, sale or reorganization, it was expressly agreed that JMC's execution of the Support Agreement would be conditional on approval by the CCAA Court.

21. JMC intends to execute the same form of Support Agreement as signed by the other supporting shareholders.

22. Separately, the Purchaser has confirmed to Just Energy in writing that the Purchaser consents to (i) JMC transferring the ecobee Shares to Just Energy, notwithstanding Section 1.4(c) of the Support Agreement, and (ii) Just Energy making such public announcements, filings and disclosures as it reasonably determines are required or advisable in connection with its obligations as a debtor in these CCAA Proceedings, notwithstanding Section 1.4(b) of the Support Agreement.

23. Even if JMC was not inclined to support the Arrangement, the Drag-Along Rights under the USA would likely have been engaged, such that JMC would be forced to sell its equity interest in ecobee in connection with the Arrangement.

Consideration Under the Arrangement

24. Upon the sale of the ecobee Shares to the Purchaser, Just Energy (having received the ecobee Shares through the proposed Wind-Up and Dissolution Transaction, described below) anticipates receiving at Closing approximately $61 million, comprised of approximately $18 million cash and $43 million of Generac Common Stock. Just Energy can receive up to an additional approximate $10 million in Generac Common Stock in the fiscal years ending June 30, 2022 and 2023, provided that certain performance targets are achieved by ecobee (collectively with the $43 million of Generac Common Stock, the "**Consideration Shares**").

25. The Arrangement Agreement does not contain a lock-up provision preventing Just Energy from selling the Consideration Shares immediately following Closing.

26. The Applicants are seeking Court approval to permit Just Energy, in consultation with the Monitor, to sell the Consideration Shares free and clear from all encumbrances as soon as practicable following Closing to allow Just Energy to monetize the sale proceeds.

Wind-Up and Dissolution Transactions

27. As part of ordinary course tax and corporate planning to utilize available tax attributes, the Just Energy Entities intend to enter into a series of transactions in advance of the closing of the Arrangement to transfer the assets and liabilities currently held by JMC to Just Energy, including JMC's interest in the ecobee Shares, to allow those shares to then be sold to the Purchaser by Just Energy (the "**Wind-Up and Dissolution Transactions**").

28. The Wind-Up and Dissolution Transactions will save the Just Energy Entities (and in turn their stakeholders) from tax liability of approximately $6.6 million that would otherwise result from the sale of the ecobee Shares by JMC. This tax will not be payable if the Wind-Up and

Dissolution Transactions are implemented since Just Energy has losses available to offset the gain on the sale of the ecobee Shares from tax.

29. The Wind-Up and Dissolution Transactions are permitted by Canadian tax laws and could proceed without Court approval or oversight by the Canada Revenue Agency absent the ongoing CCAA and Chapter 15 proceedings and JMC's associated declaration of insolvency.

30. The Wind-Up and Dissolution Transactions are not expected to have any negative impact on any creditor or stakeholders of the Just Energy Entities. To the contrary, they will not only assist in monetizing non-core assets that have been historically difficult to sell, but also allow this to occur in a manner that generates a tax benefit in the amount of approximately $6 million. The assets that would be available to satisfy JMC's liabilities will continue to exist in the hands of Just Energy, which is a co-obligor with JMC on the exact same liabilities for which JMC is responsible.

31. The ecobee board of directors has approved the transfer of the ecobee Shares by JMC to Just Energy prior to Closing, pursuant to the USA.

Other Grounds

32. In addition to the other grounds discussed in this Notice of Motion, the Applicants rely on:

(a) the provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;

(b) Rules 1.04, 1.05, 2.03, 16, 37, and 59.06 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, and section 106 and 137 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(c) changes to Commercial List operations in light of COVID-19 dated March 16, 2020; and

(d) such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

33. The Sixth Affidavit of Michael Carter sworn November 8, 2021, including the exhibits thereto (the "**Sixth Carter Affidavit**");

34. The Fourth Report of the Monitor, to be filed; and

35. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

November 8, 2021

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Lawyers to the Applicants

TO: THE SERVICE LIST

Schedule "A"

Join Zoom Meeting
https://zoom.us/j/94428434327?pwd=b3Rtb1lOR1oyMnN5WjVkcWFIank1dz09

Meeting ID: 944 2843 4327
Passcode: 892780
One tap mobile
+14388097799,,94428434327#,,,,*892780# Canada
+15873281099,,94428434327#,,,,*892780# Canada

Dial by your location
- +1 438 809 7799 Canada
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- +1 647 558 0588 Canada
- +1 778 907 2071 Canada
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- +1 312 626 6799 US (Chicago)
- +1 346 248 7799 US (Houston)
- +1 646 558 8656 US (New York)
- +1 669 900 9128 US (San Jose)
- +1 253 215 8782 US (Tacoma)

Meeting ID: 944 2843 4327
Passcode: 892780
Find your local number: https://zoom.us/u/acjUeHtz82

Join by SIP
94428434327@zoomcrc.com

Join by H.323
162.255.37.11 (US West)
162.255.36.11 (US East)
115.114.131.7 (India Mumbai)
115.114.115.7 (India Hyderabad)
213.19.144.110 (Amsterdam Netherlands)
213.244.140.110 (Germany)
103.122.166.55 (Australia Sydney)
103.122.167.55 (Australia Melbourne)
149.137.40.110 (Singapore)
64.211.144.160 (Brazil)
149.137.68.253 (Mexico)
69.174.57.160 (Canada Toronto)
65.39.152.160 (Canada Vancouver)
207.226.132.110 (Japan Tokyo)
149.137.24.110 (Japan Osaka)
Meeting ID: 944 2843 4327
Passcode: 892780

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Court File No: CV-21-00658423-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JUST ENERGY GROUP INC. et al.**

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION
(Motion for Approval of ecobee Inc. Support Agreement and Related Relief)

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Lawyers to the Applicants

2

Court File No. CV-21-00658423-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JUST ENERGY GROUP INC., JUST ENERGY CORP., ONTARIO ENERGY COMMODITIES INC., UNIVERSAL ENERGY CORPORATION, JUST ENERGY FINANCE CANADA ULC, HUDSON ENERGY CANADA CORP., JUST MANAGEMENT CORP., JUST ENERGY FINANCE HOLDING INC., 11929747 CANADA INC., 12175592 CANADA INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC., 8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP., JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST ENERGY INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY SERVICES LLC, HUDSON ENERGY CORP., INTERACTIVE ENERGY GROUP LLC, HUDSON PARENT HOLDINGS LLC, DRAG MARKETING LLC, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. AND JUST ENERGY (FINANCE) HUNGARY ZRT.

APPLICANTS

AFFIDAVIT OF MICHAEL CARTER

(Sworn November 8, 2021)

(Motion for Approval of ecobee Inc. Support Agreement and Related Relief)

I, Michael Carter, of the Town of Flower Mound, in the State of Texas, MAKE OATH AND SAY:

1. I have been Just Energy Group Inc.'s ("**Just Energy**") Chief Financial Officer since September 2020. In that role, I am responsible for all financial-related aspects of the business of Just Energy and its subsidiaries in the CCAA proceedings (collectively, the "**Just Energy Group**" or the "**Applicants**"), including the partnerships listed on Schedule "A" of the Initial Order (as

defined below) to which the protections and authorizations of the Initial Order were extended (collectively with the Applicants, the "**Just Energy Entities**"). As such, I have personal knowledge of the matters deposed to in this affidavit, including the business and financial affairs of the Just Energy Entities. Where I have relied on other sources for information, I have stated the source of my information and I believe such information to be true. In preparing this affidavit, I have also consulted with the Just Energy Group's senior management team and their financial and legal advisors.

2. I make this affidavit in support of a motion by the Applicants for an order:

(a) authorizing and empowering Just Management Corporation ("**JMC**") to enter into the Support and Voting Agreement (the "**Support Agreement**") relating to the Arrangement Agreement (as defined below) between ecobee Inc. (the Seller, "**ecobee**"), Shareholder Representative Services LLC, in its capacity as shareholder representative ("**Shareholder Representative**"), 13462234 Canada Inc. (the **"Purchaser**") and Generac Power Systems, Inc. ("**Generac Power**");

(b) authorizing and empowering the Just Energy Entities to enter into the Wind-Up and Dissolution Transactions (as defined below) prior to the closing of the Transaction (as defined below), and ordering that the completion of the Wind-Up and Dissolution Transactions is deemed to be in compliance with sections 34 and 38 of the *Canada Business Corporations Act*, RSC 1985, c C-44 ("**CBCA**");

(c) authorizing and directing the Just Energy Entities to take all steps necessary to effect the dissolution of JMC in accordance with the Wind-Up and Dissolution Transactions;

(d) authorizing Just Energy to sell and transfer all right, title and interest in and to the ecobee Shares (as defined below), following the completion of the Wind-Up and Dissolution Transactions, to the Purchaser, free and clear of all claims and encumbrances; and

(e) authorizing Just Energy, in consultation with the Monitor, to sell the Consideration Shares (as defined below) to a third-party purchaser free and clear of all claims and encumbrances, at any time following closing of the Transaction.

3. Capitalized terms used in this affidavit but not defined have the meanings given to them in the Second Amended and Restated Initial Order ("**SARIO**"), or in my affidavit sworn on March 9, 2021 (the "**Initial Order Affidavit**"), copies of which are attached (in the case of the Initial Affidavit, without exhibits) as **Exhibits "A"** and **"B"** hereto. All references to monetary amounts in this affidavit are in Canadian dollars unless noted otherwise.

Background on the Just Energy Entities and the CCAA Proceedings

4. On March 9, 2021 (the "**Filing Date**"), the Applicants obtained protection under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "**CCAA**") pursuant to an initial order (the "**Initial Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**"). The Initial Order, among other things, extended the protections granted thereunder to the partnerships listed on Schedule "A" thereto.

5. The Initial Order has twice been amended and restated, and the CCAA Court granted an Amended and Restated Initial Order ("**ARIO**") and the SARIO on March 19, 2021, and May 26, 2021, respectively.

6. On April 2, 2021, the U.S. Court granted the Final Recognition Order which, among other things, granted the ARIO, including any and all existing and future extensions, amendments, restatements, and/or supplements authorized by the CCAA Court, full force and effect on a final basis with respect to the Just Energy Entities' property located within the United States.

7. Since the granting of the Initial Order, the Stay Period in these CCAA proceedings has been extended on a number of occasions, most recently by Order of the CCAA Court granted September 15, 2021, which, among other things, extended the Stay Period to December 17, 2021. On November 3, 2021, the Applicants served a motion seeking, among other things, to extend the Stay Period to February 17, 2022.

Background on ecobee

8. ecobee is a private Canadian federally incorporated company headquartered in Toronto engaged in the business of developing and selling smart home devices (including smart thermostats, room sensors, smart light switches and smart cameras) and related services (including energy management and demand response services) to residential and commercial customers throughout North America.

9. In financial year 2021 ending June 30, ecobee had net revenue of US$149 million. In the first quarter of financial year 2022, ecobee had US$41.5 million in net revenue and EBITDA of US$4.6 million. As of the first quarter of financial year 2022, ecobee's smart thermostats were used in 2.19 million homes throughout North America.

Just Energy's Interest in ecobee

10. On August 10, 2012, Just Energy Ontario LP ("**JEOLP**"), a subsidiary of Just Energy and one of the Just Energy Entities subject to the CCAA Proceedings, acquired a 15% fully diluted

interest in ecobee for an amount of $6,460,000. Over the next several years, JEOLP acquired additional shares in ecobee through various capital raises conducted by ecobee. At the same time, as a result of these capital raises, JEOLP's interest in ecobee was reduced from approximately 15% to 8%, on a fully diluted basis. In 2018, the shares of ecobee held by JEOLP were transferred to JMC in consideration for 2 classes of preferred shares in JMC and an election was filed under Subsection 85(2) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp.) for such transfer to occur on a tax-deferred basis.

11. JMC currently owns approximately 8% of ecobee, on a fully diluted basis, which includes approximately 2.34% of the Common Shares, 19.33% of the Class A Preferred Shares and 13.48% of the Class B Preferred Shares (together, the "**ecobee Shares**"). As required by International Financial Reporting Standards, this investment is measured at and classified on Just Energy's consolidated financial statements as fair value through profit and loss. The fair value of the investment is determined directly from transacted/quoted prices of identical assets. As at June 30, 2021, the fair value of JMC's investment in the ecobee Shares was recorded as $32.9 million.

12. Mr. Jonah Davids, Executive Vice President, General Counsel and Corporate Secretary of Just Energy, currently sits on the Board of Directors of ecobee (the "**ecobee Board**") as JMC's nominee pursuant to ecobee's Seventh Amended and Restated Unanimous Shareholder Agreement (the "**USA**") dated as of April 24, 2018.

The Just Energy Entities' Attempts to Sell their Interest in ecobee

13. Previously, the Just Energy Entities had a marketing campaign whereby ecobee smart thermostats were marketed by the Just Energy Entities through a cross-sell opportunity to the Just Energy Entities' existing customer base in Ontario and Texas, as well as in a bundled product offering with commodity or air conditioner/furnace rentals.

14. The Just Energy Entities discontinued these cross-selling and bundled product offerings in or about 2019, and have not sold any ecobee smart thermostats to its customer base over the past two years.

15. The Just Energy Entities have been actively attempting to sell JMC's 8% interest in ecobee for several years and have declined to participate in the most recent capital raises of ecobee as this was no longer deemed a core asset of the Just Energy Entities. In January 2019, Just Energy retained National Bank Financial Inc., as investment advisor, in an effort to sell JMC's equity interest in ecobee. These efforts were ultimately unsuccessful, and the engagement with National Bank Financial Inc. was terminated by Just Energy in November 2020.

Unanimous Shareholder Agreement

16. ecobee, and all of its shareholders, including JMC, are parties to the USA. A copy of the USA is attached as **Exhibit "C"**.

17. I understand that the Common Shares, Class A Preferred Shares, Class B Preferred Shares and Class C Preferred Shares of ecobee (collectively, the "**Shares**") are held by approximately 130 different shareholders, most of whom are current or former employees or directors who reside in the Greater Toronto Area. All but one of the remaining ecobee shareholders, who hold a majority of the Shares, are institutional investors who are closely involved in the business and affairs of ecobee and are able to exercise their right to vote.

18. Pursuant to Article 7.5 of the USA, if ecobee receives a qualifying offer from a third party that it wishes to accept, which is approved by the ecobee Board and a majority of the votes cast by holders of Common Shares at a meeting of common shareholders, and approved in writing by the holders of a majority of the Class B Preferred Shares and Class C Preferred Shares, voting together

on an as-converted basis, and which will provide a specified return to Class C Investors (as defined in the USA), ecobee is entitled to require all shareholders, on 10 days' prior notice in writing, to sell their Shares to the third party for the amount set forth in the qualifying offer (the "**Drag-Along Rights**").

Transaction with Generac

19. On November 1, 2021, Just Energy issued a press release advising that ecobee has entered into an agreement with the Purchaser, a wholly-owned subsidiary of Generac Power, which in turn is a wholly owned subsidiary of Generac Holdings Inc. ("**Generac Holdings**"), to sell all of the issued and outstanding Shares of ecobee (the "**Transaction**"), including all of the ecobee Shares held by JMC, to the Purchaser. The Transaction is proposed to be effected pursuant to a court approved arrangement (the "**Arrangement**") under Section 192 of the *Canada Business Corporations Act*, RSC 1985, c C-44 ("**CBCA**"). Attached as **Exhibit "D"** is a copy of Just Energy's press release. Attached as **Exhibit "E"** is a copy of Generac Holding's press release announcing the Transaction.

20. The Transaction is valued at up to US$770 million, contingent on the achievement of certain performance targets. Based on current estimates, at closing, the Purchaser will pay the sellers of the Shares an aggregate of US$200 million in cash, subject to customary adjustments and escrow/indemnity holdbacks, along with US$450 million in Generac Holding's common stock (the "**Generac Common Stock**") valued at approximately US$448.93 per Consideration Share as provided in the Arrangement Agreement. Additionally, upon achievement of certain performance targets in the fiscal years ending June 30, 2022 and 2023, the selling ecobee shareholders may receive an "earnout" of up to an aggregate of US$120 million in additional shares of Generac Common Stock.

21. At closing, and following the proposed Wind-Up and Dissolution Transactions (as defined below), Just Energy anticipates receiving approximately $61 million, comprised of approximately $18 million cash and $43 million of Generac Common Stock, subject to customary adjustments and escrow/indemnity holdbacks. The Just Energy Entities can receive up to an additional approximate $10 million in Generac Common Stock over calendar years 2022 and 2023, subject to customary adjustments and indemnity holdback amounts and provided that certain performance targets are achieved by ecobee (collectively, the "**Consideration Shares**"). Generac Common Stock trades on the New York Stock Exchange under the symbol GNRC.

22. Upon completion of the Arrangement, ecobee will become a wholly-owned subsidiary of the Purchaser and indirectly a subsidiary of Generac Power.

Arrangement Agreement

23. On November 1, 2021, the Purchaser, Generac Power, ecobee and Shareholder Representative, entered into the Arrangement Agreement. A copy of the Arrangement Agreement is attached as **Exhibit "F"**.

24. The Arrangement Agreement includes the following material terms (capitalized terms not defined in the section below have the meaning ascribed to them in the Arrangement Agreement):

(a) The Arrangement Consideration will be payable by the Purchaser in accordance with the Plan of Arrangement implemented under the CBCA. Pursuant to Section 2.04 of the Arrangement Agreement, the first US$450,000,000 will be payable in the form of Generac Common Stock, with the remainder payable in the form of cash, without interest. The parties to the Arrangement have agreed to use a fixed Generac Share Value for the purposes of the Arrangement Consideration.

(b) The Earnout Consideration will be payable exclusively in the form of Generac Common Stock. Pursuant to Section 2.09 of the Arrangement Agreement, the Company Securityholders will have the opportunity to receive up to a maximum of $120,000,000 of Earnout Consideration based upon the post-Closing performance of the Business. This Earnout Consideration will be calculated using two metrics, being the Connected Homes and the Eco+ ARR, which will be compared as at June 30, 2022 and June 30, 2023 against four corresponding targets set out in the Arrangement Agreement.

(c) Pursuant to Section 2.06, the Purchaser will deposit or cause to be deposited with the Escrow Agent the General Indemnification Escrow Amount, the Special Indemnification Escrow Amount and the Purchase Price Adjustment Escrow Amount. Each of these Escrow Amounts will be held for the purpose of securing any payment obligations of ecobee Company Securityholders. When each Indemnification Escrow Fund is terminated, the Escrow Agent shall pay any remaining amounts to the Company Securityholders in accordance with each Company Securityholder's Pro Rata Shares per the Escrow Agreement. The Purchaser will also cause to be deposited $500,000 to an account for use by the Securityholder Representative prior to Closing for Tax and accounting purposes.

(d) The Post-Closing Adjustment, set out in Section 2.08, will be an amount equal to the Closing Working Capital plus the Closing Cash minus the Estimated Closing Working Capital minus the Estimated Closing Cash minus the aggregate amount of any outstanding Indebtedness or unpaid Transaction Expenses as of the Effective Time that was not considered in the calculation of Closing Arrangement

Consideration. The Securityholder Representatives will prepare and deliver to the Purchaser a statement setting forth this calculation, which will be reviewed by the Purchaser. The Escrow Agent will be instructed to disburse from the Purchase Price Adjustment Escrow Fund the immediately available funds to the Purchaser and/or the Exchange Agent for distribution to the Company Securityholders, depending on whether the Post-Closing Adjustment is a positive or negative number.

25. The Arrangement Agreement includes customary representations and warranties given by both ecobee and the Purchaser.

26. Article 8 of the Arrangement Agreement sets out indemnification obligations of the Purchaser, and its Affiliates on the one hand and the Company Securityholders on the other hand. Under Article 8, the Company Securityholders severally indemnify and hold the Purchaser and its Affiliates harmless from such Company Securityholder's Pro Rata Share of any and all Losses incurred based upon, among others, inaccuracies or breaches of the representations or warranties of the Company (*i.e.*, ecobee), breaches or non-fulfillment of any covenant, agreement or obligation to be performed by the Company prior to Closing, amounts paid to the holders of Shares who have exercised or purported to exercise dissenters' or appraisal rights, Transaction Expenses or Indebtedness of the Company Group outstanding as of Closing and certain Taxes of the Company Group.

27. Certain limitations to the indemnification by the Purchaser and Company Securityholders are set out in Section 8.04 of the Arrangement Agreement, including in respect of insurance proceeds, pursuant to which an Indemnified Party will use commercially reasonable efforts to recover under insurance policies for any amounts subject to indemnification, and tax benefits, pursuant to which indemnifications will be deducted for the Indemnified Party from the amount of

any Tax Benefit realized or reasonably expected to be realized as a result of such Losses. There are also limitations with respect to, among others, the maximum claims for a single Loss, a Deductible protecting Company Securityholders from indemnification up to a certain amount and protection of each Company Securityholder from liability in excess of such Company Securityholder's Pro Rata Share of each loss.

28. There is also no subrogation against any Company Securityholder under the representation and warranty insurance policy being purchased by the Purchaser in favour of the Purchaser (the "**R&W Insurance Policy**") pursuant to which indemnification will be offset by any insurance proceeds recovered by the indemnified party. In addition, the Company Securityholders are not liable for indemnification for breaches of representations and warranties only up to the remaining balance of the General Indemnification Escrow Fund except in the case of certain fundamental representations and warranties. Further, no Company Securityholder is liable for more than the amount actually paid to the Company Securityholder for such holders' securities.

29. Under the Arrangement Agreement, the parties have agreed that as soon as reasonably practicable following the date of the Agreement, ecobee shall pursue a motion for an Interim Order and Final Order pursuant to Section 192 of the CBCA. To that end, on November 8, 2021, ecobee obtained the Interim Order. A copy of the Affidavit of Stuart Lombard filed in support of its motion for the Interim Order and copy of the Interim Order as signed by the Honourable Justice McEwen are attached as **Exhibits "G"** and **"H"**, respectively. I understand that a Final Order hearing has been scheduled on November 26, 2021.

30. ecobee has announced that it intends to hold a special meeting of shareholders (the "**Special Meeting**") on Monday November 22, 2021 at 10:00 a.m. in connection with the Transaction, unless 100% of ecobee shareholders provide written support of the Arrangement, in which case

the Special Meeting will not be necessary. A copy of the Plan of Arrangement is attached to the Arrangement Agreement. Once complete, the Plan of Arrangement will be attached to the Notice of Meeting and Management Information Circular for the Special Meeting (the "**Circular**"), attached as **Exhibit "I"**.

Prior Sales and Marketing Efforts by ecobee

31. As set out in the Circular, the terms of the Arrangement are the result of arm's length negotiations between representatives of ecobee, Generac Power, the Purchaser, and their respective advisors.

32. In March 2021, the ecobee Board decided to explore strategic alternatives for ecobee. In connection with such process, ecobee explored, with the assistance of its financial advisor (BofA Securities, Inc.), potential financings with private equity firms, the potential sale to a strategic acquirer, as well as the potential acquisition by a U.S.-based Special Purpose Acquisition Fund. As part of this process, ecobee participated in meetings with numerous parties, including certain U.S. special purpose acquisition corporations ("**SPACs**").

33. Initially, the ecobee Board favoured exploring a possible transaction with a U.S. SPAC whereby ecobee would become a publicly-traded company. On April 29, 2021, the ecobee Board signed a letter of intent with a NYSE-listed U.S. SPAC. That transaction initially valued ecobee at US$1 billion but that was later reduced to US$750 million. Negotiations stalled as the U.S. SPAC market continued to deteriorate. A significant portion of the valuation would have been attributed to stock in the U.S. SPAC, which would have involved a high degree of risk and limited near term liquidity for ecobee shareholders if the deal had proceeded. I understand that the parties ultimately could not agree on a valuation as well as other issues and decided not to proceed.

34. At that point, the ecobee Board began to favour a strategic combination and ecobee pursued discussions with Generac, one of the strategic acquirers it had identified in the strategic review. The parties negotiated a term sheet that was signed on August 19, 2021, pursuant to which ecobee agreed to negotiate exclusively with Generac in connection with a potential acquisition transaction. The subsequent negotiations and review of the Arrangement by the ecobee Board and various advisors ultimately led to the unanimous support by the ecobee Board and all senior officers of ecobee of the Arrangement.

Support Agreement

35. In connection with the Arrangement Agreement, the majority of ecobee's securityholders, including the majority of those closely involved in the business and affairs of ecobee, with the exception of JMC, entered Support Agreements wherein each supporting shareholder acknowledged that they support and agree to be bound by the Arrangement Agreement and will vote in favour of the approval, ratification and adoption of the Arrangement.

36. In the case of JMC, in light of the ongoing CCAA Proceedings and the provisions of the SARIO that restrict any material refinancing, restructuring, sale or reorganization, it was expressly agreed by the parties and acknowledged that JMC's execution of the Support Agreement would be conditional on approval by the CCAA Court. Separately, the Purchaser, through its counsel, has confirmed to Just Energy in writing that the Purchaser consents to (i) JMC transferring the ecobee Shares to Just Energy at any time at least five Business Days prior to the Closing upon Just Energy assuming all of the obligations of JMC under the Support Agreement, notwithstanding Section 1.4(c) of the Support Agreement, and (ii) Just Energy making such public announcements, filings and disclosures as it reasonably determines are required or advisable in connection with its obligations as a debtor in these CCAA Proceedings, notwithstanding Section 1.4(b) of the Support

Agreement. A copy of the Support Agreement proposed to be executed by Just Energy is attached as **Exhibit "J"** (with supporting shareholder names redacted). A copy of the consent provided by the Purchaser is attached as **Exhibit "K"**.

37. Under the Support Agreement, each ecobee securityholder acknowledges its informed approval of the Transaction and undertakes to vote or cause to be voted in favor of the Arrangement Agreement. Each signatory also agrees to waive its dissent rights, refrain from inconsistent actions and appoint a securityholder representative.

38. Further, each signatory agrees to provide certain representations and warranties to the Purchaser and the securityholder representative, including ownership of undersigned's interests and authority and ability to convey title.

39. Pursuant to Article 3.4 of the Support Agreement, an ecobee securityholder in breach of a representation and warranty will have certain potential payment obligations pursuant to indemnification obligations under Article 8 of the Arrangement Agreement.

40. However, this indemnification obligation is mitigated by the following factors. First, the Purchaser will seek payment out of the appropriate escrow fund, including the General Indemnification Escrow Fund, the Special Indemnification Escrow Fund and the Purchase Price Adjustment Fund. Second, any exposure is limited to the pro rata share of the securityholder's proceeds. For JMC, this means its exposure would be capped at approximately 8%. Third, in accordance with the R&W Insurance Policy purchased by the Purchaser, indemnification will be offset by any insurance proceeds recovered by the indemnified party.

Approval of the Support Agreement is in the Best Interests of the Just Energy Entities and their Stakeholders

41. In light of JMC's unsuccessful prior attempts to sell the ecobee Shares, it was uncertain at the commencement of the CCAA Proceedings whether a monetization of its 8% minority interest in ecobee would be possible. The sale of JMC's current 8% interest is in the best interests of the Applicants and their stakeholders as it monetizes a non-cash flowing/non-core asset.

42. First, as set out in Just Energy's November 1 press release, Just Energy anticipates receiving at closing approximately $61 million, comprised of approximately $18 million cash and $43 million of Generac Common Stock. Just Energy can receive up to an additional approximate $10 million in Generac Common Stock in the fiscal years ending June 30, 2022 and 2023, provided that certain performance targets are achieved by ecobee. This represents an approximate $28.1 million premium from the Transaction, representing the difference between the value of the consideration payable under the Arrangement (excluding any upside from the earnout) and the value of the investment most recently recorded in Just Energy's consolidated financial statements as at June 30, 2021. As noted, the Just Energy Entities have been attempting, unsuccessfully, to sell its equity interest in ecobee for the past several years.

43. Second, the Generac Common Stock issued pursuant to the Arrangement will be freely tradable following closing and the Arrangement Agreement does not contain a lock-up provision preventing the parties to the Arrangement from selling the Consideration Shares immediately following closing. As part of the relief sought in this motion, the Applicants are seeking Court approval to permit Just Energy to sell the Generac Common Stock free and clear from all encumbrances at an opportune time following closing of the Transaction to allow Just Energy to monetize the sale proceeds as Just Energy's business is not holding minority ownership in publicly traded companies.

44. Third, the non-competition and non-solicitation provisions in the Support Agreement do not apply to Just Energy nor its director nominee, allowing Just Energy to conduct its business in an unencumbered manner.

45. Finally, even if JMC was not inclined to support the Arrangement, the Drag-Along Rights under Section 7.5 of the USA would likely have been engaged, such that JMC would be forced to sell its equity interest in ecobee in connection with the Arrangement. I understand that the ecobee Board has determined that the Arrangement is a qualifying offer under Section 7.5 and that ecobee securityholders holding a sufficient number of Shares have provided support so as to trigger the Drag-Along Rights. Furthermore, as is customary for a plan of arrangement, the Arrangement is structured such that if the requisite shareholder approval is obtained and all other conditions to closing are satisfied then the Purchaser shall acquire all of the issued and outstanding shares of ecobee regardless of whether a shareholder has not voted in favour of the Arrangement.

Stakeholder Support for the Transaction

46. Just Energy's Board of Directors unanimously supports the Transaction and agrees that it is in the best interest of the Company. The ecobee Board and Generac Board of Directors have also approved the Transaction.

47. Further, in accordance with the Initial Order, I understand that the Monitor and the DIP Agent, on behalf of the DIP Lenders, support this Transaction.

The Wind-Up and Dissolution Transactions

48. In accordance with well-accepted tax planning, the Just Energy Entities intend to enter into a series of transactions in advance of the closing of the Arrangement to transfer the assets and liabilities currently held by JMC to Just Energy, including JMC's interest in the ecobee Shares, to

allow those ecobee Shares to then be sold to the Purchaser by Just Energy (the "**Wind-Up and Dissolution Transactions**"). The Wind-Up and Dissolution Transactions will save the Just Energy Entities (and in turn their stakeholders) from tax liability of approximately $6.6 million that would otherwise result from the sale of the ecobee Shares by JMC. This tax will not be payable if the Wind-Up and Dissolution Transactions are implemented since Just Energy has losses available to offset the gain on the sale of the ecobee Shares from tax.

49. The Wind-Up and Dissolution Transactions will be comprised of the following steps:

(a) the stated capital of the common shares of JMC will be reduced to $0.00;

(b) JMC will purchase for cancellation its Preferred Shares from JEOLP for a note with a principal amount equal to their FMV, which Just Energy believes to be nominal (the "**JMC Note**").

(c) JEOLP will transfer the JMC Note to Just Energy Trading LP ("**JET LP**") as partial repayment of debt owing to JET LP;

(d) JET LP will transfer the JMC Note to Just Energy as partial repayment of debt owing to Just Energy; and

(e) the property of JMC will be transferred to Just Energy and, in due course, JMC will be dissolved.

50. After the transfer of the ecobee Shares to Just Energy, Just Energy will sell the ecobee Shares to the Purchaser in accordance with the Arrangement.

51. I am advised by Mr. Firoz Ahmed, a partner in the tax group at Osler, Hoskin & Harcourt LLP ("**Osler**"), counsel for the Applicants, that the proposed Wind-Up and Dissolution

Transactions are permitted by Canadian tax laws and recognized as legitimate by the Canada Revenue Agency ("**CRA**"). I am further advised by Mr. Marc Wasserman, a partner in the insolvency and restructuring group at Osler, that such transactions could proceed without court approval absent the ongoing CCAA and Chapter 15 proceedings. All corporate steps to complete the proposed transactions are permitted under both the Credit Agreement and the DIP Term Sheet. The Just Energy Entities are seeking this Court's approval of the Wind-Up and Dissolution Transactions in light of the provisions in the Initial Order restricting the Just Energy Entities from reorganizing the Business or Property, in whole or in part, without the approval of the CCAA Court.

52. The proposed Wind-Up and Dissolution Transactions are not expected to have any negative impact on any stakeholders of the Just Energy Entities. The ecobee Shares are the only assets held by JMC (with the exception of an interest in a dormant partnership that has no value). JMC does not have any liability other than under the DIP Term Sheet, the Credit Agreement and the Court-ordered charges granted in these CCAA proceedings, to applicable secured suppliers. Further, I have confirmed with the Monitor that it is not aware of any Proofs of Claim being filed in the Claims Process against JMC by the Claims Bar Date of November 1, 2021, apart from those directly related to the foregoing. In respect of the Credit Agreement, all of the Just Energy Entities are either borrowers or guarantors. In respect of the DIP Term Sheet, all of the Just Energy Entities are jointly and severally liable for such amounts, and the DIP Lenders' Charge (and all other Court-ordered charges) is secured against all present and future assets, property and undertakings of the Just Energy Entities, including JMC and Just Energy.

53. Accordingly, a wind up of JMC into Just Energy in the manner proposed will have a net neutral effect on the liabilities of the Just Energy Entities. All entities involved are already jointly

and severally liable for the Credit Agreement and DIP Term Sheet indebtedness. Instead, the proposed transaction is expected to benefit the Just Energy Entities and their stakeholders by saving them from a tax liability to JMC of at least approximately $6.6 million, which would result if JMC were to directly sell its interest in the ecobee Shares to the Purchaser.

54. Further, I am advised that the ecobee Board approved the transfer of the ecobee Shares by JMC to Just Energy prior to closing, pursuant to the USA, which was required for Just Energy to transfer the ecobee Shares. To effect this approved share transfer, Just Energy will enter into an adoption agreement in a form consistent with the form previously used for the transfer to JMC pursuant to which Just Energy agrees to be a party to and bound by all of the provisions of the USA as if Just Energy were an original party thereto as a "Shareholder" and as "Just Energy". Just Energy will also sign a customary Joinder Agreement to the Corporation's Registration Rights Agreement dated February 20, 2018, as amended.

Authorization to Sell the ecobee Shares to the Purchaser

55. As part of the relief sought in this motion, the Applicants are seeking an order authorizing, on the closing of the Transaction, all of Just Energy's right, title and interest in and to the ecobee Shares to vest absolutely in the Purchaser free and clear of all claims and encumbrances. This will allow the Transaction to be completed and the Just Energy Entities to then be in a position to monetize the Consideration Shares received on closing.

Authorization to Sell the Consideration Shares

56. The Applicants are also seeking an order authorizing Just Energy to sell the Consideration Shares received by Just Energy at any time following closing of the Transaction as owning the shares of publicly traded entity is inconsistent with Just Energy's business. This will allow the Just

Energy Entities the flexibility to monetize the Consideration Shares at an opportune time. In the normal course, in the absence of the CCAA proceedings, the immediate sale of these shares could proceed without court approval. In connection with any such sale, the proposed form of Order provides that all right, title and interest in the Consideration Shares will vest in the third-party purchaser free and clear of all claims and encumbrances. The Applicants believe that such vesting is necessary, in the context of these CCAA proceedings, to facilitate a sale of the Consideration Shares to a third-party purchaser in order to assist the Just Energy Entities with their liquidity requirements during these CCAA Proceedings and obtain a substantial potential benefit as part of a restructuring plan.

Conclusion

57. For all of the foregoing reasons, the Applicants believe that approval of the entering into of the Support Agreement and related relief is in the best interests of the Just Energy Entities and their stakeholders.

SWORN BEFORE ME over video teleconference this 8th day of November, 2021 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the City of Houston in the State of Texas while the Commissioner was located in the City of Toronto, in the Province of Ontario.

Commissioner for Taking Affidavits
Andrew Rintoul (LSO No. 81955T)

Michael Carter

THIS IS EXHIBIT "A" REFERRED TO IN THE AFFIDAVIT OF MICHAEL CARTER, SWORN BEFORE ME OVER VIDEO CONFERENCE THIS 8TH DAY OF NOVEMBER, 2021.

Commissioner For Taking Affidavits
Andrew Rintoul

Court File No. CV-21-00658423-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	WEDNESDAY, THE 26TH
	)	
JUSTICE KOEHNEN	)	DAY OF MAY, 2021

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JUST ENERGY GROUP INC.**, JUST ENERGY CORP., ONTARIO ENERGY COMMODITIES INC., UNIVERSAL ENERGY CORPORATION, JUST ENERGY FINANCE CANADA ULC, HUDSON ENERGY CANADA CORP., JUST MANAGEMENT CORP., JUST ENERGY FINANCE HOLDING INC., 11929747 CANADA INC., 12175592 CANADA INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC., 8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP., JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST ENERGY INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY SERVICES LLC, HUDSON ENERGY CORP., INTERACTIVE ENERGY GROUP LLC, HUDSON PARENT HOLDINGS LLC, DRAG MARKETING LLC, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. AND JUST ENERGY (FINANCE) HUNGARY ZRT.
(each, an "**Applicant**", and collectively, the "**Applicants**")

SECOND AMENDED AND RESTATED INITIAL ORDER

(amending the Initial Order dated March 9, 2021, as amended and restated on March 19, 2021)

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), was heard this day by judicial videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the affidavit of Michael Carter sworn March 9, 2021 and the Exhibits thereto (the "**First Carter Affidavit**"), the affidavit of Michael Carter sworn March 16, 2021 and the Exhibits thereto (the "**Second Carter Affidavit**"), the affidavit of Michael Carter sworn March 18, 2021 and the Exhibits thereto (the "**Third Carter Affidavit**"), the affidavit of Margaret Munnelly sworn March 16, 2021 and the Exhibits thereto (the "**Munnelly Affidavit**"), the affidavit of Michael Carter sworn May 19, 2021 and the Exhibits thereto, the pre-filing report of the proposed monitor, FTI Consulting Canada Inc. ("**FTI**"), dated March 9, 2021, the First Report of FTI in its capacity as the Court-appointed monitor of the Applicants (the "**Monitor**") dated March 18, 2021, the Second Report of the Monitor dated May 21, 2021, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants and the partnerships listed in Schedule "A" hereto (the "**JE Partnerships**", and collectively with the Applicants, the "**Just Energy Entities**"), the Monitor, Alter Domus (US) LLC (the "**DIP Agent**"), as administrative agent for the lenders (the "**DIP Lenders**") under the DIP Term Sheet (as defined below), the DIP Lenders and such other counsel who were present, and on reading the consent of FTI to act as the Monitor,

SERVICE

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

DEFINED TERMS

2. **THIS COURT ORDERS** that capitalized terms that are used in this Order shall have the meanings ascribed to them in Schedule "B" hereto or the First Carter Affidavit, as applicable, if they are not otherwise defined herein.

APPLICATION

3. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies. Although not Applicants, the JE Partnerships shall enjoy the benefits of the protections and authorizations provided by this Order.

PLAN OF ARRANGEMENT

4. **THIS COURT ORDERS** that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**")

POSSESSION OF PROPERTY AND OPERATIONS

5. **THIS COURT ORDERS** that the Just Energy Entities shall remain in possession and control of their respective current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Just Energy Entities shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Just Energy Entities shall each be authorized and empowered to continue to retain and employ the employees, contractors, staffing agencies, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that:

(a) the Just Energy Entities shall be entitled to continue to utilize the central cash management system currently in place as described in the First Carter Affidavit or, with the consent of the Monitor, the DIP Agent and the DIP Lenders, replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System (a "**Cash Management Bank**") shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Just Energy Entities of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Just Energy Entities, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash

Management System, an unaffected creditor under any Plan with regard to Cash Management Obligations. All present and future indebtedness, liabilities and obligations of any and every kind, nature or description whatsoever to a Cash Management Bank under, in connection with, relating to or with respect to any and all agreements and arrangements evidencing or in respect of treasury facilities and cash management products (including, without limitation, all pre-authorized debit banking services, electronic funds transfer services, overdraft balances, corporate credit cards, merchant services and pre-authorized debits) provided by a Cash Management Bank to any Just Energy Entity, and any unpaid balance thereof, are collectively referred to herein as the "**Cash Management Obligations**";

(b) during the Stay Period (as defined below), no Cash Management Bank shall, without leave of this Court: (i) exercise any sweep remedy under any applicable documentation (provided, for greater certainty, that the cash pooling and zero-balancing account services provided with respect to the JPMorgan accounts held by the U.S. Bank Account Holders may continue in the ordinary course); (ii) exercise or claim any right of set-off against any account included in the Cash Management System, other than set-off permitted pursuant to paragraph 8 against applicable Authorized Cash Collateral solely in respect of any Cash Management Obligations; or (iii) subject to paragraph 6(d)(ii), modify the Cash Management System;

(c) any of the Cash Management Banks may rely on the representations of the applicable Just Energy Entities with respect to whether any cheques or other payment order drawn or issued by the applicable Just Energy Entity prior to, on, or subsequent to the date of this Order should be honoured pursuant to this or any other order of this Court, and such Cash Management Bank shall not have any liability to any party for: (i) relying on such representations by the applicable Just Energy Entities as provided for herein; or (ii) honouring any cheque (whether made before, on or after the date hereof) in a good faith belief that the Court has authorized such cheque or item to be honoured;

(d) (i) those certain existing deposit agreements between the Just Energy Entities and the Cash Management Banks shall continue to govern the post-filing cash management relationship between the Just Energy Entities and the Cash Management Banks, and

that all of the provisions of such agreements shall remain in full force and effect; (ii)(A) changes to the Cash Management System in accordance with the Lender Support Agreement shall be permitted; and (B) the Just Energy Entities, with the consent of the Monitor, the DIP Agent, the majority of the DIP Lenders and the Cash Management Banks may, without further Order of this Court, implement changes to the Cash Management System and procedures in the ordinary course of business pursuant to the terms of those certain existing deposit agreements, including, without limitation, the opening and closing of bank accounts, where such changes are not otherwise implemented pursuant to paragraph 6(d)(ii)(A); (iii) all control agreements in existence prior to the date of this Order shall apply; and (iv) the Cash Management Banks are authorized to debit the Just Energy Entities' accounts in the ordinary course of business in accordance with the Cash Management System arrangements without the need for further order of this Court for all undisputed Cash Management Obligations owing to the Cash Management Banks;

(e) the Cash Management Banks shall be entitled to the benefit of and are hereby granted a charge (the "**Cash Management Charge**") on the Property to secure the Cash Management Obligations due and owing and that have not been paid in accordance with the applicable Cash Management Arrangements (as defined in the Lender Support Agreement). The Cash Management Charge shall have the priority set out in paragraphs 53-55 herein; and

(f) the Just Energy Entities are authorized but not directed to continue to operate under the merchant processing agreements with JPMorgan Chase Bank, N.A., Paymentech, LLC ("**Paymentech**") (collectively and as amended, restated, supplemented, or otherwise modified from time to time, the "**Merchant Processing Agreement**"). The Just Energy Entities are authorized to pay or reimburse Paymentech for fees, charges, refunds, chargebacks, reserves and other amounts due and owing from the Just Energy Entities to Paymentech (the "**Merchant Services Obligations**") whether such obligations are incurred prior to, on or after the date hereof, and Paymentech is authorized to receive or obtain payment for such Merchant Services Obligations, as provided under, and in the manner set forth in, the Merchant Processing Agreement, including, without limitation, by way of recoupment or set-off without further order of the Court.

7. **THIS COURT ORDERS** that, except as specifically permitted herein, the Just Energy Entities are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any of the Just Energy Entities to any of their respective creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business; provided, however, that the Just Energy Entities, until further order of this Court, are hereby permitted, subject to the terms of the Definitive Documents: (i) with the consent of the Monitor, to provide cash collateral ("**Authorized Cash Collateral**") to third parties (the "**Collateral Recipients**"), including to the Cash Management Banks in accordance with the Lender Support Agreement, with respect to obligations incurred before, on or after the date hereof, and to grant security interests in such Authorized Cash Collateral in favour of the Collateral Recipients, where so doing is necessary to operate the Business in the normal course during these proceedings; (ii) subject to the terms of the Lender Support Agreement, to reimburse the reasonable documented fees and disbursements of one Canadian legal counsel, one U.S. legal counsel, one local counsel in Texas and one financial advisor to the agent (the "**CA Agent**") and the lenders (the "**CA Lenders**") under the Credit Agreement, whether incurred before or after the date of this Order; (iii) subject to the terms of the Lender Support Agreement, to pay all non-default interest and fees to the CA Agent and the CA Lenders in accordance with its terms; and (iv) to repay advances under the Credit Agreement solely for the purpose of creating availability under the Revolving Facilities in order for the Just Energy Entities to request the issuance of Letters of Credit under the Revolving Facilities to continue to operate the Business in the ordinary course during these proceedings, subject to: (A) obtaining the consent of the Monitor with respect to the issuance of the Letters of Credit under the Revolving Facilities; and (B) receipt of written confirmation from the applicable CA Lender(s) under the Credit Agreement that such CA Lender(s) will issue a Letter of Credit of equal value within one (1) Business Day thereafter. Capitalized terms used but not otherwise defined in this paragraph shall have the meanings ascribed thereto in the Credit Agreement.

8. **THIS COURT ORDERS** that the holders of cash collateral provided by the Just Energy Entities prior to the date hereof or any Collateral Recipients of Authorized Cash Collateral (the foregoing, collectively, "**Cash Collateral**") shall be authorized to exercise any available rights of

set-off in respect of such Cash Collateral with respect to obligations secured thereby, whether incurred before, on or after the date hereof.

9. **THIS COURT ORDERS** that the Charges (as defined below) shall rank junior in priority to any liens, security interests and charges attached to Cash Collateral in favour of the holders thereof, and shall attach to the Cash Collateral only to the extent of any rights of any Just Energy Entity to the return of such Cash Collateral.

10. **THIS COURT ORDERS** that, subject to the terms of the Definitive Documents (as hereinafter defined), the Just Energy Entities shall be entitled but not required to pay the following amounts whether incurred prior to, on or after the date of this Order:

(a) all outstanding and future wages (including, without limitation, the Q3 bonus described in the Munnelly Affidavit), salaries, commissions, employee benefits, contributions in respect of retirement or other benefit arrangements, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;

(b) all outstanding and future amounts owing to or in respect of other workers providing services in connection with the Business and payable on or after the date of this Order, incurred in the ordinary course of business and consistent with existing arrangements;

(c) the fees and disbursements of any Assistants retained or employed by the Just Energy Entities in respect of these proceedings at their standard rates and charges, which, in the case of the Financial Advisor (as defined below) shall be the amounts payable in accordance with the Financial Advisor Agreement (as defined below);

(d) with the consent of the Monitor in consultation with the agent under the Credit Agreement (or its advisors), amounts owing for goods or services actually provided to any of the Just Energy Entities prior to the date of this Order by third parties, if, in the opinion of the Just Energy Entities, such third party is critical to the Business and ongoing operations of the Just Energy Entities;

(e) any taxes (including, without limitation, sales, use, withholding, unemployment, and excise) not covered by paragraph 12 of this Order, and whereby the nonpayment of

which by any Just Energy Entity could result in a responsible person associated with a Just Energy Entity being held personally liable for such nonpayment; and

(f) taxes related to revenue, State income or operations incurred or collected by a Just Energy Entity in the ordinary course of business.

11. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the terms of the Definitive Documents, the Just Energy Entities shall be entitled but not required to pay all reasonable expenses incurred by the Just Energy Entities in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers' insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Just Energy Entities following the date of this Order.

12. **THIS COURT ORDERS** that the Just Energy Entities shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Just Energy Entities in connection with the sale of goods and services by the Just Energy Entities, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Just Energy Entities.

RESTRUCTURING

13. **THIS COURT ORDERS** that the Just Energy Entities shall, subject to such requirements as are imposed by the CCAA and subject to the terms of the Definitive Documents, have the right to:

(a) permanently or temporarily cease, downsize or shut down any of their Business or operations;

(b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and

(c) pursue all avenues of refinancing, restructuring, selling and reorganizing the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing, restructuring, sale or reorganization,

all of the foregoing to permit the Just Energy Entities to proceed with an orderly restructuring of the Just Energy Entities and/or the Business (the "**Restructuring**").

LEASES

14. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Just Energy Entities shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the applicable Just Energy Entity and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On

the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

15. **THIS COURT ORDERS** that the Just Energy Entities shall provide each of the relevant landlords with notice of the relevant Just Energy Entity'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 entitlement of a Just Energy Entity 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 relevant Just Energy Entity, or by further Order of this Court upon application by the Just Energy Entities on at least two (2) days notice to such landlord and any such secured creditors. If any Just Energy Entity disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

16. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (i) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant Just Energy Entity and the Monitor 24 hours' prior written notice, and (ii) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the relevant Just Energy Entity in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE JUST ENERGY ENTITIES, THE BUSINESS OR THE PROPERTY

17. **THIS COURT ORDERS** that until and including June 4, 2021 or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process before any court, tribunal, agency or other legal or, subject to paragraph 18, regulatory body (each, a "**Proceeding**") shall be commenced or continued against or in respect of any of the Just Energy Entities or the

Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the prior written consent of the Just Energy Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Just Energy Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

18. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, organization, governmental unit, body or agency, foreign regulatory body or agency or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Just Energy Entities or the Monitor, or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Just Energy Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower the Just Energy Entities to carry on any business which the Just Energy Entities are not lawfully entitled to carry on, (ii) subject to paragraph 19, affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

19. **THIS COURT ORDERS** that notwithstanding Section 11.1 of the CCAA, all rights and remedies of provincial energy regulators and provincial regulators of consumer sales that have authority with respect to energy sales against or in respect of the Just Energy Entities or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended during the Stay Period except with the written consent of the Just Energy Entities and the Monitor, or leave of this Court on notice to the Service List.

NO INTERFERENCE WITH RIGHTS

20. **THIS COURT ORDERS** that during the Stay Period, 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 Just Energy Entities except with

the written consent of the Just Energy Entities and the Monitor, leave of this Court or as permitted under any Qualified Support Agreement or the Lender Support Agreement.

CONTINUATION OF SERVICES

21. **THIS COURT ORDERS** that during the Stay Period, except as permitted under any Qualified Support Agreement or the Lender Support Agreement, all Persons having oral or written agreements with any Just Energy Entity 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 Just Energy Entities or the Business, 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 Just Energy Entities, and that the Just Energy Entities shall be entitled to the continued use of their current premises, 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 Just Energy Entities in accordance with normal payment practices of the Just Energy Entities or such other practices as may be agreed upon by the supplier or service provider and the applicable Just Energy Entity and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

22. **THIS COURT ORDERS** that, subject to paragraph 30 but notwithstanding any other paragraphs of this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to any of the Just Energy Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

KEY EMPLOYEE RETENTION PLAN

23. **THIS COURT ORDERS** that the Key Employee Retention Plan (the "**KERP**"), as described in the Second Carter Affidavit and attached as Confidential Appendix "Q" thereto, is

hereby approved and the Just Energy Entities are authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

24. **THIS COURT ORDERS** that the key employees referred to in the KERP (the "**Key Employees**") shall be entitled to the benefit of and are hereby granted a charge on the Property (the "**KERP Charge**"), which charge shall not exceed the aggregate amount of C$2,012,100 for Canadian dollar payments and US$ 3,876,024 for U.S. dollar payments, to secure any payments to the Key Employees under the KERP. The KERP Charge shall have the priority set out in paragraphs 53-55 herein.

LENDER SUPPORT AGREEMENT

25. **THIS COURT ORDERS** that the Lender Support Agreement is hereby ratified and approved and that, upon the occurrence of a termination event under the Lender Support Agreement, the CA Lenders may exercise the rights and remedies available to them under the Lender Support Agreement in accordance with the terms thereof.

PRE-FILING SECURITY INTERESTS

26. **THIS COURT ORDERS** that any obligations secured by a valid, enforceable and perfected security interest upon or in respect of any of the Property pursuant to a security agreement which includes as collateral thereunder any Property acquired after the date of the applicable security agreement ("**After-Acquired Property**"), shall continue to be secured by the Property (including After Acquired Property that may be acquired by the applicable Just Energy Entities after the commencement of these proceedings) notwithstanding the commencement of these proceedings, subject to the priority set out in paragraphs 53-55 herein.

COMMODITY SUPPLIERS

27. **THIS COURT ORDERS** that each Qualified Commodity/ISO Supplier shall be entitled to the benefit of and is hereby granted a charge (together, the "**Priority Commodity/ISO Charge**") on the Property in an amount equal to the value of the Priority Commodity/ISO Obligations. The value of the Priority Commodity/ISO Obligations shall be determined in accordance with the terms of the existing agreements or arrangements between the applicable Just Energy Entity and the Qualified Commodity/ISO Supplier or, in the event of any dispute, by the

Court. The Priority Commodity/ISO Charge shall have the priority set out in paragraphs 53-55 herein.

28. **THIS COURT ORDERS** that the Commodity/ISO Supplier Support Agreements are hereby ratified, approved and deemed to be Qualified Support Agreements.

29. **THIS COURT ORDERS** that the Just Energy Entities are hereby authorized and empowered to execute and deliver up to eight (8) Qualified Support Agreements.

30. **THIS COURT ORDERS** that upon the occurrence of an event of default under a Qualified Support Agreement, the applicable Qualified Commodity/ISO Supplier may exercise the rights and remedies available to it under its Qualified Support Agreement, or upon five (5) days' notice to the Just Energy Entities, the Monitor and the Service List, may apply to this Court to seek the Court's authorization to exercise any and all of its other rights and remedies against the Just Energy Entities or the Property under or pursuant to its Commodity Agreement or ISO Agreement and the Priority Commodity/ISO Charge, including without limitation, for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Just Energy Entities and for the appointment of a trustee in bankruptcy of the Just Energy Entities provided that a Qualified Commodity/ISO Supplier may, unless otherwise ordered by the Court, terminate any Commodity Agreements and Qualified Support Agreements entered into after May 26, 2021 without obtaining the Court's authorization in the event that: (i) an Order is granted in these proceedings that authorizes the exercise of rights and remedies against the Just Energy Entities or the Property under or pursuant to the Definitive Documents and the DIP Lenders' Charge (as defined below); or (ii) these proceedings or the recognition proceedings under Chapter 15 of the United States Bankruptcy Code are dismissed or converted to a liquidation proceeding, including a receivership, bankruptcy, proceeding under Chapter 7 of the United States Bankruptcy Code or otherwise.

31. **THIS COURT ORDERS** that the Monitor shall provide a report on the value of the Priority Commodity/ISO Obligations as of the last day of each calendar month by posting such report on the Monitor's Website (as defined below) within three (3) Business Days of such calendar month end.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

32. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Just Energy Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Just Energy Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Just Energy Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the Just Energy Entities or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

33. **THIS COURT ORDERS** that each of the Just Energy Entities shall jointly and severally indemnify their respective directors and officers against obligations and liabilities that they may incur as directors or officers of the Just Energy Entities after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

34. **THIS COURT ORDERS** that the directors and officers of the Just Energy Entities shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of C$44,100,000, as security for the indemnity provided in paragraph 33 of this Order. The Directors' Charge shall have the priority set out in paragraphs 53-55 herein.

35. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (i) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (ii) the Just Energy Entities' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 33.

APPOINTMENT OF MONITOR

36. **THIS COURT ORDERS** that FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Just Energy Entities with the powers and obligations set out in the CCAA or set forth herein and that the Just Energy Entities and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Just Energy Entities pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

37. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Just Energy Entities' receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(c) assist the Just Energy Entities, to the extent required by the Just Energy Entities, in their dissemination to the DIP Agent, the DIP Lenders and their counsel of financial and other information in accordance with the Definitive Documents;

(d) advise the Just Energy Entities in their preparation of the Just Energy Entities' cash flow statements and reporting required by the DIP Agent and DIP Lenders, which information shall be reviewed with the Monitor and delivered to the DIP Agent and DIP Lenders and their counsel in accordance with the Definitive Documents;

(e) advise the Just Energy Entities in their development of a Plan and any amendments to a Plan;

(f) assist the Just Energy Entities, to the extent required by the Just Energy Entities, with the holding and administering of creditors' or shareholders' meeting for voting on the Plan;

(g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Just Energy Entities, wherever located and to the extent that is necessary to adequately assess the Just Energy Entities' business and financial affairs or to perform its duties arising under this Order;

(h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(i) perform such other duties as are required by this Order or by this Court from time to time.

38. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

39. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor 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 Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor'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.

40. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Just Energy Entities and the DIP Agent and the DIP Lenders with information provided by the Just Energy Entities in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Just Energy Entities is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

41. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

42. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor (including both U.S. and Canadian counsel for all purposes of this Order), and counsel to the Just Energy Entities (including both U.S. and Canadian counsel for all purposes of this Order) shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on, or subsequent to the date of this Order, by the Just Energy Entities as part of the costs of these proceedings. The Just Energy Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor, and the Just Energy Entities' counsel on a weekly basis.

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

ADMINISTRATION CHARGE

44. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Just Energy Entities shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of C$3,000,000 as security for their professional fees and disbursements incurred at their standard

rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 53-55 herein.

DIP FINANCING

45. **THIS COURT ORDERS** that the Just Energy Entities are hereby authorized and empowered to obtain and borrow or guarantee, as applicable, pursuant a credit facility from the DIP Agent and the DIP Lenders in order to finance the Just Energy Entities' working capital requirements and other general corporate purposes, all in accordance with the Cash Flow Statements (as defined in the DIP Term Sheet) and Definitive Documents, provided that borrowings under such credit facility shall not exceed US$125,000,000 unless permitted by further Order of this Court.

46. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the CCAA Interim Debtor-in-Possession Financing Term Sheet between the Just Energy Entities, the DIP Agent and the DIP Lenders dated as of March 9, 2021 and attached as Appendix "DD" to the First Carter Affidavit (as may be amended or amended and restated from time to time, the "**DIP Term Sheet**").

47. **THIS COURT ORDERS** that the Just Energy Entities are hereby authorized and empowered to execute and deliver such mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively with the DIP Term Sheet and the Cash Flow Statements, the "**Definitive Documents**"), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Agent and the DIP Lenders pursuant to the terms thereof, and the Just Energy Entities are hereby authorized and directed to pay and perform all of the indebtedness, interest, fees, liabilities and obligations to the DIP Agent and the DIP Lenders under and pursuant to the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order. Notwithstanding any other provision in this Order, all payments and other expenditures to be made by any of the Just Energy Entities to any Person (except the Monitor and its counsel) shall be in accordance with the terms of the Definitive Documents, including in respect of payments in satisfaction of Priority Commodity/ISO Obligations.

48. **THIS COURT ORDERS** that the DIP Agent and the DIP Lenders shall be entitled to the benefit of and are hereby granted a charge (the "**DIP Lenders' Charge**") on the Property, which DIP Lenders' Charge shall not secure an obligation that exists before this Order is made. The DIP Lenders' Charge shall have the priority set out in paragraphs 53-55 hereof.

49. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

(a) the DIP Agent on behalf of the DIP Lenders may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lenders' Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under any of the Definitive Documents or the DIP Lenders' Charge, the DIP Agent or the DIP Lenders, as applicable, may immediately cease making advances or providing any credit to the Just Energy Entities and shall be permitted to set off and/or consolidate any amounts owing by the DIP Agent or the DIP Lenders to the Just Energy Entities against the obligations of the Just Energy Entities to the DIP Agent and the DIP Lenders under the Definitive Documents or the DIP Lenders' Charge, make demand, accelerate payment and give other notices with respect to the obligations of the Just Energy Entities to the DIP Agent or the DIP Lenders under the Definitive Documents or the DIP Lenders' Charge, or to apply to this Court on five (5) days' notice to the Just Energy Entities, the Monitor and the Service List to seek the Court's authorization to exercise any and all of its other rights and remedies against the Just Energy Entities or the Property under or pursuant to the Definitive Documents and the DIP Lenders' Charge, including without limitation, for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Just Energy Entities and for the appointment of a trustee in bankruptcy of the Just Energy Entities; and

(c) the foregoing rights and remedies of the DIP Agent and the DIP Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Just Energy Entities or the Property.

50. **THIS COURT ORDERS AND DECLARES** that the DIP Agent, the DIP Lenders, the Qualified Commodity/ISO Suppliers and the Cash Management Banks shall be treated as

unaffected in any Plan filed by the Applicants or any of them under the CCAA, or any proposal filed by the Applicants or any of them under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), with respect to any advances made under the Definitive Documents, the Priority Commodity/ISO Obligations or the Cash Management Obligations, as applicable.

APPROVAL OF FINANCIAL ADVISOR AGREEMENT

51. **THIS COURT ORDERS** that the agreement dated February 20, 2021 engaging BMO Nesbitt Burns Inc. (the "**Financial Advisor**") as financial advisor to the Just Energy Entities and attached as Confidential Appendix "FF" to the First Carter Affidavit (the "**Financial Advisor Agreement**"), and the retention of the Financial Advisor under the terms thereof, is hereby ratified and approved and the Just Energy Entities are authorized and directed *nunc pro tunc* to make the payments contemplated thereunder in accordance with the terms and conditions of the Financial Advisor Agreement.

52. **THIS COURT ORDERS** that the Financial Advisor shall be entitled to the benefit of and is hereby granted a charge (the "**FA Charge**") on the Property, which charge shall not exceed an aggregate amount of C$8,600,000 as security for the fees and disbursements and other amounts payable under the Financial Advisor Agreement, both before and after the making of this Order in respect of these proceedings. The FA Charge shall have the priority set out in paragraphs 53-55 herein.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

53. **THIS COURT ORDERS** that the priorities of the Administration Charge, the FA Charge, the Directors' Charge, the KERP Charge, the DIP Lenders' Charge, the Priority Commodity/ISO Charge and the Cash Management Charge, as among them, shall be as follows:

First – Administration Charge and FA Charge (to the maximum amount of C$3,000,000 and C$8,600,000, respectively), on a *pari passu* basis;

Second – Directors' Charge (to the maximum amount of C$44,100,000);

Third – KERP Charge (to the maximum amounts of C$2,012,100 and US$3,876,024);

Fourth – DIP Lenders' Charge (to the maximum amount of the Obligations (as defined in the DIP Term Sheet) owing thereunder at the relevant time) and the Priority Commodity/ISO Charge, on a *pari passu* basis; and

Fifth – Cash Management Charge.

54. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge, the FA Charge, the Directors' Charge, the KERP Charge, the DIP Lenders' Charge, the Priority Commodity/ISO Charge or the Cash Management Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

55. **THIS COURT ORDERS** that, subject to paragraph 9, each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person (including those commodity suppliers listed in Schedule "A" hereto).

56. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court on notice to parties in interest, the Just Energy Entities shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the Just Energy Entities also obtain the prior written consent of the Monitor, the DIP Agent on behalf of the DIP Lenders and the beneficiaries of the Administration Charge, the FA Charge, the Directors' Charge, the KERP Charge, the Priority Commodity/ISO Charge and the Cash Management Charge, or further Order of this Court.

57. **THIS COURT ORDERS** that the Charges, the agreements and other documents governing or otherwise relating to the obligations secured by the Charges, and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Agent or the DIP Lenders thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made

pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan document, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds any of the Just Energy Entities and notwithstanding any provision to the contrary in any Agreement:

(a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Definitive Documents shall create or be deemed to constitute a breach by any Just Energy Entity of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Just Energy Entities entering into the DIP Term Sheet, the creation of the Charges or the execution, delivery or performance of any of the other Definitive Documents; and

(c) the payments made by the Just Energy Entities pursuant to this Order or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

58. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Just Energy Entities' interest in such real property leases.

SERVICE AND NOTICE

59. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) and the Wall Street Journal a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, or cause to be sent, in the prescribed manner or by electronic message to the e-mail addresses as last shown on the records of the Just Energy Entities, a notice to every known creditor who has a claim against the Just Energy Entities of more than $1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the

prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of the individuals who are creditors publicly available.

60. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor's website as part of the public materials to be recorded thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall haven no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

61. **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 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL - http://cfcanada.fticonsulting.com/justenergy (the "**Monitor's Website**").

62. **THIS COURT ORDERS** that the Just Energy Entities, the DIP Agent or the DIP Lenders and the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal deliver, facsimile or other electronic transmission to the Just Energy Entities' creditors or other interested parties and their advisors and that any such service, distribution or notice shall be deemed to be received: (a) if sent by courier, on the next business day following the date of forwarding thereof, (b) if delivered by personal delivery or facsimile or other electronic transmission, on the day so delivered, and (c) if sent by ordinary mail, on the third business day after mailing. For greater certainty, any such distribution or service shall be deemed to be in

satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

FOREIGN PROCEEDINGS

63. **THIS COURT ORDERS** that the Applicant, Just Energy Group Inc. ("**JEGI**") is hereby authorized and empowered, but not required, to act as the foreign representative (in such capacity, the "**Foreign Representative**") in respect of the within proceedings for the purpose of having these proceedings recognized and approved in a jurisdiction outside of Canada.

64. **THIS COURT ORDERS** that the Foreign Representative is hereby authorized to apply for foreign recognition and approval of these proceedings, as necessary, in any jurisdiction outside of Canada, including in the United States pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

GENERAL

65. **THIS COURT ORDERS** that any interested party may apply to this Court to amend or vary this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the Order sought or upon such other notice, if any, as this Court may order; provided, however, that the Chargees, the DIP Agent and the DIP Lenders shall be entitled to rely on this Order as issued and entered and on the Charges and priorities set out in paragraphs 53-55 hereof, including with respect to any fees, expenses and disbursements incurred and in respect of advances made under the Definitive Documents or pursuant to the Qualified Support Agreement, as applicable, until the date this Order may be amended, varied or stayed. For the avoidance of doubt (i) no payment in respect of any obligations secured by the Priority Commodity/ISO Charge or the Cash Management Charge or made to the CA Lenders pursuant to the Lender Support Agreement, and (ii) none of the Authorized Cash Collateral, shall be subject to the terms of any intercreditor agreement, including any "turnover" or "waterfall" provision(s) therein.

66. **THIS COURT ORDERS** that, notwithstanding paragraph 65 of this Order, the Just Energy Entities or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties under this Order or in the interpretation or application of this Order.

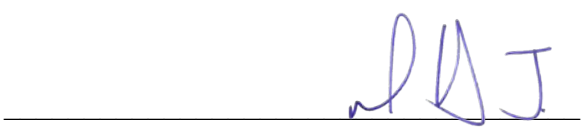
67. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Just Energy Entities, the Business or the Property.

68. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body or agency having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Just Energy Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies and agencies are hereby respectfully requested to make such orders and to provide such assistance to the Just Energy Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to JEGI, in any foreign proceeding, or to assist the Just Energy Entities and the Monitor and their respective agents in carrying out the terms of this Order.

69. **THIS COURT ORDERS** that each of the Just Energy Entities and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body or agency, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that JEGI 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.

70. **THIS COURT ORDERS** that Confidential Appendices "FF" and "GG" to the First Carter Affidavit and Confidential Appendix "Q" to the Second Carter Affidavit shall be and are hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

71. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



SCHEDULE "A"

JE Partnerships

Partnerships:

- JUST ENERGY ONTARIO L.P.
- JUST ENERGY MANITOBA L.P.
- JUST ENERGY (B.C.) LIMITED PARTNERSHIP
- JUST ENERGY QUÉBEC L.P.
- JUST ENERGY TRADING L.P.
- JUST ENERGY ALBERTA L.P.
- JUST GREEN L.P.
- JUST ENERGY PRAIRIES L.P.
- JEBPO SERVICES LLP
- JUST ENERGY TEXAS LP

Commodity Suppliers:

- EXELON GENERATION COMPANY, LLC
- BRUCE POWER L.P.
- SOCIÉTÉ GÉNÉRALE
- EDF TRADING NORTH AMERICA, LLC
- NEXTERA ENERGY POWER MARKETING, LLC
- MACQUARIE BANK LIMITED
- MACQUARIE ENERGY CANADA LTD.
- MACQUARIE ENERGY LLC
- MORGAN STANLEY CAPITAL GROUP

- BP CANADA ENERGY MARKETING CORP.
- BP ENERGY COMPANY
- BP CORPORATION NORTH AMERICA INC.
- BP CANADA ENERGY GROUP ULC
- SHELL ENERGY NORTH AMERICA (CANADA) INC.
- SHELL ENERGY NORTH AMERICA (US), L.P.

SCHEDULE "B"

DEFINITIONS

"**Commodity Agreement**" means a gas supply agreement, electricity supply agreement or other agreement with any Just Energy Entity for the physical or financial purchase, sale, trading or hedging of natural gas, electricity or environmental derivative products, or contracts entered into for protection against fluctuations in foreign currency exchange rates, which shall include any master power purchase and sale agreement, base contract for sale and purchase, ISDA master agreement or similar agreement.

"**ISO Agreement**" means an agreement pursuant to which a Just Energy Entity has reimbursement obligations to a counterparty for payments made by such counterparty on behalf of such Just Energy Entity to an independent system operator that coordinates, controls and monitors the operation of an electrical power system, and includes all agreements related thereto.

"**Lender Support Agreement**" means that certain Accommodation and Support Agreement dated as of March 18, 2021 and attached as Exhibit "A" to the Third Carter Affidavit, among the CA Agent, the CA Lenders and the Just Energy Entities, which agreement shall not be amended, restated or modified in any manner without the consent of the majority of the DIP Lenders and the Monitor.

"**Priority Commodity/ISO Obligation**" means amounts that are due and payable, at the applicable time, for: (i)(A) the physical supply of electricity or gas that has been delivered on or after March 9, 2021; (B) financial settlements on or after March 9, 2021; and (C) amounts owing under a confirmation or transaction that was executed on or after March 9, 2021 pursuant to a Commodity Agreement as a result of the termination thereof in accordance with the applicable Qualified Support Agreement; and (ii) for services actually delivered by a Qualified Commodity/ISO Supplier on or after March 9, 2021 pursuant to an ISO Agreement (but for greater certainty, excluding any amount owing for ISO services provided under an ISO Agreement on or before the date of this Order, whether or not yet due).

"**Qualified Commodity/ISO Supplier**" means any counterparty to a Commodity Agreement or ISO Agreement that has executed or executes a Qualified Support Agreement with a Just Energy Entity and refrained from exercising any available termination rights, under the Commodity

Agreement as a result of the commencement of the Proceedings absent an event of default under such Qualified Support Agreement.

"**Qualified Support Agreement**" means a support agreement between a Just Energy Entity and a counterparty to a Commodity Agreement, in form and substance satisfactory to the Just Energy Entities and the DIP Lenders, acting reasonably, which includes, among other things: (i) that such counterparty shall apply to the Court on five (5) days' notice to the Just Energy Entities, the Monitor and the Service List prior to exercising any termination rights under a Qualified Support Agreement, except as expressly provided for herein; (ii) the obligation to supply physical and financial power and natural gas and other related services pursuant to any confirmations or transactions executed pursuant to a Commodity Agreement; and (iii) an agreement to refrain from exercising termination rights as a result of the commencement of these proceedings absent an event of default under such support agreement.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

Court File No: CV-21-00658423-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JUST ENERGY GROUP INC., et al (collectively, the "**Applicants**")

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

SECOND AMENDED & RESTATED INITIAL ORDER

OSLER, HOSKIN & HARCOURT, LLP
P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Marc Wasserman (LSO# 44066M)
Michael De Lellis (LSO# 48038U)
Jeremy Dacks (LSO# 41851R)

Tel: (416) 362-2111
Fax: (416) 862-6666

Lawyers for the Applicants

THIS IS EXHIBIT "B " REFERRED TO IN THE AFFIDAVIT OF MICHAEL CARTER, SWORN BEFORE ME OVER VIDEO CONFERENCE THIS 8TH DAY OF NOVEMBER, 2021.

Commissioner For Taking Affidavits
Andrew Rintoul

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JUST ENERGY GROUP INC., JUST ENERGY CORP., ONTARIO ENERGY COMMODITIES INC., UNIVERSAL ENERGY CORPORATION, JUST ENERGY FINANCE CANADA ULC, HUDSON ENERGY CANADA CORP., JUST MANAGEMENT CORP., JUST ENERGY FINANCE HOLDING INC., 11929747 CANADA INC., 12175592 CANADA INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC., 8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP., JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST ENERGY INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY SERVICES LLC, HUDSON ENERGY CORP., INTERACTIVE ENERGY GROUP LLC, HUDSON PARENT HOLDINGS LLC, DRAG MARKETING LLC, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. AND JUST ENERGY (FINANCE) HUNGARY ZRT.

Applicants

AFFIDAVIT OF MICHAEL CARTER

I, Michael Carter, of the Town of Flower Mound, in the State of Texas, MAKE OATH AND SAY:

1. This affidavit is made in support of an application by Just Energy Group Inc. ("**Just Energy**") and the other applicant companies listed in the style of cause above (collectively, the "**Applicants**") for an Initial Order and related relief under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "**CCAA**").

2. I have been Just Energy's Chief Financial Officer since September 2020. In that role, I am responsible for all financial-related aspects of Just Energy's business. As such, I have personal knowledge of the matters deposed to in this affidavit, including the business and financial affairs of Just Energy and its subsidiaries. Where I have relied on other sources for information, I have stated the source of my information and I believe such information to be true.

3. All references to monetary amounts in this affidavit are in Canadian dollars unless noted otherwise.

A. Overview

4. Just Energy and its subsidiaries (collectively, the "**Just Energy Group**") are retail energy providers specializing in delivering electricity and natural gas to consumer and commercial customers as well as energy-efficient solutions and renewable energy options. The Just Energy Group currently serves over 950,000 consumer and commercial customers, mostly in the United States and Canada.

5. Over the past few years, the Just Energy Group has taken steps to position itself for sustainable growth as an independent industry leader. Most notably, on September 28, 2020, Just Energy completed a balance sheet recapitalization transaction (the "**Recapitalization**") through a plan of arrangement (the "**Arrangement**") under section 192 of the *Canada Business Corporations Act* (the "**CBCA**"). The Arrangement was approved by a Final Order of the Ontario

Superior Court of Justice (Commercial List) dated September 2, 2020 and the Recapitalization closed on September 28, 2020. The Recapitalization was the culmination of a year-long strategic review process and reflected a comprehensive plan to strengthen Just Energy's business.

6. However, despite continued improving performance since the closing of the Recapitalization, the Just Energy Group is facing severe short-term liquidity challenges due to the recent unprecedented and catastrophic winter storm in Texas (the Just Energy Group's largest market). While the Just Energy Group employs a comprehensive hedging strategy to manage weather risk, the weather conditions in Texas were colder than anything experienced in decades, causing significantly higher than normal customer demand while also forcing significant electricity market supply offline. As a result, the Just Energy Group was forced to balance its demand through real time purchases through ERCOT (defined below).

7. While Texas was already experiencing extreme market pricing, the negative financial impact of the storm was exacerbated by the actions of Texas regulators. Texas's electricity grid, the Texas Interconnection, is one of the three main grids in the United States and largely operates independently with limited export and import capability. Unlike most other electricity markets in the United States, the Texas Interconnection is not subject to regulation by the Federal Energy Regulatory Commission ("**FERC**"). Instead, an independent system operator ("**ISO**") called Electric Reliability Council of Texas ("**ERCOT**") is solely responsible for managing the Texas Interconnection and ERCOT is only subject to regulation by the Texas Public Utility Commission ("**PUCT**").

8. In response to the winter storm, on February 15, 2021, the PUCT issued an order instructing ERCOT to set the real time settlement price of power at the high offer cap of U.S. $9,000 per

megawatt hour ("**MWh"**) for over 100 consecutive hours (in contrast, the real time electricity price did not hit U.S. $9,000 per MWh for even one 15-minute interval in 2020). As a result, the Just Energy Group was forced to balance its power supply through ERCOT at artificially high electricity prices and significantly increased ancillary service costs. The Just Energy Group estimates that it may have incurred losses and additional costs currently totaling over $315 million as a result of PUCT and ERCOT's actions and the winter storm.

9. The winter storm and the regulatory response has been devastating for other participants in the Texas electricity market as well. The largest power generation and transmission cooperative in Texas, Brazos Electric Power Cooperative, filed for Chapter 11 bankruptcy protection on March 1, 2021 after incurring an estimated U.S. $2.1 billion in charges over seven days as reported in an article titled *Texas Power Firm Hit With $2.1 Billion Bill Files for Bankruptcy*, attached as **Exhibit** "**A**". In addition, ERCOT has already barred two electricity sellers, Entrust Energy Inc. and Griddy Energy LLC, from the Texas power market for failing to make payments after last month's energy crisis as reported in an article titled *A Second Power Provider Defaults After Texas Energy Crisis*, attached as **Exhibit** "**B**". The ERCOT wholesale market incurred charges of U.S. $55 billion over a seven-day period, an amount equal to what it ordinarily incurs over four years.

10. ERCOT and PUCT have faced sustained criticism for their response to the winter storm. In recent weeks, both PUCT's chair and several ERCOT board members have resigned and the ERCOT board voted to oust its CEO as reported in the article titled *ERCOT fires CEO, following resignation of head utility regulator, board members*, attached as **Exhibit** "**C**". Potomac Economics, an independent market monitor hired by the state of Texas to assess ERCOT's performance, concluded that ERCOT overpriced electricity for almost two days, resulting in U.S. $16 billion in overcharges as noted in the article titled *Texas Watchdog Says Power Grid Operator*

Made $16 Billion Error, a copy of which is attached as **Exhibit** "**D**". In response, PUCT has indicated that it will not be reversing these overcharges despite its independent market monitor recommending that the charges be reversed, as reported in the article titled *Texas Opts Not to Fix $16 Billion Power Overcharge*, a copy of which is attached as **Exhibit** "**E**".

11. The Just Energy Group has disputed both the artificially high prices and the extraordinary ancillary costs charged by ERCOT. However, under ERCOT's protocols, the Just Energy Group must pay any invoices within two days of receipt, even if it is disputing them. Otherwise, ERCOT can suspend the Just Energy Group's market participation in as little as 2 days and transfer the Just Energy Group's customers to another energy provider, called a Provider of Last Resort ("**POLR**"), on 5 days' notice. The Texas market accounts for approximately 47% of the Just Energy Group's embedded gross margin ("**EGM**")[1] and is essential for the Just Energy Group maintaining going concern operations.

12. Despite the historic nature of the winter storm and the unprecedented resulting costs incurred by energy retailers, both ERCOT and PUCT have, to date, ignored the Just Energy Group's requests to suspend ERCOT's usual protocols. Therefore, the Just Energy Group had no option other than to pay its ERCOT invoices in Texas.

13. On March 5, 2021, the Just Energy Group received three invoices for approximately U.S. $123.21 million from ERCOT, of which approximately U.S. $96.24 million must be paid by end of day on March 9, 2021. On March 8, 2021, the Just Energy Group received from ERCOT (i) a notice that it must post approximately U.S. $25.7 million of additional collateral within two

[1] EGM is a rolling five-year measure of management's estimate of future contracted energy and product gross margin.

business days; and (ii) three invoices for approximately U.S. $ 25.46 million, of which approximately U.S. $18.86 million is due by March 10, 2021. The Just Energy Group does not have enough liquidity to pay that amount without access to the DIP Facility (defined below). If the amount due is not paid, ERCOT can transfer all of the Just Energy Group's customers in Texas to a POLR, which would be devastating to the Just Energy Group's business.

14. The Just Energy Group's financial challenges have been exacerbated by the reaction of certain creditors and other stakeholders to the extreme weather event and significant amounts coming due in the near future. Bonding companies that issued surety bonds have demanded that the Just Energy Group provide more than $30 million in additional collateral (with over $20 million already provided and the rest expected by March 17). The bonding companies had either threatened to start the process of cancelling bonds issued by them if the Just Energy Group did not post additional collateral or had already started the process of cancelling the bonds they had issued and agreed to issue rescission notices upon receipt of the additional collateral. The cancellation of the bonds may have resulted in the revocation of licenses necessary for the Just Energy Group to carry on business in certain jurisdictions.

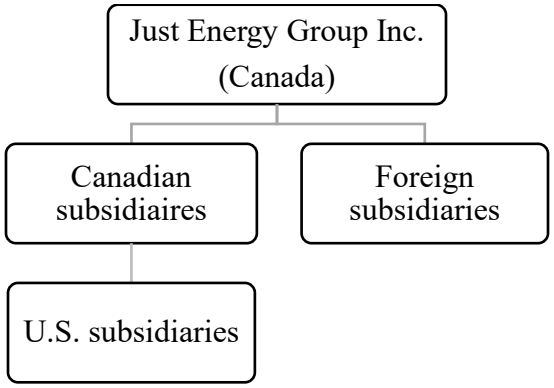
15. The Just Energy Group also has significant payables coming due in the next few weeks. On March 22, 2021, approximately $270 million owing to counterparties under the ISO Services Agreements (defined below) will come due. In addition, over $75 million owing to Commodity Suppliers (defined below) will be coming due by March 25, 2021. As such, the Just Energy Group has significant liabilities coming due that it cannot currently pay and are therefore insolvent. In these circumstances, the Applicants require immediate CCAA protection to ensure that they can continue as a going concern, service their significant customer base, maintain employment for almost 1,000 employees, and preserve enterprise value.

B. Corporate Structure

16. Just Energy is the ultimate parent company of the Just Energy Group and the other Applicants are all direct or indirect subsidiaries of Just Energy. All of the Applicants are either borrowers under the Credit Facility (defined below) or have provided secured guarantees in respect of the Credit Facility.

17. While the limited partnerships listed in Schedule "A" (the "**Just Energy LPs**") are not applicants in this proceeding, the Applicants seek to have a stay of proceedings and other provisions of an Initial Order under the CCAA extended to the Just Energy LPs in order to maintain stability and business operations through this restructuring process. The business and operations of the Applicants are heavily intertwined with that of the Just Energy LPs. In particular, certain of the Just Energy LPs hold most of the gas and electricity licenses granted by Canadian regulators pursuant to which the Just Energy Group conducts business in Canada.

18. A corporate chart showing the structure of the Just Energy Group as of November 10, 2020 is attached as **Exhibit** "**F**". A simplified version of the corporate chart is below:



(a) Just Energy Group Inc.

19. Just Energy is a CBCA corporation. It has two head offices: one in Mississauga, Ontario and one in Houston, Texas. Just Energy's registered office is First Canadian Place, 100 King Street

West, Suite 2630, Toronto, Ontario. Its common shares (the "**Common Shares**") are listed on the Toronto Stock Exchange (the "**TSX**") and the New York Stock Exchange (the "**NYSE**").

(b) Canadian Subsidiaries

20. The Canadian subsidiaries are corporations, limited partnerships, and unlimited liability companies that are directly or indirectly wholly owned by Just Energy. The material Canadian subsidiaries are set out below:

(a) *Just Energy Corp.:* Just Energy Corp. is a direct subsidiary of Just Energy. It employs almost all of the Just Energy Group's employees in Canada and is the general partner for all of the Just Energy operating subsidiaries listed below that are limited partnerships.

(b) *Just Energy Ontario L.P. (Ontario), Just Energy Alberta L.P. (Alberta), Just Green L.P. (Alberta), Just Energy Manitoba L.P. (Manitoba), Just Energy B.C. Limited Partnership (British Columbia), Just Energy Québec L.P. (Quebec), Just Energy Prairies L.P. (Manitoba), Hudson Energy Canada Corp. (Canada), and Filter Group Inc.*: These are the Canadian operating entities for the Just Energy Group's business.

(c) *Just Energy Trading L.P. (Ontario)*: This entity is used to procure supply of energy commodities.

21. Just Energy also indirectly holds an approximate 8% fully diluted interest in ecobee Inc., a manufacturer and distributor of smart thermostats, located in Toronto, Ontario.

(c) U.S. Subsidiaries

22. The U.S. subsidiaries are corporations, limited liability companies and limited partnerships indirectly wholly owned by Just Energy. The material U.S. subsidiaries are noted below (all of which are formed under the laws of the State of Delaware, unless otherwise noted):

(a) *Just Energy (U.S.) Corp.; Just Energy Illinois Corp.; Just Energy Indiana Corp.; Just Energy Massachusetts Corp.; Just Energy New York Corp.; Just Energy Texas I Corp.; Just Energy Texas LP (Texas); Just Energy Pennsylvania Corp.; Just Energy Solutions Inc. (California); Just Energy Michigan Corp.; Hudson Energy Services LLC (New Jersey); Just Energy Limited; Fulcrum Retail Energy LLC d/b/a Amigo Energy (Texas); Tara Energy, LLC (Texas); Interactive Energy Group LLC; and Filter Group USA Inc:* These are the U.S. operating entities for the Just Energy Group's business.

(d) Foreign Subsidiaries

23. Until recently, the Just Energy Group had operations in several countries outside North America. In 2019, Just Energy made a strategic decision to focus on its North American operations. The Just Energy Group has completed sales of its U.K., Irish, and Japanese operations. On February 4, 2021, the Just Energy Group entered into an agreement to sell its German operations for nominal consideration. However, due to the current circumstances resulting from the Texas weather event, the preconditions for closing this sale may no longer be achievable and the German operations will likely be wound down instead. The Just Energy Group still has an Indian subsidiary and has employees in India that support the Just Energy Group's operations in North America.

C. The Just Energy Group's Business

(a) Products and Services Offered by the Just Energy Group

24. The Just Energy Group primarily supplies electricity and natural gas commodities to both consumer and commercial customers. These sales are made under various arrangements, mainly under long-term fixed price contracts with some customers remaining on month-to-month variable-price after their long-term contract expired. As of December 31, 2020, the Just Energy Group had a total of 956,000 customers (859,000 consumer and 97,000 commercial customers).

25. The Just Energy Group also provides various green products. Customers can choose an appropriate JustGreen program to supplement their natural gas and electricity contracts and offset their carbon footprint. In addition, through terrapass (a Just Energy subsidiary), customers can offset their environmental impact by purchasing high quality environmental products. Terrapass supports projects throughout North America that destroy greenhouse gases, produce renewable energy, and restore freshwater ecosystems through the purchase of renewable energy credits and carbon offsets.

26. The Just Energy Group also offers water filtration systems through Filter Group Inc. ("**Filter Group**") in Canada and through its subsidiary Filter Group US Inc. in the United States.

27. The Just Energy Group's business is divided into two main segments, a consumer segment and a commercial segment.

(i) Consumer Segment

28. The consumer segment sells gas and electricity to customers with annual consumption equal to or less than 15 residential customer equivalents ("**RCEs**").[2] Consumer customers made up 36% of the Just Energy Group's RCE base and accounted for approximately 60% of sales in the quarter ended December 31, 2020. Products are marketed to consumer customers primarily through digital and retail sales channels.

29. For its retail sales channels, in the United States, the Just Energy Group enters into contracts with (i) retail establishments to obtain access to their premises to market to and sign-up new customers, and (ii) staffing companies which provide sales agents who carry out the marketing activities to attract and sign-up customers and who are paid on commission.

30. The retail sales channel is a competitive space, and the Just Energy Group's relationships with the retailers and staffing companies are critical for its ability to attract customers directly and maintain and grow its consumer business. The Just Energy Group experiences some attrition of customers on an ongoing basis (approximately 2 percent a month), and so marketing to and signing up new customers is essential for sustaining and growing the business.

31. For certain retailers, the Just Energy Group has exclusive relationships pursuant to which only the Just Energy Group is permitted to market in some or all of that retailer's stores, including certain retailers where the Just Energy Group is able to target a more lucrative clientele. The Just Energy Group has long-standing relationships with certain staffing companies, which provide sales representatives to enroll consumer customers, and train sales agents and ensure that sales agents

[2] A unit of measurement equivalent to a customer using 2,815 m3 (or 106 GJs or 1,000 Therms or 1,025 CCFs) of natural gas on an annual basis or 10 MWh (or 10,000 kWh) of electricity on an annual basis, which represents the approximate amount of gas and electricity used by a typical household in Ontario, Canada.

act in accordance with standards and codes of conduct set by both the staffing agencies and the retailers.

(ii) Commercial Segment

32. The commercial segment sells gas and electricity to customers with annual consumption over 15 RCEs. Commercial customers made up 64% of the Just Energy Group's RCE base and accounted for approximately 40% of sales in the quarter ended December 31, 2020. Sales to commercial customers are made through three main channels: brokers, door-to-door commercial independent contractors, and inside commercial sales representatives.

33. Brokers and independent contractors are the two most significant channels through which the Just Energy Group attracts and renews commercial customers. Independent contractors directly market the Just Energy Group to potential commercial customers whereas brokers are contacted by potential customers and then reach out to energy sellers to bid on the opportunity. Both brokers and independent contractors are paid solely on commission.

34. The Just Energy Group's relationship with brokers and independent contractors is critical for its ability to attract and renew commercial customers. As noted above, in light of ongoing customer attrition, marketing to and signing up new customers is essential for sustaining and growing the Just Energy Group's business.

35. There is significant competition for commercial customers and the Just Energy Group attracts and renews the vast majority of its commercial customers through these channels. The brokers and independent contractors have direct relationships with customers and could easily divert the customers elsewhere. Moreover, if the Just Energy Group does not pay outstanding

amounts owing to brokers, those brokers may conclude that the Just Energy Group is not financially reliable and choose to refer customers to other retailers.

(b) Just Energy Group operates in heavily regulated markets

36. The natural gas and electricity markets that the Just Energy Group operates in are highly regulated. I am advised by Richard King of Osler, Hoskin & Harcourt LLP ("**Osler**"), Canadian counsel for the Applicants, and believe that the fundamental purpose of the regulatory regime governing energy (gas and electricity) retailers can be traced back to energy sector reforms across much of North America that began in the 1980s and 1990s. Through these reforms, non-utility power generators and retailers/marketers gained access to many North American energy markets, which were previously monopolized by traditional public utilities. These regulatory regimes were reformed to facilitate and encourage companies like the Just Energy Group to enter energy markets.

37. I am further advised by Mr. King and believe that the rationale for opening the energy commodity market to competition was to provide gas and electricity to consumers at lower cost, through price competition, as well as offering greater choice for customers. As a corollary to opening the market to greater competition for gas or electricity retailers like the Just Energy Group, the regulatory regime encompasses two important public interest goals:

(a) to provide for consumer protection in the marketing of gas or electricity at the retail level; and

(b) to establish standard contractual terms and conditions governing the relationship between energy retailers and the incumbent utilities, largely to ensure that utilities

> do not utilize their dominant monopoly position to impair retailers from selling and contracting with retail customers.[3]

38. In most jurisdictions where it operates, the Just Energy Group is subject to oversight from public utility commissions or independent electricity system operators responsible for ensuring the financial stability of market participants and continued supply to customers. These regulators could take various steps if they are concerned about the Just Energy Group's financial stability or ability to continue as a going concern, including requiring the Just Energy Group to post additional collateral (or provide other financial security) or taking steps to suspend or revoke the Just Energy Group's licenses.

39. In Canada, certain of the Just Energy LPs (the "**Licensed Entities**") have received gas and electricity licenses from regulators in British Columbia, Alberta, Saskatchewan, Manitoba, and Ontario. I am advised by Mr. King and believe that the licences and registrations are granted by provincial regulatory bodies (the "**Provincial Regulators**") and are necessary to permit the Licensed Applicants to market and sell natural gas and/or electricity to consumers in the particular province.

40. In addition, I am advised by Mr. King and believe, Hudson Energy Canada Corp. (an Applicant) is registered as a market participant with the Alberta Electricity System Operator (the "**ISO Regulator**"). This registration allows the purchase and sale of electricity in the wholesale electricity market in Alberta and the import/export of electricity with neighbouring jurisdictions. Participation in the wholesale electricity market is essential to the Just Energy Group's ability to

[3] These licensing, code of conduct, and mandatory contractual terms are set out in legislation as well as Rules, Codes and decisions issued by the Provincial Regulators.

supply electricity to retail customers in Alberta and neighbouring jurisdictions. I am advised by Mr. King and believe that an insolvency event constitutes an event of default under the applicable Market Rules, which permit the ISO Regulator to suspend trades and participation in the market, and then terminate the market registration. In relation to the ISO Regulator, the Just Energy Group has posted all required collateral.

41. I am further advised by Mr. King and believe the Licensed Entities are under certain obligations to the Provincial Regulators, including to notify some of the Provincial Regulators of any "material change" in their businesses. It is likely that a CCAA filing would constitute such a material change. At least two Provincial Regulators have expressed concern about the Just Energy Group's ongoing viability. The queries were prompted by media reports arising from Just Energy's public disclosure about its current financial challenges. In addition, a market participant in Manitoba has requested that the Provincial Regulator authorize the utility to no longer permit the Licensed Entity to enroll new customers in Manitoba. A copy of the request is attached as **Exhibit** "**G**".

42. I am advised by Mr. King and believe that, absent the Regulatory Stay (defined below), these regulators could respond to the Applicants' CCAA filing by terminating the licenses they have granted or imposing other conditions, and that these measures may result in the Just Energy Group losing its ability to conduct business with its customers in the applicable provinces. Without the stable of customer contracts that the Licensed Entities have invested many years developing, the Applicants will instantly lose vital revenue streams. A chart including information concerning the Provincial Regulators and the actions they could potentially take against the Just Energy Group is attached as **Exhibit** "**H**".

43. As part of the proposed Initial Order, the Applicants are seeking to stay the Provincial Regulators from, among other things, terminating the licenses granted to the Licensed Entities. With the benefit of the DIP Facility, the Applicants intend to continue paying amounts owing to its contractual counterparties (primarily its ISOs and utilities) in the ordinary course, which is reflected in the Cash Flow Forecast. Despite continuing to make such payments, the Provincial Regulators may still attempt to take steps to terminate the Licensed Entities in Canada or impose other conditions. Accordingly, unless the Provincial Regulators are stayed, the Just Energy Group may not be able to continue business in the applicable provinces and present a viable restructuring plan.

44. The Just Energy Group is also subject to regulation by the Federal Energy Regulatory Commission ("**FERC**") and by regulators in the following U.S. states: Texas, Connecticut, California, Delaware, Georgia, Illinois, Maine, Maryland, Massachusetts, Michigan, Nevada, New Jersey, New York, Ohio, Pennsylvania, and Virginia.

45. I am advised by Kirkland & Ellis LLP ("**Kirland**"), U.S. counsel for the Applicants, that the Applicants' entities that have been issued gas and electricity licenses (the "**U.S. Licensed Entities**") by regulators in the United States (the "**U.S. Regulators**") are susceptible to similar concerns as those applicable to the Licensed Entities regarding the risk that such licenses can be terminated or have other conditions imposed on them, which may result in the Just Energy Group losing its ability to conduct business with its customers in the United States. With the benefit of the DIP Facility, the Applicants intend to continue making payments to the ISOs and utilities in the ordinary course, which is reflected in the Cash Flow Forecast. Despite continuing to make such payments, the U.S. Regulators may still attempt to take steps to terminate the U.S. Licensed Entities' licenses in the United States or impose other conditions. Accordingly, in conjunction with

the Chapter 15 Case (defined below), the Applicants are also seeking to stay the U.S. Regulators from, among other things, terminating the licenses granted to the U.S. Licensed Entities.

(c) Employees and Employee Benefits

46. As of March 1, 2021, the Just Energy Group employed approximately 979 full-time employees and 5 part-time employees. The geographic distribution of the Just Energy Group's employees is as follows:

Province / Territory	Number of Employees
Canada	
Ontario	324
Alberta	6
British Columbia	1
New Brunswick	1
Saskatchewan	1
Total (Canada)	333
United States	
Texas	351
Other states	30
Total (United States)	381
Other	
India	265
Total (overall)	**979**

47. In addition, as of March 1, 2021, the Just Energy Group contracts with 23 independent contractors. The Just Energy Group's employees are all non-unionized and there are no applicable collective agreements.

(i) Stock-Based Compensation Plans

48. The following sections describe certain stock-based compensation plans currently maintained by the Just Energy Group.

(A) Employee Share Purchase Plan

49. Certain employees of the Just Energy Group are eligible to participate in the Employee Share Purchase Plan ("**ESPP**") that awards Common Shares, subject to the terms and conditions of the ESPP. There are separate ESPPs for Canadian and U.S. employees:

(a) The *Canadian ESPP* is maintained for employees of Just Energy Corp. and its subsidiaries, subject to certain eligibility criteria. Eligible employees can have 2 percent of their salaries deducted for the program, which amount is matched by their employer. Employee and employer contributions are used by the administrative agent, Solium Capital Inc., to purchase Common Shares through normal market purchases. Awards of the Common Shares generally vest after two years from the date on which the employee first joins the Canadian ESPP. During the vesting period, all unvested Common Shares and all dividends from such unvested units are held in trust (the "**Canadian ESPP Trust**"). As of February 28, 2021, there are 144 current employees and 99 former employees participating in the Canadian ESPP. The share value of the Canadian ESPP Trust is approximately $156,236.

(b) The *U.S. ESPP* is maintained for employees of U.S. subsidiaries of Just Energy, subject to certain eligibility criteria. Eligible employees can have 3 percent of their salaries deducted for the program, which amount is matched by their employer. Employee and employer contributions are used by the administrative agent, Computershare Trust Company of Canada ("**Computershare**"), to acquire Common Shares. Awards of shares generally vest after six months of participation in the program. During the vesting period, all unvested shares and all dividends

from such unvested shares are held in trust (the "**U.S. ESPP Trust**"). As of February 28, 2021, there are 120 current employees and 49 former employees participating in the US ESPP and the share value of the U.S. ESPP Trust is approximately U.S. $143,421.

(B) Equity Compensation Plan

50. Just Energy's 2020 Equity Compensation Plan, which was approved as part of the Recapitalization, provides for the issuance of Restricted Share Units ("**RSUs**"), Performance Share Units ("**PSUs**"), Options, and Deferred Share Units ("**DSUs**"). Currently, there are no RSUs or PSUs issued and outstanding. There is an aggregate of 190,983 DSUs issued to 7 directors and an aggregate of 650,000 options issued to 9 executives with an exercise price of $8.46 each.

(C) Retirement Savings Plans

51. Certain full-time employees are entitled to participate in (a) the group registered retirement savings plan for Canadian resident employees ("**RRSP**") maintained by Just Energy Corp., (b) the profit sharing/401(k) plan for U.S. resident employees ("**401(k)**") maintained by Just Energy (U.S.) Corp., and (c) the deferred profit sharing plan ("**DPS Plan**") maintained by Just Energy Corp.

52. The RRSP is offered by Just Energy Corp. and is available to all full-time Canadian resident employees of Just Energy Corp. Just Energy Group does not make contributions to the RRSP.

53. The 401(k) is offered by Just Energy (U.S.) Corp. and is available to employees of Just Energy (U.S.) Corp., Just Energy Marketing Corp., and Just Energy Limited, I.E.G. Just Energy (U.S.) Corp. may make discretionary contributions to the 401(k). In 2020, the Just Energy Group contributed U.S. $929,721 to the 401(k).

54. Full time employees who have materially and significantly contributed to the prosperity and profits of Just Energy Corp., as determined by the Board of Directors of Just Energy Corp., are entitled to participate in the DPS Plan. Just Energy Corp. contributes to the DPS Plan in the amount of two percent of any DPS Plan registered-employee's yearly salary, excluding overtime and bonuses. DPS Plan funds are held in trust and administered by a trustee. Upon retirement or death, the value of the DPS Plan registered-employee's account is paid out in the form of a cash refund. If the DPS Plan-registered employee is terminated prior to retirement after two years of continuous membership in the DPS Plan, he or she is entitled to receive a cash refund equal to the value of his or her account. Just Energy Corp. contributed approximately $352,532 to the DPS Plan in 2020.

(ii) Health and Welfare Benefits

55. Just Energy (U.S.) Corp. offers group medical, prescription, dental, vision and disability benefits as well as basic life insurance to its full-time employees ("**U.S. Health and Welfare Benefits**"). U.S. Health and Welfare Benefits are effective following 30 days of continuous employment. Just Energy (U.S.) Corp. made total contributions of approximately U.S. $3,102,330 in 2020 in respect of the U.S. Health and Welfare Benefits.

56. Just Energy Corp. offers group disability, prescription, dental, and health benefits as well as basic life insurance to its full-time and certain part-time employees ("**Canadian Health and Welfare Benefits**"). Canadian Health and Welfare Benefits are effective for full time salaried employees from the first day of employment. Canadian Health and Welfare Benefits are effective for full-time hourly and eligible part-time employees effective following 3 months of employment. Just Energy Corp. made total contributions of approximately $2,520,370 in respect of the Canadian Health and Welfare Benefits in 2020.

(d) Suppliers

57. The Just Energy Group transacts with various suppliers to purchase gas and electricity (the "**Commodity Suppliers**"). The Just Energy Group typically purchases gas and electricity for larger commercial customers when it executes the contract for that customer. For remaining customers, supplies are purchased based on forecasted consumption. Commodity and volume forecasts are developed using historical data and current market conditions.

58. In addition to agreements for the physical supply of gas and electricity, the Just Energy Group also enters into hedge contracts with Commodity Suppliers in order to minimize commodity and volume risk. These include derivative instruments such as physical forward contracts and options and financial swap contracts and options that are designed to fix the price of supply for estimated customer commodity demand. The Just Energy Group also purchases various weather derivatives to mitigate its exposure to variances in customer requirements that are driven by changes in expected weather conditions.

59. The Just Energy Group evaluates and manages weather-related risks by analyzing historically observed weather and commodity scarcity scenarios in its various markets. The Just Energy Group's current portfolio and forecasts are stress tested against multiple scenarios to estimate a range of revenue and supply outcomes. Scenarios are constructed using historical consumption, weather, load, and price patterns adjusted for known and expected market changes. Scenarios include events such as a polar vortex, the Texas 2011 heat wave, El-Nino winters, and other severe weather events. Based on the forecasts, the Just Energy Group will then layer in its hedging strategy under its risk management policy. In its planning for the current winter season (November 2020 – March 2021), the Just Energy Group had positioned its portfolio under all

known historical weather and commodity scarcity scenarios to not have its exposure exceed $10 million in the aggregate.

60. In addition to supply agreements, the Just Energy Group is also party to ISO services agreements (the "**ISO Services Agreements**") with certain Commodity Suppliers (in such capacity, the "**ISO Services Providers**"). The most significant is an Independent Electricity System Operator Scheduling Agreement (the "**BP Agreement**") with BP Energy Company ("**BP**") pursuant to which BP provides a variety of services as well as working capital and credit support:

(a) BP provides all services and takes all actions required for the scheduling and arranging for the delivery of all physical sales of energy by Hudson Energy Services, LLC.

(b) BP makes certain payments to ISOs monitoring the electrical power system in certain jurisdictions on behalf of the Just Energy Group. The payments to the ISOs must be made daily but BP provides the Just Energy Group on average 35 days to repay these amounts as the amounts due from the current month are due on the 20th day after month end or the first business day thereafter.

(c) BP posts collateral and provides credit support for the Just Energy Group with ISOs, which relieves the Just Energy Group of the obligation to post the collateral related to its load requirements.

61. The services provided under the BP Agreement are critical to the delivery of energy to the Just Energy Group's commercial customers. Absent this agreement, the Just Energy Group would

be obligated to provide these services itself and would be subject to shorter payment terms for amounts owing to the ISOs.

(e) Distribution Arrangements

62. The Just Energy Group transacts with various third-party local distribution companies ("**LDCs**") to distribute electricity and natural gas to both commercial and consumer customers. The Just Energy Group also receives certain customer billing and customer collection services from LDCs in various markets, as described in greater detail below. These LDC agreements are critical to the delivery of electricity and natural gas in the Just Energy Group's markets.

63. The Canadian counterparties to the LDC Agreements are incumbent public utilities in all of the Canadian provinces where the Licence-holders carry on business. They include both privately-owned entities (such as Enbridge Gas, Fortis BC, and ATCO Gas) and publicly-owned entities (such as Toronto Hydro, SaskEnergy, and Cit of Lethbridge). I am advised by Mr. King and believe that, whether these counterparties may be public or private, they are themselves regulated entities and that, in most cases, the terms of the LDC Agreements with the Licensed Entity are established and approved by the Provincial Regulators.

64. In respect of the Just Energy Group's electricity retail services, LDCs provide customer billing services in all electricity markets except Alberta and Texas. The LDCs also provide collection services, including the collection and remittance to the Just Energy Group of the commodity portion of each customer's account for a small monthly fee, except in Alberta and Texas, and with respect to some Ohio utilities. In the case of some Ohio utilities, the LDCs provide collection services only until the account is delinquent. In Alberta and Texas, the Just Energy Group conducts billing and collection directly. In Ontario, Massachusetts, Delaware, New York,

Pennsylvania, New Jersey, Illinois, Maryland, and Michigan, and in the case of some Ohio utilities, LDCs assume 100% of the risk associated with default in payment by customers.

65. In respect of the Just Energy Group's natural gas retail services, customers purchase gas supply directly from Just Energy's operating entities, which is distributed by the LDCs. With the exception of Alberta, the LDCs provide customer billing services. In all markets except Alberta, Illinois and California, the LDCs provide collection services, including the collection and remittance to the Just Energy Group of the commodity portion of each customer's account for a small monthly fee. In Illinois and California, the LDCs provide collection services only until the account is delinquent. In Ontario, British Columbia, Manitoba, Quebec, New York, Saskatchewan, Ohio, Maryland, New Jersey, New York, Pennsylvania, Indiana, and Michigan, each LDC assumes 100% of the credit (receivable) risk associated with default in payment by consumer and commercial customers. In all Canadian markets except for Alberta, the LDCs bill and collect from end-use customers (including the Just Energy Group's customers) and remit the commodity component of the bill to the Just Energy Group (less a small charge). In Alberta and Texas, the Just Energy Group bills and collects from end-use customers and pays the LDCs for providing transmission and distribution services for the customer.

(f) Surety Bonds

66. Pursuant to arrangements with several bonding companies, such bonding companies have issued surety bonds to various counterparties including states, regulatory bodies, utilities (including LDCs), and various other surety bond holders in return for a fee and/or meeting certain collateral posting requirements. Such surety bond postings are required to operate in certain states or markets. As at December 31, 2020, the total surety bonds issued were $46.3 million.

67. Most bonding companies can require collateral on demand at any time, whereas one is required to give 30 days' notice. If the Just Energy Group does not discharge the liability or post the required collateral, the bonding companies have the right to cancel the underlying bond within as early as 10 days. Just Energy and various other members of the Just Energy Group have entered into indemnity agreements with the bonding companies with respect to such surety bonds. The bonding companies have already demanded that the Just Energy Group post approximately $34 million in additional collateral.

68. The cancellation of certain bonds may trigger the suspension or cancellation of licenses necessary to operate, and the suspension or cancellation of all services including commodity delivery services provided by LDCs to consumers that would force the transfer of Just Energy's customers back to the utilities or regulated energy providers by the various utility commissions. This would affect the Just Energy Group's business in many significant markets making up a vast majority of its customer base, including Texas, Alberta, Saskatchewan, Illinois, Pennsylvania, Ohio, Michigan, New York, California, New Jersey, and British Columbia.

(g) Banking and Cash Management System

69. Just Energy maintains a centralized cash management system to consolidate and track funds generated by the operations of Just Energy and its subsidiaries.

70. Just Energy and certain subsidiaries have accounts at each of Canadian Imperial Bank of Commerce ("**CIBC**"), JPMorgan Chase and its affiliates ("**JPMorgan**"), Royal Bank of Canada ("**RBC**"), TD Canada Trust ("**TD**"), FirstCaribbean International Bank ("**CIBC First Caribbean**"), Allied Irish Banks ("**AIB**"), and Erste Bank Hungary Zrt. ("**Erste Bank**").

71. Just Energy and a number of other Just Energy Group companies[4] (collectively, the "**Bank Account Holders**") maintain accounts at one or more of the above banks. Collectively, the Bank Account Holders maintain 36 accounts at CIBC, 60 accounts at JPMorgan, 3 accounts at TD, 2 accounts at AIB, and 1 account at each of RBC, CIBC First Caribbean and Erste Bank (the "**Bank Accounts**"). The Bank Accounts are either CAD, USD, EUR, GBP, or INR denominated. While most Bank Accounts are domiciled within Canada or the United States, a small number are domiciled outside of North America in Ireland, the United Kingdom, and Germany. These accounts in Ireland and Germany pertain to non-core businesses that the Just Energy Group is in the process of divesting or winding down.

72. For accounts held by Canadian Bank Account Holders, the Just Energy Group is in the process of decentralizing its cash management system with CIBC. Upon completion, it is expected that all account activity for outgoing wire or electronic funds transfer ("**EFT**") direct deposits will need to be fully funded in advance. Pre-authorized debits from customer accounts will be subject to a daily limit.

73. For accounts held by U.S. Bank Account Holders, Just Energy has in place a cash pooling mechanism and zero-balance account service among most of the JPMorgan accounts that

[4] 11929747 Canada Inc., Filter Group Inc., Filter Group USA Inc., Fulcrum Retail Energy LLC, Fulcrum Retail Holdings LLC, Just Energy Corp., Just Energy Group Inc., Just Management Corp.;; Just Energy Finance Holding Inc.; Just Energy Foundation Canada; Just Energy Trading L.P.; Ontario Energy Commodities Inc.; Just Energy Advanced Solutions Corp.; Just Energy Advanced Solutions LLC; Just Energy Prairies L.P.; Just Energy (Québec) L.P.; Just Energy (B.C.) Limited Partnership; Just Green L.P.; Just Energy Ontario L.P.; Just Energy Manitoba L.P.; JE Services Holdco I Inc.; Just Energy Alberta L.P.; JE Services Holdco II Inc.; Just Energy Finance Canada ULC; Momentis Canada Corp.; Universal Energy Corporation; Hudson Energy Canada Corp;; 8704104 Canada Inc; Tara Energy LLC; Just Energy Foundation USA, Inc.; Just Energy (U.S.) Corp.; Just Energy Marketing Corp.; Just Energy Illinois Corp.; Just Energy New York Corp.; Just Energy Indiana Corp.; Just Energy Texas I Corp.; Just Energy Michigan Corp.; Just Energy Massachusetts Corp.; Just Energy Solutions Inc.; Just Energy Pennsylvania Corp.; Just Solar Holdings Corp.; Interactive Energy Group LLC; Just Energy Services Limited; Just Energy (U.K.) Limited; Just Energy (Ireland) Limited; Just Energy Germany GmbH; Just Energy Deutschland GmbH; Just Energy (Finance) Hungary Zrt; and JEBPO Services LLP.

automatically conducts transfers to ensure a zero-balance is achieved in U.S. accounts on a daily basis. Just Energy has a master account (the "**Master Account**") used to sweep and replenish the zero balanced accounts. Upon business close on a daily basis, positive cash balances from zero-balanced accounts are automatically swept into the Master Account on a daily basis. Negative cash balances are likewise replenished daily from the Master Account.

74. The Just Energy Group maintains ISDA Master Agreements with HSBC Bank Canada ("**HSBC**"), National Bank of Canada, ATB Financial and the Bank of Nova Scotia, specifically to transact foreign exchange hedge transactions ("**FX hedges**"). As of March 1, 2021, the Just Energy Group held approximately U.S. $105 million in FX hedges.

D. The Financial Position of the Just Energy Group

75. A copy of Just Energy's consolidated audited financial statements for the fiscal year ended March 31, 2020 are attached as **Exhibit** "**I**" and a copy of Just Energy unaudited financial statements for the quarter ended December 31, 2020 are attached as **Exhibit** "**J**". These are Just Energy's most recent publicly disclosed annual and quarterly financial statements respectively and have been prepared on a consolidated basis for the Just Energy Group. Certain information contained in Just Energy's latest quarterly financials is summarized below.

76. The latest quarterly financial statements include a going concern note explaining that, following the recent extreme cold weather event in Texas, the Just Energy Group's ability to continue as a going concern for the next 12 months is dependent on the company meeting the potential liquidity challenges and potential non-compliance with debt covenants from this event. The note further explained that there can be no assurance that Just Energy will be able to address these challenges with its stakeholders or otherwise, and any inability or failure of the company to

appropriately address such challenges could materially and adversely impact the business, operations, financial condition and operating results of the Just Energy Group and that these material uncertainties may cast significant doubt upon Just Energy's ability to continue as a going concern.

(a) Assets

77. As at December 31, 2020, the total assets of the Just Energy Group had a book value of approximately $1,069,042,000 and consisted of the following (which figures are in thousands of dollars):

Current assets: $606,947	
Cash and cash equivalent	$66,635
Restricted cash	$207
Trade and other receivables, net	$344,080
Gas in storage	$16,185
Fair value of derivative financial assets	$29,196
Income taxes recoverable	$4,928
Other current assets	$143,145
Assets classified as held for sale	$2,571
Non-current assets: $462,095	
Investments	$32,889
Property and equipment, net	$20,638
Intangible assets, net	$86,618
Goodwill	$264,651
Fair value of derivative financial assets	$20,071

Deferred income tax assets	$3,414
Other non-current assets	$33,814
Total Assets	**$1,069,042**

(b) Liabilities

78. As at December 31, 2020, the total liabilities of the Just Energy Group had a book value of approximately $1,284,885,000 and consisted of the following (which figures are in thousands of dollars):

Current liabilities: $607,464	
Trade and other payables	$472,763
Deferred revenue	$8,909
Income taxes payable	$3,434
Fair value of derivative financial liabilities	$110,166
Provisions	$5,945
Current portion of long-term debt	$3,535
Liabilities associated with assets classified as held for sale	$2,712
Non-current liabilities: $677,421	
Long-term debt	$515,233
Fair value of derivative financial liabilities	$136,329
Deferred income tax liabilities	$2,715
Other non-current liabilities	$23,144
Total liabilities	$1,284,885

(c) Stockholder's Deficit

79. As at December 31, 2020, the shareholders deficit in the Just Energy Group was $215,843,000 and consisted of the following (which figures are in thousands of dollars):

Shareholders' capital	$1,537,863
Contributed deficit	$(12,469)
Accumulated deficit	$(1,829,210)
Accumulated other comprehensive income	$88,388
Non-controlling interest	$(415)
Total shareholders' deficit	**$(215,843)**

(d) Capital Structure

80. The Just Energy Group's capital structure includes trade debt, the Credit Facility, the Term Loan, the Subordinated Notes, and Common Shares, each of which is defined and described below. Below is a table setting out the priority of payment of the significant debt owed by the Just Energy Group:

Tier	Items	Date	Approximate Amount
Tier 1	Secured Suppliers AP	March 31, 2021[5]	$244 million
Tier 2	Credit Facility Lenders	March 5, 2021	$331.82 million
	Suppliers MTM (Liability Only)	March 1, 2021	$146.17 million

[5] This amount is an estimate based on a forecast of Secured Supplier AP estimated at March 31, 2021. An estimate has been included to give an indication of the expected quantum of this category following the impact of the Texas weather event. As of January 31, 2021, the Just Energy Group owed its Secured Suppliers approximately $198.96 million.

	ISO Service Obligations (Subject to Cap)	March 5, 2021	$94.5 million
Tier 3	ISO Service Obligations (In Excess of Cap)	March 5, 2021	$177.66 million
Tier 4	Term Loan	December 31, 2020	$273.48 million
Tier 5	Subordinated Notes	December 31, 2020	$13.2 million

81. Attached as **Exhibit** "**K**" is a letter dated March 4, 2021 that Just Energy received from BP in the context of ongoing discussions regarding the effect of the Texas weather event on Just Energy. The letter advises that BP disagrees with the characterization of amounts due from Just Energy as Tier 2 and Tier 3 obligations and that such amounts are Tier 1 obligations. On March 5, 2021, Just Energy responded to the BP letter stating that Just Energy was happy to look into the matter but believed it is largely an intercreditor issue that will be resolved over time. The Applicants do not intend to take a position on this intercreditor issue as part of this proceeding or otherwise. Attached as **Exhibit** "**L**" is a copy of Just Energy's responding letter.

82. As at March 5, 2021, the Just Energy Group had cash and cash equivalents of $81.6 million and available borrowing capacity of $2.9 million under the Credit Facility.

(i) Trade Debt

83. The Just Energy Group's financial obligations to its primary Commodity Suppliers in North America, which include Shell, BP, Exelon Generation Company LLC, Bruce Power L.P., EDF Trading North America, LLC, Nextera Energy Marketing, LLC, Macquarie and Morgan Stanley Capital Group Inc. (collectively, the "**Secured Suppliers**"), are secured by security granted by Just Energy and other members of the Just Energy Group pursuant to general security

agreements, pledges of securities, and other security documents. As of January 31, 2021, the Just Energy Group owed its Secured Suppliers approximately $198.96 million. The Just Energy Group currently estimates this amount will increase to approximately $244 million as at March 31, 2021.

84. The Just Energy Group has also posted letters of credit to secure its obligations to certain Commodity Suppliers other than the Secured Suppliers.

85. In addition, Filter Group is the borrower under an outstanding loan from Home Trust Company to finance the cost of rental equipment over a period of three to five years (the "**Filter Group Loan**"). Payments on the loan are made monthly as Filter Group receives payment from the customer and continue up to the end date of the customer contract term on the factored receivable. As of December 31, 2020, there was approximately $5.5 million outstanding under the Filter Group Loan.

(ii) Non-Trade Debt

86. The following table summarizes the Just Energy Group's significant non-trade debt, which is described in greater detail below. The debts are listed by priority of payment in the table below.

	Type	**Borrower(s)**	**Maturity Date**	**Approximate Outstanding Amount as of December 31, 2020**
Credit Facility	Revolving credit facilities on borrowing base	Just Energy Ontario L.P. and Just Energy (U.S.) Corp.	December 31, 2023	$232.62 million in principal[6] $77.8 million in letters of credit[7]

[6] $227.86 million as at March 5, 2021.

[7] $103.96 million as at March 5, 2021.

Term Loan	Non-revolving, senior unsecured term loan facility	Just Energy Group Inc.	March 31, 2024	$273.48 million
Subordinated Notes	Unsecured subordinated notes	Just Energy Group Inc.	September 27, 2026	$13.2 million

(A) Credit Facility

87. Just Energy Ontario L.P. and Just Energy (U.S.) Corp. (collectively, the "**Credit Facility Borrowers**") are borrowers under a ninth amended and restated credit agreement (as amended from time to time, the "**Credit Agreement**") made as of September 28, 2020 with a syndicate of lenders that includes CIBC, National Bank of Canada, HSBC, JPMorgan, Alberta Treasury Branches, Canadian Western Bank, and Morgan Stanley Senior Funding, Inc., a subsidiary of Morgan Stanley Bank N.A. (the "**Credit Facility Lenders**"). A copy of the Credit Agreement is attached as **Exhibit** "**M**".

88. Under the Credit Agreement, the Credit Facility Lenders agreed to extend a credit facility of $335 million, with scheduled mandatory commitment reductions during the term of the Credit Agreement (the "**Credit Facility**").

89. As at March 5, 2021, there was approximately $227.86 million in principal outstanding under the Credit Agreement, plus outstanding letters of credit amounting to $103.96 million. The letters of credit are issued to various counterparties. primarily utilities and suppliers. Interest is payable on outstanding loans at rates that vary with bankers' acceptance rates, London Interbank Offered Rate, Canadian bank prime rate or U.S. prime rate. Interest rates are adjusted quarterly based on certain financial performance indicators.

90. The Just Energy Group has made several draws on the Credit Facility in the past few months, including following the Texas weather event. As a result of these, available borrowing capacity under the Credit Facility has decreased from $24.6 million as of December 31, 2020, to $2.9 million as of March 5, 2021.

91. The Credit Facility Borrowers' obligations are guaranteed by guarantees from certain subsidiaries and affiliates and secured by general security agreements from the Credit Facility Borrowers and such subsidiaries and affiliates, pledges of the securities of the Credit Facility Borrowers and such subsidiaries and affiliates, and other security documentation. The Applicants are all borrowers under the Credit Facility or have delivered a guarantee and a general security agreement in respect of the Credit Facility.

(B) Term Loan

92. As part of the Recapitalization, Just Energy issued a U.S. $205.9 million principal note (the "**Term Loan Agreement**") maturing on March 31, 2024 to Sagard Credit Partners, LP and certain funds managed by a leading U.S.-based global fixed income asset manager (the "**Term Loan Lenders**"). Attached as **Exhibit** "**N**" is a copy of the original Term Loan Agreement.

93. As at December 31, 2020, approximately $273.48 million was outstanding on the Term Loan.

94. The Term Loan bears interest at 10.25% per annum, and payments are be capitalized into the note. The interest is capitalized on a semi-annual basis on September 30 and March 31. Upon achieving certain financial measures, Just Energy will pay either 50% or 100% of the interest in cash at a 9.75% rate on a semi-annual basis. The Term Loan matures on March 31, 2024.

(C) Subordinated Notes

95. As part of the Recapitalization, Just Energy issued $15 million principal of subordinated notes ("**Subordinated Notes**") to holders of certain subordinated convertible debentures that were extinguished as part of the Recapitalization. Attached as **Exhibit** "**O**" is a copy of the indenture for the Subordinated Notes. The Subordinated Notes bear an annual interest rate of 7% payable in-kind semi-annually on March 15 and September 15. A $2 million fee related to the issuance of the notes was capitalized at inception to be amortized over the term of the notes. The Subordinated Notes had a principal amount of $15 million as at September 28, 2020, which was reduced to $13.2 million through a tender offer for no consideration on October 19, 2020.

(iii) Intercreditor Arrangements

96. The Secured Suppliers, the Credit Facility Borrowers (defined below), certain subsidiaries and affiliates of the Credit Facility Borrowers (including Just Energy), and the agent for the lenders under the Credit Agreement (defined below) are also party to an intercreditor agreement (the "**Intercreditor Agreement**") setting out the relative priority of the parties' security interests. A copy of the Intercreditor Agreement is attached as **Exhibits** "**P**". The security is granted in favour of a collateral agent under the Intercreditor Agreement for the benefit of the Credit Facility Lenders and the Secured Suppliers. Pursuant to the Intercreditor Agreement, the Secured Suppliers rank *pari passu* with the Credit Facility Lenders, subject to a waterfall set out in the agreement which provides that: (i) accounts payable owing to the Secured Suppliers rank first; (ii) the "mark to market" liability that would be owed to the Secured Suppliers rank second and *pari passu* with the amounts owed to the Credit Facility Lenders and amounts owing to the providers under the ISO Services Agreements up to a cap of $94.5 million; and (iii) amounts owing to the providers under the ISO Services Agreement above the cap rank third.

(iv) Equity

97. Just Energy's authorized share capital consists of an unlimited number of Common Shares and 50,000,000 preference shares (the "**Preferred Shares**"). As at March 1, 2021, there were 48,078,637 Common Shares and no Preferred Shares issued and outstanding. The Common Shares are listed on the TSX and the NYSE.

E. Background to CCAA Proceedings

(a) Just Energy's efforts to improve financial performance

98. Over the past few years, the Just Energy Group has taken various steps to address significant financial challenges (including high leverage levels and an unsustainable capital structure) and liquidity risks faced by the business. Attached as **Exhibits** "**Q**" and "**R**" are the Interim Order and Final Order affidavits sworn by Jim Brown (my predecessor as Just Energy's CFO and currently Just Energy's Chief Commercial Officer) for the Arrangement proceeding that describes the measures taken by the Just Energy Group in detail.

99. In May 2020, after a year-long review of strategic alternatives (the "**Strategic Review**"), Just Energy concluded that the Recapitalization was the only viable option short of an insolvency proceeding that provided a long-term solution to its financial challenges. Following extensive negotiations, Just Energy entered into support agreements with its Credit Facility and Term Loan lenders and launched the Arrangement proceedings under s. 192 of the CBCA in July 2020. The Arrangement was approved by a Final Order of the Court granted on September 2, 2020 and the Recapitalization closed on September 28, 2020. The Recapitalization was the culmination of a comprehensive plan to strengthen and de-leverage its business and it positioned the Just Energy Group for sustainable growth as an independent industry leader. After the Recapitalization closed,

the Just Energy Group hit its financial targets and accordingly the Board approved a distribution of the Q3 bonus, which were tied to meeting those targets.

(b) Texas regulatory environment

100. As noted above, this filing is the result of recent events in Texas. For context, I explain the regulatory environment in Texas below before describing the Texas weather event.

101. Fulcrum Retail Energy, LLC, Just Energy Texas L.P., Tara Energy, LLC, and Hudson Energy Services, LLC (the "**Just Energy Texas Entities**") have electricity licenses in Texas. The Just Energy Texas Entities are subject to oversight from ERCOT and PUCT.

102. ERCOT is the ISO that is solely responsible for managing the Texas Interconnection, which covers 213 of the 254 Texas counties. ERCOT is subject to regulation by PUCT, a state agency that regulates the state's electric, water and telecommunication utilities, implements respective legislation, and offers customer assistance in resolving consumer complaints. Among other things, PUCT enforces compliance with Texas utility laws and regulates electric utility rates. Thus, PUCT is ultimately responsible for ERCOT's operations and overall electricity regulation in Texas.

103. Generally, ISOs within the Eastern and Western Interconnections (the two main grids in the United States outside Texas) are subject to regulation by the FERC and various regional reliability agencies. The ERCOT grid, by contrast, is its own standalone interconnection, and it has limited ability to import electricity into or export it out of the grid. Texas is the only one of the contiguous 48 states with its own standalone electricity grid. However, the delivery of electricity in the ERCOT market operates similarly to other electricity markets in the United States. Market participants buy and sell electricity using both the Real-Time Market (*i.e.*, electricity for current

transmission/distribution and use by consumers) and the Day-Ahead Market, both of which are facilitated by ERCOT in its role as the ISO, and through bilateral contracts that indirectly facilitate the majority of wholesale electricity sales in the ERCOT market.

104. These markets allow ERCOT, in conjunction with the qualified scheduling entities ("**QSEs**") that transact directly in the day-ahead and spot markets (facilitated by the bilateral contracts entered into between electricity generators/wholesalers, retailers, and the qualified scheduling entities) to ensure that electricity is reliably delivered to all market participants.

105. As such, in addition to managing the overall operation of the electrical grid, ERCOT effectively serves as a clearinghouse for the purchase and sale of electricity between electric generation and load-serving entities. ERCOT also performs financial settlements for the competitive wholesale electricity market and enforces certain credit requirements, including collateral-posting requirements, to ensure market participants' creditworthiness for ERCOT-facilitated transactions.

106. The Just Energy Group is required to post collateral or other form of financial comfort with ERCOT in an amount determined pursuant to ERCOT's protocols. If the Just Energy Group is unable to provide such financial comfort or pay its invoices when due, ERCOT can suspend the Just Energy Group's market participation in as little as 2 days and transfer the Just Energy Group's customers to a POLR on 5 days' notice. Such actions would be devastating to the Just Energy Group's business.

(c) Unprecedented winter storm and regulatory response in Texas

107. Just Energy Group is facing new liquidity pressures and challenges because of the extreme cold weather recently experienced throughout Texas, which is the Just Energy Group's single

largest market and one of the largest electricity markets in the United States. Attached as **Exhibits** "**S**","**T**","**U**", "**V**" and "**W**" are press releases issued by the Just Energy Group between February 16 and March 3, 2021, describing the Texas weather event and its impact on the Just Energy Group.

108. Beginning on February 13, 2021, Texas experienced an unprecedented and catastrophic energy crisis when a powerful winter storm moved over and blanketed the entire state, resulting in temperatures well below 20°F in a state where many homes and businesses rely on electricity for heating. Price shocks in Texas were felt as early as February 12 when natural gas prices jumped from U.S. $3 to over U.S. $150/MMBtu in anticipation of gas supply shortages.

109. Customer demand for electricity grew on February 13 and 14, pushing Texas's power grid to a new winter peak demand record, topping 69,000 megawatts between 6:00 p.m. and 7:00 p.m. This was more than 3,200 megawatts higher than the previous winter peak set in January 2018.

110. As noted above, the Just Energy Group hedges weather risk based on historical scenarios. For February 2021, the Just Energy Group had weather hedge contracts in place to cover an incremental 50% increase in customer usage above normal February consumption. However, due to the extreme cold weather, customer usage increased significantly above the weather hedges for a sustained period. For example, the Just Energy Group's load in Texas was up over 200% on February 14 from the same day a week earlier.

111. In the early hours of February 15, ERCOT declared an Energy Emergency Alert Level 1, urging consumers to conserve power. Within an hour, ERCOT elevated to an Energy Emergency Alert Level 2, and only 13 minutes later, at 1:25 a.m., ERCOT elevated to an Energy Emergency Alert Level 3. With the grid stressed to within minutes of a catastrophic failure, ERCOT ordered transmission operators to implement deep cuts in load in the form of rotating outages to reduce the

strain and avoid a complete collapse of the grid. While demand soared, supply plummeted as power plants tripped offline and demand threatened to exceed supply. Natural gas prices spiked in response to falling supply as lines froze up. As a result, the cost to produce electricity from gas-fueled power plants increased dramatically.

112. The financial impact of the Texas winter event was exacerbated by the actions of Texas regulators. PUCT adopted an order instructing ERCOT to set the real time price at the high offer cap of U.S. $9,000 per MWh during an emergency meeting on February 15, 2021. PUCT's actions and rationale are described by the Wall Street Journal article, *Amid Blackouts, Texas Scrapped Its Power Market and Raised Prices. It Didn't Work*, a copy of which is attached as **Exhibit** "**X**". PUCT has stated that it made this order because the computer that was supposed to help match supply and demand on the power grid was not working properly and PUCT believed it needed to intervene to relieve a growing crisis. However, the higher prices did not result in additional power production because many electricity generators were dealing with frozen equipment or fuel shortages and were unable to deliver more power. As a result, buyers were forced to pay significantly higher prices for the same limited supply of electricity as before.

113. While ERCOT rescinded all load shed instructions by 1:05 a.m. on February 18, it failed to return the real time prices to their normal levels as required by PUCT's order and ERCOT Nodal Protocols. Instead, the price for wholesale electricity remained at U.S. $9,000/MWh for more than four straight days until 9:00 a.m. on February 19, 2021 (*i.e.*, for over 100 consecutive hours). In contrast, the real time electricity prices did not hit U.S. $9,000 for even one 15-minute interval for all of 2020.

114. In addition to artificially high electricity costs in ERCOT during the Texas weather event, the Just Energy Group was also exposed to significantly increased ancillary service costs, which are charges associated with maintaining the reliability of the grid that are uplifted to all market participants daily based on that day's load ratio share. The Just Energy Group believes that its invoices include Ancillary Services charges that were either erroneously calculated or are an unreasonable application of ERCOT's protocols.

115. For example, typically the Just Energy Group's invoices include a charge for Reliability Deployment Ancillary Service Imbalance Revenue Neutrality that ranges from U.S. $0 to U.S. $23,500 per day. Between June 2015 and February 16, 2021, the Just Energy Group paid approximately $504,000 in respect of this charge. In contrast, for the three settlement dates of February 17, 18 and 19, 2021, the aggregate charge is over U.S. $53 million. This is approximately **106 times higher than the last 5 years of charges combined**. The Just Energy Group has not been able to discern any reasonable basis for the exponential increase in this charge and ERCOT has provided no data in support of this determination.

116. The Just Energy Group had hedge contracts in place to cover its normal load level ancillary costs which are based on its normal load share of electricity in ERCOT. However, the significantly higher Ancillary Service prices resulted in significant additional costs of more than U.S. $105 million that cannot be covered by the Just Energy Group's hedge contracts.

(d) Efforts to seek relief from Texas regulators refused

117. Other energy retailers operating in the Texas market have also suffered significant losses and incurred significant costs because of the Texas weather event and ERCOT's response. The Texas weather event caused the ERCOT wholesale market to incur charges of approximately

U.S. $55 billion over a seven-day period, an amount equal to what it ordinarily incurs over four years. In recognition of this fact, on February 21, 2021, PUCT issued an "Order Directing ERCOT to Take Action and Granting Exception to ERCOT Protocols" (the "**February 21 Order**"), a copy of which is attached as **Exhibit** "**Y**", which explained that "In an attempt to protect the overall integrity of the financial electric market in the ERCOT region, the Commission concludes it is necessary to authorize ERCOT to use its sole discretion in taking actions under the ERCOT Nodal Protocols to resolve financial obligations between a market participant and ERCOT."

118. In response, ERCOT issued a notice on February 22, 2021 stating that it was "temporarily deviating from Protocol deadlines and timing related to settlements, collateral obligations, and Invoice payments while prices are under review. Invoices or settlements will not be executed until issues are finalized by State leaders considering solutions to the financial challenges caused by the winter event, which is anticipated to occur this week." However, just one day later, ERCOT changed course without explanation and issued a second notice saying that "ERCOT has ended its temporary deviation from protocol deadlines and timing related to settlements, collateral obligations, and invoice payments. Invoices and settlement will be executed in accordance with Protocol language." Copies of the February 22 and 23 notices from ERCOT are attached as **Exhibits** "**Z**" and "**AA**".

119. On March 1, 2021, representatives of the Just Energy Group had a teleconference with ERCOT personnel to discuss these charges during which participating ERCOT personnel were unable to explain the dramatic departure from historical charges other than stating that it was protocol driven. The Just Energy Group has officially disputed invoices from ERCOT and taken the position that ERCOT should remove the administrative price adders that set prices to U.S. $9,000/MWh from 1:05 a.m. on February 18, 2021 forward and to challenge the additional and

unprecedented ancillary costs. Copies of the written submissions sent to ERCOT are attached as **Exhibit** "**BB**".

120. In addition, on March 3, 2021, the Just Energy Group filed with PUCT a petition for emergency relief seeking an order (i) that ERCOT deviate from the deadlines and timing in its Protocols and Market Guides related to settlements, collateral obligations, and invoice payments and suspend the execution or issuance of invoices or settlements for intervals during the dates of February 14, 2021 through February 19, 2021 until issues related to the catastrophic Texas weather event of February 2021 raised by Texas authorities from the executive and legislative branches (collectively, "**State Authorities**") are investigated, addressed, and resolved, or alternatively (ii) waiving Section 9.6(2) of the ERCOT Protocols to allow the Just Energy Group to delay payment of certain ERCOT Settlement Invoices while it fully exercises its rights under the ERCOT Protocols to dispute the invoiced payment amounts. A copy of the petition is attached as **Exhibit** "**CC**". PUCT has not granted the relief requested by the Just Energy Group.

121. As such, the Just Energy Group had no choice but to pay its invoices from ERCOT. As noted above, under ERCOT's protocols, the Just Energy Group must pay any invoices within two days, even if it is disputing them. Otherwise, ERCOT can suspend the Just Energy Group's market participation in as little as 2 days and transfer the Just Energy Group's customers to a POLR.

122. The Texas weather event and the response from ERCOT and PUCT has been devastating for other participants in the Texas electricity market as well. As noted above, Brazos Electric Power Cooperative filed for creditor protection under Chapter 11 of the U.S. Bankruptcy Code on March 1, 2021 and ERCOT has barred two electricity sellers (Entrust Energy Inc. and Griddy Energy LLC) from Texas's power market for failing to make payments and has already transferred

their customers to a POLR. Several energy retailers have also filed petitions for emergency relief with PUCT that, like the Just Energy Group's petition, are seeking relief from section 9.62 of the ERCOT Protocols, including Brilliant Energy, LLC, Liberty Power, and Spark Energy, Inc.

(e) Payment and collateral demands from other creditors

123. The Just Energy Group's liquidity challenges have been further exacerbated because certain business partners and regulators following the Texas weather event have issued demands or taken actions in response to concerns about the Just Energy Group's liquidity and significant amounts owing to trade creditors that are coming due:

(a) The Just Energy Group has received demands from certain of its bonding companies for more than $30 million in additional collateral. Over $20 million of additional collateral has already been provided and the rest is expected to be provided by March 17, 2021. The bonding companies had either threatened to start the process of cancelling bonds issued by them if the Just Energy Group did not post additional collateral or had already started the process of cancelling bonds they issued and agreed to issue rescission notices upon receipt of the additional collateral. The cancellation of the bonds may have resulted in the revocation of licenses necessary for the Just Energy Group to carry on business in certain jurisdictions.

(b) On February 24, 2021, the Just Energy Group received a letter from a transmission and distribution service provider stating that the Just Energy Group was delinquent on invoices totaling U.S. $141,745 that had an original due date of February 23, 2021 (*i.e.*, one day earlier), that the Just Energy Group would be in default if the

delinquent balance is not received within ten days, and that the supplier would exercise its remedies in the event of default. The Just Energy Group paid all outstanding amounts due to the transmission and distribution service providers on March 1, 2021, as an event of default for non-payment may result in ERCOT transferring customers to a POLR.

(c) On March 22, 2021, approximately $270 million owing to counterparties under the ISO Services Agreements. This amount has increased significantly from what the Just Energy Group would normally expect, which increase is a direct result of the Texas weather event. In addition, more than $75 million in payables owing to Commodity Suppliers will also come due around March 22, 2021.

F. Urgent Need for Relief under the CCAA

124. Following the Texas weather event, the steps taken by the Texas regulators in response and the additional demands from creditors, the Just Energy Group is facing significant liquidity challenges which threaten its ability to continue as a going concern. Both ERCOT and PUCT have ignored the Just Energy Group's requests to delay payment of invoices it is challenging

125. On March 5, 2021, the Just Energy Group received three invoice for approximately U.S. $123.21 million from ERCOT, of which approximately U.S. $96.24 million is required to be paid by the end of day on March 9, 2021.[8] The Just Energy Group cannot pay this amount without access to the DIP Facility (defined below). However, if the Just Energy Group does not pay amounts owing to ERCOT, ERCOT can assign some or all of its customers in Texas to a POLR.

[8] The remaining amount is paid by BP in the first instance under the BP Agreement. The amount owing to BP from the Just Energy Group is part of the amounts owing to ISO counterparties coming due on March 22, 2021.

126. In addition to the March 5 ERCOT invoices, on March 8, 2021, the Just Energy Group received from ERCOT (i) a notice that it must post approximately U.S. $25.7 million of additional collateral within two business days; and (ii) three invoices for approximately U.S. $ 25.46 million, of which approximately U.S. $18.86 million is due by March 10, 2021.[9] In addition, as noted above, the Just Energy Group has significant amounts coming due in the near future.

127. As such, the Just Energy Group has significant liabilities coming due in the near future that it cannot currently pay. Just Energy is therefore insolvent as it cannot meet its liabilities as they come due. In these circumstances, the Applicants require urgent relief under the CCAA to ensure that they can continue as a going concern, service their significant customer base, maintain employment for approximately 1,000 employees, and preserve enterprise value.

128. The Applicants, with the assistance of the proposed Monitor, have sized the DIP to address the Just Energy Group's urgent liquidity needs over the first ten days of this proceeding. The Applicants estimate that they will a beginning cash balance of $77.4 million on March 9, 2021 and the Applicants are seeking authority to draw $126 million on the DIP Facility on March 9. Between March 9 and 19, the cashflows reflect that the Applicants will need to pay the following amounts:

(a) Energy and delivery costs: $224.6 million.

(b) Taxes: $5.4 million.

(c) Commissions: $6.3 million.

[9] The remaining amount is paid by BP in the first instance under the BP Agreement. The amount owing to BP from the Just Energy Group is part of the amounts owing to ISO counterparties coming due on March 22, 2021.

(d) Selling and other costs: $6.6 million.

(e) Interest expenses and fees: $3.2 million

(f) Professional fees: $1.4 million.

129. The Cash Flow Forecasts state that (as a result of the receipts and outflows set out there) the Applicants cash balance is expected to be as low as $33 million at certain points in the first 10 days of this proceeding. In addition to the specific amounts set out above, the Just Energy Group expects that it may receive other demands or invoices that will have to be paid in the first 10 days of this proceeding. The Just Energy Group expects that it may receive one or more additional invoices from ERCOT, and, in light of the continuing uncertainty created by the Texas weather event, it is not possible to reliably predict the amount of those invoices. In addition, as discussed above, the Just Energy Group operates in heavily regulated markets and may receive additional demands to post collateral or other financial security on short notice after its CCAA filing as a condition of permitting the Just Energy Group to continue doing business. As a result, in order to ensure that it can continue going concern operations in the first 10 days of this proceeding, the Just Energy Group needs authorization to access the full DIP Facility to ensure that it has sufficient liquidity to pay both the specific amounts set out above and other demands that may arise.

G. Initial Relief Sought

(a) Stay of Proceedings

130. The Applicants are insolvent and urgently require a stay of proceedings and other protections provided by the CCAA in order to preserve the status quo and secure breathing space to prevent precipitous regulatory and counterparty action which threatens its business. The proposed Initial Order provides a stay of proceedings until March 19, 2021 (the "**Stay Period**").

131. The proposed Initial Order includes a prohibition on any present or future bank providing the Cash Management System (as defined in the Initial Order) from exercising any sweep remedy under any applicable documentation and exercising or claiming any right of set-off against any account included in the Cash Management System (except for the cash pooling and zero-balancing account services provided with respect to the JPMorgan accounts). As noted above, the Canadian Bank Account Holders have recently agreed to decentralize the Just Energy Group's cash management system with CIBC. Therefore, this relief is needed to ensure that any amounts borrowed under the DIP Facility and any receipts received during the Stay Period are used to facilitate the Just Energy Group's restructuring objectives and to maintain its going concern operations. Any risk of prejudice to banks providing the Cash Management System is mitigated by the fact that the Canadian Bank Account Holders have agreed that all account activity for outgoing wire or EFT direct deposits will need to be fully funded in advance.

132. As noted above, the Applicants seek to have a stay of proceedings and other provisions of an Initial Order under the CCAA extended to the Just Energy LPs (with the Applicants, the "**Just Energy Entities**"). The business and operations of the Applicants are heavily intertwined with that of the Just Energy LPs. In particular, the Just Energy LPs hold most of the gas and electricity licenses granted by Canadian regulators pursuant to which the Just Energy Group conducts business in Canada.

133. Moreover, the proposed Initial Order provides that, pursuant to section 11.1(3) of the CCAA, all rights and remedies of Provincial Regulators are stayed during the Stay Period except with the written consent of the Just Energy Entities and the Monitor or leave of the Court.

134. The Applicants believe that it is necessary to extend the Stay to prevent Provincial Regulators and U.S. Regulators from taking steps against any Licensed Entities and U.S. Licensed Entities that could undermine their ability to restructure their business, and to provide a meaningful opportunity for licenceholders to engage with the regulators with respect to a path forward. In order to give effect to the Stay as against parties in the United States, the Applicants intend to commence a proceeding to recognize this Canadian proceeding under Chapter 15 of the US Bankruptcy Code. As discussed above, with the benefit of the DIP Facility, the Applicants intend to continue making payments to the contractual counterparts in the ordinary course, which is reflected in the Cash Flow Forecast. Despite this, if the Stay is not granted, it is possible that the Provincial Regulators or U.S. Regulators may still take steps that would cause the Just Energy Group to lose its ability to conduct business with its customers and frustrate the Just Energy Group's restructuring efforts to the detriment of the Just Energy Group and its key stakeholders.

(b) DIP Financing

135. Because of its current liquidity challenges, and as demonstrated in the Cash Flow Forecast (discussed below), the Just Energy Group requires interim financing to provide stability, continue going concern operations, and to restructure its business as part of this CCAA proceeding.

136. The Just Energy Group contacted its five largest stakeholders and provided them with a term sheet and certain information necessary to assess and evaluate an opportunity to provide debtor-in-possession financing. The information provided included a situation update presentation and access to a virtual data room. The Just Energy Group also responded to numerous information requests and management held virtual meetings with these stakeholders to answer questions about the Just Energy Group and its financial forecast. In addition, the Just Energy Group engaged with four other parties who had interest in considering the DIP financing opportunity. The Just Energy

Group negotiated the form of non-disclosure agreement ("**NDA**") with two of these parties. However, due to the short timeframe in which the Just Energy Group needed to secure DIP financing, there was not sufficient time for the parties to finalize NDAs or conduct the necessary due diligence.

137. As a result of this process, subject to certain terms and conditions, the DIP Lenders have agreed to provide a debtor-in-possession facility (the "**DIP Facility**"). The related credit agreement (the "**Commitment Letter**") is attached to this affidavit as **Exhibit** "**DD**".

138. The DIP Facility includes the following commercial terms:

(a) **Facility size**: U.S. $125 million delayed-draw term loan credit facility, subject to a first draw of U.S. $100 million and a second draw of U.S. $25 million.

(b) **Term**: December 31, 2021.

(c) **Interest**: 13% per annum, payable in cash.

(d) **Default rate**: 2% per annum, payable in cash.

(e) **Fees:** Commitment Fee equal to 1% of Commitments and Origination Fee equal to 1% of Commitments.

139. The DIP Facility is proposed to be secured by a Court-ordered charge (the "**DIP Lenders' Charge**") on all of the present and future assets, property and undertaking of the Applicants (the "**Property**"). The DIP Lenders' Charge will not secure any obligation that exists before the Initial Order is made. The DIP Lenders' Charge will have priority over all other security interests, charges

and liens, except the Administration Charge, the FA Charge, the Directors' Charge and the KERP Charge and *pari passu* with the Priority Commodity/ISO Charge (each defined below).

140. In the Initial Order, the Applicants are seeking authorization to request an initial draw of U.S. $100 million to enable them to pay specified amounts that are known to be due during the first 10 days of the CCAA proceeding. These amounts are specified in the Cash Flow Forecast and include amounts owed to ERCOT and other energy and delivery costs, taxes, commissions, selling and other costs, interest expenses and fees, and professional fees and other costs and expenses in connection with the CCAA proceedings. The balance of funds will only be used if necessary, providing the Applicants with flexibility to address additional liquidity demands made during the first 10 days of the CCAA proceeding given the nature of the Applicants' business, unforeseen liquidity demands that may need to be satisfied to ensure the Applicants' ability to operate as a going concern, and the continued risk of receipt of future invoices from ERCOT that must be paid within 2 business days of receipt. At the Comeback Hearing, the Applicants intend to request the authority to draw down the remainder of the DIP Facility in accordance with the Cash Flow Forecast.

(c) Monitor

141. FTI Consulting Canada Inc. ("**FTI**") has consented to act as the Monitor of the Applicants under the CCAA. A copy of the Monitor's consent is attached as **Exhibit** "**EE**".

(d) Administration Charge

142. The Applicants propose that the Monitor, its Canadian and U.S. counsel, and Canadian and U.S. counsel to the Applicants be granted a court-ordered charge on the Property as security for their respective fees and disbursements relating to services rendered in respect of the

Applicants (the "**Administration Charge**"). The Administration Charge is proposed to rank *pari passu* with the FA Charge and have first priority over all other charges. With the concurrence of the proposed Monitor, the Applicants are proposing that the Administration Charge for the first ten days be limited to $2.2 million and will be seeking to increase the charge at the comeback hearing.

(e) Financial Advisor and FA Charge

143. In the aftermath of the Texas weather event, Just Energy engaged BMO Nesbitt Burns Inc. ("**BMO**") as an independent financial advisor to assist Just Energy in dealing with the liquidity challenges it was facing and to provide financial advisory services to, among other things, assist in exploring and evaluating potential transactional alternatives. The engagement letter for BMO is attached as **Confidential Exhibit** "**FF**" (the "**BMO Engagement Letter**"). The Applicants are asking, as part of the proposed Initial Order, for the Court to approve Just Energy's engagement of BMO as its financial advisor and are seeking a charge in the amount of $1.8 million (the "**FA Charge**") to secure the amounts payable to BMO. At the comeback hearing, the Applicants will be seeking to increase the FA Charge. The FA Charge is proposed to rank *pari passu* with the Administration Charge and have first priority over all other charges.

144. As the BMO Engagement Letter contains commercially sensitive information, the proposed Initial Order also orders that the Confidential Appendix to the Pre-Filing Report be sealed and not form part of the court record pending further order of the Court.

(f) Directors' and Officers' Protection

145. A successful restructuring of the Just Energy Group will only be possible with the continued participation of its directors, officers, management, and employees. These personnel are

essential to the viability of the Applicants' continuing business and the preservation of enterprise value.

146. I am advised by Marc Wasserman of Osler and believe that, in certain circumstances, directors of Canadian companies can be held liable for certain obligations of a company owing to employees and government entities, which may include unpaid accrued wages, unpaid accrued vacation pay, and unremitted sales, goods and services, and harmonized sales taxes. The Applicants estimate, with the assistance of FTI in its capacity as proposed Monitor, that these obligations may amount to as much as approximately $5.8 million.

147. I am also advised by Kirkland and believe that, in certain circumstances, directors of U.S. companies may be held liable for certain obligations of a company owing to employees and government entities, which may include sales and use taxes, employee withholding and certain payroll taxes, state income taxes in a few states, 401(k) and other obligations withheld from employees, unpaid wages (including paid vacation), ERISA fiduciary obligations, and non-payment of contractual obligations owed to suppliers of perishable agricultural commodities. The Applicants estimate, with the assistance of FTI in its capacity as proposed Monitor, that these obligations may amount to as much as approximately $30 million.

148. It is my understanding that Just Energy's present and former directors and officers are among the potential beneficiaries under liability insurance policies (the "**D&O Insurance**") that cover an aggregate annual limit of approximately U.S. $38.5 million. However, I understand that the D&O Insurance has various exceptions, exclusions, and carve-outs where coverage may not be available and that claims on such policy have already been made. I therefore do not believe that this insurance policy provides sufficient coverage against the potential liability that the directors

and officers could incur in relation to this CCAA proceeding. The current D&O Insurance will be expiring on its own terms on April 1, 2021. The Applicants are currently in the process of either securing renewal or replacement insurance or purchasing a tail for the existing policy and a new policy.

149. In light of the complexity and scope of the overall enterprise and potential liabilities and the uncertainty surrounding available indemnities and insurance, the directors and officers have indicated to the Applicants that their continued service to the company and involvement in this proceeding is conditional upon the granting of an order under the CCAA which grants a charge in favour of the directors and officers of Just Energy in the amount of $30 million on the Property (the "**Directors' Charge**"). The Directors' Charge is proposed to be subordinate to the Administration Charge and FA Charge but shall rank in priority to all the other charges. The Directors' Charge is necessary so that the Applicants may benefit from their directors' and officers' experience with the Applicants' business and industry, and so that its directors and officers can guide the Applicants' restructuring efforts.

(g) KERP

150. At the comeback hearing, the Applicants will be seeking approval of a key employee retention plan (the "**KERP**") and the granting of a Court-ordered charge (the "**KERP Charge**") as security for payments under the KERP. A summary of the KERP is attached as **Confidential Exhibit** "**GG**". The KERP summary contains commercially sensitive information as well as personal information relating to the Just Energy Group's employees. Therefore, the proposed Initial Order orders that the Confidential Exhibit EE be sealed and not form part of the court record pending further order of the Court.

151. The KERP was developed by the Applicants to facilitate and encourage the continued participation of senior management and other key employees of the Applicants who are required to guide the business through the restructuring and preserve value for stakeholders. The KERP will provide participants with additional payments as an incentive to continue their employment through the CCAA proceedings. These employees have significant experience and specialized expertise that cannot be easily replicated or replaced. Further, these key employees will likely have other, more certain employment opportunities and will be faced with a significantly increased workload during the restructuring process.

152. The Applicants propose to include the following employees in the KERP:

Group	Approximate Number of Employees	Approximate Estimated Cost
Executives	8	$3.39 million
Commercial	11	$1.37 million
Operations	13	$925,249
Legal, Regulatory, Finance and HR	10	$1.14 million
Total	**42**	**$6.83 million**[10]

153. The KERP payments will be made in three installments payable as follows: (i) 180 days after the filing date; (ii) 270 days after the filing date; and (iii) the earlier of 15 months after the filing day or exit from the CCAA proceeding. For executive employees, the first and second

[10] Over $1 million of the amount of the KERP comprises foreign exchange charges for employees being paid in U.S. dollars.

installments will each be in an amount equal to 25 percent of the total KERP payment payable to the employee in question whereas the final installment will be equal to 50 percent of the total KERP payment. For all other employees, the first and second installments will each be in an amount equal to 40 percent of the total KERP payment payable to the employee in question whereas the final installment will be equal to 20 percent of the total KERP payment. The total KERP payments range from 35 percent to 90 percent of the base salary of the relevant employees.

(h) Q3 Bonuses

154. The cash flows included payment of certain bonuses awarded to Just Energy Group employees for Q3 of Fiscal 2021 and the Just Energy Group intends to pay them when due on April 2, 2021, in accordance with the terms of the proposed Initial Order.

155. The payment of the bonus depended on Just Energy achieving corporate targets as set and approved annually by the Compensation Committee and the Board of Just Energy. Following the close of the applicable fiscal quarter, the Board has the absolute discretion to determine if the corporate targets have been met and will make all determinations with respect to any bonus. Any approved bonus shall be paid no later than 60 days following the date the bonus is approved by the Board, subject to the executive's continued employment through the end of the applicable fiscal quarter.

156. At the Compensation Committee meeting on July 2, 2020, the Compensation Committee reviewed a quarterly bonus structure for FY 2021 based on the excess achievement of quarterly Base EBITDA targets. If Just Energy's actual Base EBITDA result for a fiscal quarter exceeds the target, then the bonus for such quarter would be funded from a portion of such excess. The Compensation Committee recommended to the board that the quarterly bonus structure for FY

2021, including the quarterly Base EBITDA targets, be approved. The Q3 target was set at $42 million and the Board approved the quarterly bonus structure for FY 2021, including the quarterly Base EBITDA targets, at its July 3, 2020 meeting.

157. At the Compensation Committee meeting on February 9, 2021, it was reported that the Q3 Base EBITDA result was $55.785 million, which exceeded the target of $42 million, which is reflected in Just Energy's Q3 financials. The Compensation Committee requested that the Board approve the bonus pool for Q3 in the amount of approximately $3.23 million and the Board approved the Q3 bonus at its February 10, 2021 meeting. As such, the Q3 bonuses were properly approved by both the Compensation Committee and the Board based on the achieved Base EBITDA for Q3 in accordance with the terms of the bonus structure that the Compensation Committee and the Board approved in July 2020.

(i) Priority Commodity/ISO Charge

158. To continue to operate as a going concern and successfully achieve its restructuring objectives, the Just Energy Group requires its relationships with its Commodity Suppliers and ISO Service Providers to remain uninterrupted. I am advised by Mr. Wasserman and believe that the Commodity Agreements (as defined in the Initial Order) are covered by the eligible financial contract provisions in the CCAA and, therefore, the Applicants cannot rely on a stay of proceedings to prevent the Commodity Suppliers from terminating their existing contractual commitments or refraining from conducting new business with the Applicants.

159. Accordingly, to incentivize Commodity Suppliers and ISO Services Providers to continue transacting with the Just Energy Group, the proposed Initial Order grants a charge to any counterparty to a Commodity Agreement or ISO Agreement (as defined in the Order) as of March

9, 2021 that has executed or executes a Qualified Support Agreement (as defined in the Initial Order) with a Just Energy Entity and refrained from exercising termination rights under the Commodity Agreement as a result of the commencement of these proceedings absent an event of default under such Qualified Support Agreement (each, a "**Qualified Commodity/ISO Supplier**"). The Initial Order provides that each Qualified Commodity/ISO Supplier shall be entitled to the benefit of a charge (the "**Priority Commodity/ISO Charge**") on the Property in an amount equal to the value of the amounts that are due and payable, at the applicable time, for: (i)(A) the physical supply of electricity or gas that has been delivered on or after March 9, 2021; (B) financial settlements on or after March 9, 2021; and (C) amounts owing under a confirmation or transaction executed pursuant to a Commodity Agreement as a result of the termination thereof in accordance with the applicable Qualified Support Agreement on or after March 9, 2021; and (ii) for services actually delivered by a Qualified Commodity/ISO Supplier on or after March 9, 2021 pursuant to an ISO Agreement (but for greater certainty, excluding any amount owing for ISO services provided under the BP ISO Agreement on or before the date of this Order, whether or not yet due) (the "**Priority Commodity/ISO Obligation**").

160. The Just Energy Group cannot continue going concern operations or successfully restructure if Commodity Suppliers and ISO Services Providers do not enter into new transactions. Due to the financial pressures the Just Energy Group is facing, suppliers may be reluctant to continue transacting without receiving additional security. Under the terms of the Credit Agreement, the Term Loan Agreement and the Intercreditor Agreement, the Just Energy Group cannot provide additional security without the applicable lenders' consent. Therefore, the Priority Commodity/ISO Charge is essential for incentivizing Commodity Suppliers and ISO Services Providers to continue doing business with the Just Energy Group.

161. The Just Energy Group has entered into Qualified Support Agreements with its two most significant Secured Suppliers, (i) Shell Energy North America (Canada) Inc., Shell Energy North America (US), L.P., and Shell Trading Risk Management, LLC (collectively, "**Shell**"); and (ii) BP Canada Energy Company, BP Canada Energy Marketing Corp., BP Energy Company, a Delaware corporation, BP Corporation North America Inc., and BP Canada Energy Group ULC (collectively, "**BP**"), copies of which are attached as **Exhibit** "**HH**" and "**II**". In these Commodity/ISO Supplier Support Agreements, among other things, Shell and BP have agreed to not exercise any termination rights and to supply and deliver services under their existing agreements consistent with historical practice and perform such other acts that are required to satisfy all of their obligations. However, Shell and BP's obligation to continue supplying services is conditional on the Court granting the Commodity/ISO Charge.

(j) Cash Flow Forecast

162. The Applicants prepared 13-week cash flow projections and the underlying assumptions as required by the CCAA. A copy of the cash flow projections is attached as **Exhibit** "**JJ**". The projections demonstrate that the Applicants have sufficient liquidity and cash on hand to continue going concern operations during the Stay Period. I confirm that:

(a) all material information relative to the 13-week cash flow projections and to the underlying assumptions has been disclosed to FTI in its capacity as proposed Monitor; and

(b) senior management has taken all actions that it considers necessary to ensure that: (i) the individual assumptions underlying the 13-week cash flow projections are appropriate in the circumstances; and (ii) the individual assumptions underlying the

13-week cash flow projections, taken as a whole, are appropriate in the circumstances.

163. The Applicants anticipate that the Monitor will provide oversight and assistance and will report to the Court in respect of the Applicants' actual results relative to the cash flow forecast during this proceeding if the relief being requested by the Applicants is granted by the Court.

(k) Payments During this CCAA Proceeding

164. During the course of this CCAA proceeding, the Applicants intend to make payments for goods and services supplied post-filing in the ordinary course as set out in the Cash Flow Forecast described above and as permitted by the Initial Order.

165. Moreover, in order to ensure uninterrupted business operations during the CCAA proceeding, the Applicants are proposing in the Initial Order that they be authorized, with the consent of the Monitor, in consultation with the DIP Agent and the agent under the Credit Agreement (or its advisors), to make certain payments, including payments owing in arrears, to certain third parties that are critical to the Just Energy Group's business and ongoing operations.

166. I am advised by Kirkland and believe that the nonpayment of taxes (including, without limitation, sales, use, withholding, unemployment, and excise) could result in a Director or Officer of a Just Energy Entity being held personally liable in certain circumstances for such nonpayment as well as for taxes related to income or operations incurred or collected by a Just Energy Entity in the ordinary course of business. Accordingly, the proposed Initial Order provides that the Just Energy Entities are authorized to pay any such taxes.

167. In addition, the proposed Initial Order provides that the Applicants shall not grant credit or incur liabilities except in the ordinary course of business but may repay advances under the Credit Agreement for the purpose of creating availability under the LC Facility (as defined in the Initial Order) in order for the Just Energy Entities to provide Letters of Credit to continue to operate their business in the ordinary course during these proceedings, subject to: (i) obtaining the consent of the Monitor with respect to the issuance of the Letters of Credit; and (ii) receipt of written confirmation from the applicable lender(s) under the Credit Agreement that such lender(s) will issue a Letter of Credit of equal value within one business day. The Just Energy Group is required to post collateral with regulators in various jurisdictions where it conducts business and so it is essential that the Just Energy Group have the ability to obtain Letters of Credit to avoid any disruptions that would result from failing to post collateral when required.

(l) Chapter 15 Case

168. Because the Just Energy Group has operations in the U.S., and thus has assets in and valuable business and trade relationships with a number of parties in the U.S., contemporaneously with commencement of the CCAA proceeding, Just Energy intends to initiate a case under Chapter 15 of Title 11 of the United States Code (the "**Bankruptcy Code**") seeking an order to recognize and enforce the CCAA proceeding in the U.S. and protect against any potential adverse action taken by the Just Energy Group's U.S. creditors and stakeholders (the "**Chapter 15 Case**").

169. Just Energy intends to file the Chapter 15 Case in the United States Bankruptcy Court for the Southern District of Texas, where Just Energy maintains its principal place of business in the United States.

170. The Just Energy Group is a consolidated business, with offices and primary operations in both Canada and the United States which is operationally and functionally integrated in many respects. However, the Applicants' center of main interest is in Canada:

(a) The Applicant have assets in Canada.

(b) The operations of the Just Energy Group are directed in part from Just Energy's head office in Toronto, Ontario. In particular, decisions relating to the Just Energy Group's primary business (*i.e.*, buying, selling and hedging energy) are primarily made in Canada.

(c) All other members of the Just Energy Group report to Just Energy.

(d) Just Energy Corp. (a Canadian subsidiary) acts as a centralized entity providing operational and administrative functions for the Just Energy Group as a whole. These functions are performed by Canadian Just Energy Group employees and include, among other things:

(i) most enterprise-wide IT services;

(ii) enterprise-wide support for finance functions, including working capital management, credit management (including credit checks for customers), payment processing, financial reconciliations, managing business expenses, insurance, and taxation;

(iii) oversight for the legal, regulatory, and compliance functions across the entire Just Energy Group;

(iv) certain enterprise-wide HR functions, such as designing in-house learning and development programs;

(v) financial planning and analysis services, including customer enrollment, billing, customer service, and load forecasting;

(vi) supply planning services, including creating demand models which predict the amount of energy that each entity needs to purchase from suppliers and determining the proper distributor and pipeline necessary to get the gas to the end-consumer; and

(vii) internal audit services.

H. Conclusion

171. I am confident that granting the draft Initial Order sought by the Applicants is in the best interests of the Applicants and their stakeholders. Although the Just Energy Group has made significant strides in recent years to position itself for sustainable growth as an independent industry leader, it is currently in a very challenging financial position because of the "once in a generation" Texas weather event. Without the relief requested, including the stay of proceedings, the Just Energy Group faces a cessation of going concern operations, the liquidation of its assets, and the loss of its employees' jobs. The Just Energy Group requires the breathing space provided by CCAA protection to engage in a dialogue with and among its stakeholders with the goal of maximizing the ongoing value of the business and continuing employment for as many of its employees as is reasonably possible. The granting of the requested stay of proceedings will

maintain the "status quo" and permit an orderly restructuring and analysis of the Just Energy Group's affairs.

SWORN BEFORE ME over video teleconference this 9th day of March, 2021 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the Town of Flower Mound, in the State of Texas while the Commissioner was located in the City Toronto, in the Province of Ontario.

Commissioner for Taking Affidavits
Waleed Malik (LSO No. 67846O)

Michael Carter

Schedule "A"

- Just Energy Ontario L.P.
- Just Energy Manitoba L.P.
- Just Energy (B.C.) Limited Partnership
- Just Energy Québec L.P.
- Just Energy Trading L.P.
- Just Energy Alberta L.P.
- Just Green L.P.
- Just Energy Prairies L.P.
- JEBPO Services LLP
- Just Energy Texas LP

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT,* R.S.C. 1985, C. C-36, AS AMENDED;

Court File No:

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JUST ENERGY GROUP INC. ET AL.

Applicants

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at: TORONTO

AFFIDAVIT OF MICHAEL CARTER

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Fax: (416) 862-6666

Counsel for the Applicants

THIS IS EXHIBIT "C" REFERRED TO IN THE AFFIDAVIT OF MICHAEL CARTER, SWORN BEFORE ME OVER VIDEO CONFERENCE THIS 8TH DAY OF NOVEMBER, 2021.

Commissioner For Taking Affidavits
Andrew Rintoul

Execution Copy

ECOBEE INC.

SEVENTH AMENDED AND RESTATED

UNANIMOUS SHAREHOLDERS' AGREEMENT

April 24, 2018

"**Class C Investors Majority**" means approval by the Class C Investors holding more than sixty percent (60%) of the issued and outstanding Class C Preferred Shares, in the aggregate.

"**Class C Common Majority**" means approval by Shareholders holding more than sixty percent (60%) of the Common Shares issued or issuable upon conversion of Class C Preferred Shares, determined on an as-converted basis.

"**Class C Original Issue Date**" shall have the meaning assigned to such term in the Articles.

"**Class C Preferred Shares**" means the Class C Preferred Shares in the capital of the Corporation.

"**Class C Provisions**" means Sections 1.8, 2.1, 5.2, 5.7, 5.10(3) and (4), 5.11, 5.12, 5.13(1), 5.16, 10.1, 10.2 and 15.1 and Article 7.

"**Class C Purchase Agreement**" means that certain Class C Preferred Share Subscription Agreement entered into between the Corporation and the purchasers of Class C Preferred Shares identified therein, dated as of the date hereof.

"**Common Shares**" means the Common Shares in the capital of the Corporation.

"**Competitor**" means any business entity that is engaged in any business that is the same as or competitive with the Corporation's Business.

"**Control**" has the meaning specified thereto in the Act.

"**Corporation's Business**" has the meaning specified thereto in Section 4.1.

"**Deemed Liquidation Event**" has the meaning set out in the Articles.

"**Directors**" means the persons who are, from time to time, duly elected as directors of the Corporation.

"**EDC**" means Export Development Canada and its Affiliates that hold outstanding Shares.

"**EDC Provisions**" means the terms and conditions contained in Section 5.6(2) and Article 14.

"**Eligible Shareholder**" has the meaning specified thereto in Section 7.3;

"**EIP**" means (i) Energy Impact Fund LP, (ii) any venture capital fund, private equity fund or other entity or investment vehicle now or hereafter existing that is controlled by one or more general partners or managing members of, or shares the same management company with, or is otherwise managed by, Energy Impact Fund LP and that hold outstanding Shares, and (iii) such other Affiliates of Energy Impact Fund LP that hold outstanding Shares as may be designated by written notice from Energy Impact Fund LP to the Corporation from time to time.

"**EIP Provisions**" means Sections 1.8, 2.1, 5.2, 5.6(2) (solely as it relates to the EIP Observer), 5.7(1), 5.10(4), 7.1, 7.5, 7.6(c), 8.1 and 15.1.

"**Excess Investor**" has the meaning specified thereto in Section 10.1.

"**Excess Securities**" has the meaning specified thereto in Section 10.1.

pursuant to an assignment and assumption agreement dated January 1, 2015 by and among the Corporation, ecobee Ltd., Thomvest Seed Capital Inc. and Structured Alpha LP, as further amended as of September 1, 2017, as the same has been or may be amended, modified, supplemented, replaced or restated from time to time.

"**Lombard**" means Stuart Lombard and his Affiliates that hold outstanding Shares.

"**Northleaf**" means Northleaf Venture Catalyst Fund LP and its Affiliates that hold outstanding Shares.

"**OCGC**" means the Ontario Capital Growth Corporation, a corporation formed pursuant to the *Ontario Growth Corporation Act*, 2008 (Ontario), and its Affiliates that hold outstanding Shares.

"**OCGC Provisions**" means the terms and conditions contained in Article 11 hereof.

"**OCGC Securities**" means all of the Securities held by OCGC and for greater certainty, shall include but not be limited to all Class A Preferred Shares, Class B Preferred Shares, Class C Preferred Shares and Common Shares that may be held by OCGC.

"**Ontario Company**" means, in respect of a particular company:

(a) that the company pays, in respect of each fiscal year of the company, at least 50% of the wages, salaries and fees paid by it during such year to employees and contractors who spend a majority of their time working in Ontario;

(b) that, in each fiscal year of the company, 50% or more of the company's full-time employees are employees whose ordinary place of work is an office of the company located in Ontario (provided that in the case of employees who were employees for only part of the year, and not the entire year, such calculation shall be done on a weighted average basis); and

(c) that, in each fiscal year of the company, 50% or more of the company's Senior Officers maintain their "principal residence" (within the meaning of the ITA) in Ontario (provided that for the purposes of determining whether such criteria has been met, the company shall be entitled to rely upon the addresses of such Senior Officers as provided by such Senior Officers and as contained in the company's books and records unless the company has knowledge to the contrary) (provided that in the case of Senior Officers who were Senior Officers for only part of the year, and not the entire year, such calculation shall be done on a weighted average basis).

"**Options**" means options, warrants and/or other similar securities exercisable to purchase Shares, and where a "**number of Options**" is indicated means the number of Common Shares or Preferred Shares for which such Options may be exercised.

"**Permitted Transfer**" has the meaning specified thereto in Section 7.1(1)(a).

"**Permitted Transferee**" means, in respect of Lombard,

(a) a wholly owned Subsidiary of 3181693 Canada Inc.;

(b) his Spouse;

together as a single class on an as-converted basis, which approving Shareholders must include a Class C Common Majority.

"**Registered Plan**" means a registered retirement savings plan or registered retirement income fund of which Lombard is the annuitant, provided that the trustee(s) thereof and all beneficiaries thereof at any time agree to be bound by the provisions of this Agreement as a Shareholder to the extent that they receive Shares or as a shareholder of 3181693 Canada Inc. to the extent that they receive securities of 3181693 Canada Inc.

"**Relay**" means collectively: Relay Ventures Fund L.P., Relay Ventures Parallel Fund L.P., Relay Ventures Parallel US Fund L.P. and their Affiliates that hold outstanding Shares.

"**Relay Provisions**" means Section 5.2, Section 5.7(1), Section 5.13(1), Section 7.1(1), Section 7.5(b)(v), Section 7.6(b) and Section 8.1 of this Agreement.

"**Revolving Credit Loan**" means the $5 million revolving credit loan between the Corporation and the Royal Bank of Canada.

"**Securities**" means Shares and any other securities of the Corporation exchangeable, convertible or exercisable for or otherwise carrying the right or obligation to acquire, Shares, including convertible debt or rights, options or warrants to acquire Shares.

"**Senior Management Group**" means any employee of the Corporation who holds the employment title of Director level or above.

"**Senior Officer**" means, in respect of a company, a person holding the officer title of Vice-President or higher in the company.

"**Share Sale**" means a transaction or series of related transactions in which a Person, or a group of related Persons, acquires from shareholders of the Corporation outstanding shares representing fifty percent (50%) or more of the outstanding voting power of the Corporation's outstanding equity securities as of immediately before such transaction.

"**Shareholders**" means, collectively, the parties hereto (other than the Corporation and the holders of Options who do not also hold Shares) and any Person to whom a Shareholder transfers any Shares, or to whom Shares are issued, in accordance with the terms of this Agreement, and "**Shareholder**" means, individually, any one of them.

"**Shares**" means collectively the Common Shares and/or the Preferred Shares, as the context may require, subject to Section 1.9.

"**Spouse**" means, in relation to any Person who is an individual, any individual to whom that first mentioned individual is married.

"**Structured Alpha Warrant Shares**" means the Common Shares issuable upon the exercise of the Structured Alpha Warrants.

"**Structured Alpha Warrants**" means the warrants to purchase Common Shares issued by the Corporation pursuant to the Loan Agreement under three separate warrants for 600,000, 8,324,851 and 500,000 Common Shares, respectively currently outstanding and held by Structured Alpha LP.

allocated in accordance with the Articles as if the Initial Consideration were the only consideration payable in connection with such transfer, and (y) any Additional Consideration (as defined in the Articles) which becomes payable to the Selling Shareholder and the Eligible Shareholders exercising their rights pursuant to this Section 7.3 upon release from escrow shall be allocated in accordance with the Articles after taking into account the previous payment of the Initial Consideration as part of the same transfer.

7.4 Right of First Refusal.

(a) Except in the case where Section 7.5 shall apply and subject to the exemptions set forth in Section 7.1, the Eligible Shareholders other than the Selling Shareholder shall have the irrevocable right, exercisable by written notice given to the Selling Shareholder within 30 days after the giving of the notice by the Selling Shareholder referred to in Section 7.2, to purchase all or a portion of the Shares of the Selling Shareholder subject to the Offer or, if any Eligible Shareholder has exercised its rights set forth in Section 7.3, the aggregate number of Shares of the Selling Shareholder and of the other participating Shareholders which are the subject matter of the Offer (in either case, the "**Selling Shareholders Shares**"), by cash or certified cheque, *pro rata* in proportion to their respective holdings of Shares (or in such other proportions as they may unanimously agree among themselves in writing). In the event that one or more of the Eligible Shareholders elects to purchase its full *pro rata* proportion of the Selling Shareholders Shares and one or more of the Eligible Shareholders declines to elect to purchase such Eligible Shareholder's own full allotment, the fully-exercising Eligible Shareholder(s) shall have the further and final right and option, exercisable by notice in writing within 5 days of being notified by the Selling Shareholder that one or more of the Eligible Shareholders has declined to so purchase such Eligible Shareholder's full allotment, to purchase the remaining Selling Shareholders Shares on the same terms and conditions and for the amount set forth in the Offer by cash or certified cheque, *pro rata* in proportion to their respective holdings of Shares of such Eligible Shareholders (or in such other proportions as they may agree unanimously among themselves in writing).

(b) If, following compliance with Section 7.4(a), there shall remain Shares which no Eligible Shareholder has elected to purchase, the Selling Shareholder shall accept the Offer and complete the transaction with said proposed transferee in accordance with the terms and conditions of such proposed transferee 's Offer as to such remaining Shares and the parties hereby agree to take all steps and proceedings required to have such proposed transferee entered on the books of the Corporation as a shareholder of the Corporation, provided, that if the sale of such Shares to the proposed transferee is not completed within 30 days of the expiry of the 30-day period set out in Section 7.4(a), the provisions of Article 7 shall again apply to any proposed sale of Shares. The Selling Shareholder is hereby irrevocably appointed the agent and attorney of the Eligible Shareholders and each of them for the purposes of effecting registration of the proposed transferee as a Shareholder of the Corporation. The Board of Directors may require proof that the sale took place in accordance with the proposed transferee 's Offer and may refuse the recording of the Transfer of the purchased Shares if it reasonably determines that such Transfer was not in compliance with the provisions of such Offer and the terms and conditions of this Agreement.

7.5 Drag-Along Rights.

(a) If the Corporation or any Shareholder (the "**Recipient**") obtains an offer from any Person that would constitute a Qualified DLE (as defined below), and which the Recipient

wishes to accept (the "**Qualifying Offer**"), the Recipient shall forthwith provide a copy of the Qualifying Offer to the Corporation (if the Recipient is not the Corporation) and the Shareholders, together with a notice indicating that the Recipient wishes to invoke the provisions of this Section 7.5. In such event, and notwithstanding Section 5.11 or Section 7.4, if:

(1) the Qualifying Offer is approved by the Board; and

(2) the Qualifying Offer is approved by a majority of the votes cast by holders of Common Shares at a meeting of holders of Common Shares, or by the written agreement of the holders of a majority of the Common Shares (which in either case will include only holders of outstanding Common Shares and will not include holders of Preferred Shares or holders of any other securities on an as-converted basis); and

(3) the Qualifying Offer either:

(i) is approved in writing by the holders of a majority of the Class B Preferred Shares and Class C Preferred Shares, voting together on an as-converted basis (or the Common Shares issued upon the conversion of such shares); or

(ii) will provide (as determined in good faith by the Board and the Class C Investors Majority, or as provided in Section 7.5(d)) the Class C Investors with a return per outstanding Class C Preferred Share of (A) at least 2 times (2x) the Original Issue Price (as defined in the Articles) of the Class C Preferred Shares (subject to appropriate adjustment in accordance with the Articles in the event of any share dividend, share split, share combination or other similar recapitalization with respect to the Class C Preferred Shares), if the Qualified DLE is consummated prior to August 20, 2019, or (B) at least 2.5 times (2.5x) the Original Issue Price (as defined in the Articles) of the Class C Preferred Shares (subject to appropriate adjustment in accordance with the Articles in the event of any share dividend, share split, share combination or other similar recapitalization with respect to the Class C Preferred Shares), if the Qualified DLE is consummated on or after August 20, 2019,

then the Recipient shall have the right to require the Shareholders, on 10 days' prior notice in writing to such Shareholders, to sell all of their Shares to the third party pursuant to the terms of the Qualifying Offer for the amount set forth in the Qualifying Offer.

In such event, all Shareholders will vote their shares in favor of (and waive any dissenter's rights, rights of appraisal and other similar rights as to) the Qualifying Offer. The Corporation is hereby irrevocably appointed the agent and attorney of all the Shareholders and each of them for the purposes of effecting registration of the third party as a Shareholder and, if applicable, debtholder of the Corporation and in taking all such other actions (including signing any agreements, resolutions and/or certificates) as may be necessary or desirable in the opinion of the Board to complete the transactions contemplated by the Qualifying Offer in accordance with this Section 7.5.

(b) For purposes of this Section 7.5, a "**Qualified DLE**" shall mean a Deemed Liquidation Event or Share Sale the terms of which comply (A) with the following (as determined in good faith by the Board), and (B) with the requirements of 7.5(a) (and if they do not so comply with both requirements (A) and (B), the Deemed Liquidation Event or Share Sale will not be a "Qualified DLE" for the purposes of this Agreement, and none of the Shareholders shall be bound by this Section 7.5 with respect to such proposed transaction):

(i) such transaction shall not provide to any Shareholder any collateral benefits such as the provision of management, consulting or other fees, the payment for any non-competition covenant, or the payment of salary reasonably attributable to the purchase price as opposed to fair consideration for future services to be rendered by the Shareholders or any of their Affiliates, including the purchaser, or any other Person with whom the Shareholder does not deal at Arm's Length. In addition, no other consideration may be paid by the offeror or its Affiliates in respect of the transaction otherwise than as set forth in the terms thereof;

(ii) the liability of each Shareholder (and its Affiliates) under the relevant transaction agreement, including liability for a breach of representation, warranty or covenant or for a claim under an indemnity shall be several (except to the extent of escrow) and not joint and several, and shall not, under any circumstances, exceed the lesser of its *pro rata* proportion of any claim (based on the purchase price payable to each Shareholder) and the purchase price payable to it;

(iii) no Shareholder shall be liable for the inaccuracy of any representation or warranty made by, or breach of covenant by, any other Person, other than the pre-transaction Corporation, in connection with such transaction;

(iv) subject to Section 7.5(b)(iii) any representations or warranties to be made by a Shareholder in connection with such transaction shall be limited to representations and warranties related to authority, ownership, the ability to convey title to its Shares, and the Shareholder's residency for tax purposes, being representations and warranties that (i) the Shareholder holds all right, title and interest in and to the Shares it is selling free and clear of all liens and encumbrances other than the encumbrances imposed by this Agreement, (ii) the obligations of the Shareholder in connection with the transaction have been duly authorized, if applicable, (iii) the documents to be entered into by the Shareholder have been duly executed by the Shareholder and delivered to the acquirer and are enforceable against the Shareholder in accordance with their respective terms; and (iv) the Shareholder is/is not, as applicable, a resident of Canada for the purposes of the *Income Tax Act* (Canada);

(v) the terms of such transaction shall contain no provisions which (i) would prevent, limit, impair, restrain, restrict or impose on the ability of any Unrestricted Investor (as defined below) to make investments in any business, or (ii) would prevent, limit, impair, restrain, restrict or impose on any Unrestricted Investor or any of their Affiliates from conducting, operating or managing their business at the time that such transaction is made or at any time prior to that time, or expanding or growing existing businesses, or entering into new businesses. "**Unrestricted Investor**" means any of Tech Capital, Just Energy, OCGC,

Thomvest, Amazon, Northleaf, EDC, Relay, Greenchip, EIP, AGL, GXP, Xcel, CDP, BDC and other Fund Investor, and/or any of their Affiliates; and

(vi) upon the consummation of such transaction, (i) each holder of each class or series of shares will receive the same form of consideration for their shares of such class or series as is received by other holders in respect of their shares of such same class or series of shares (in their capacities as such), (ii) each holder of a class or series of Preferred Shares will receive the same amount of consideration per share of such class or series of Preferred Shares as is received by other holders in respect of their shares of such same class or series (in their capacities as such), (iii) each holder of Common Shares will receive the same amount of consideration per Common Share as is received by other holders in respect of their Common Shares (in their capacities as such), and (iv) unless the holders of at least 66 2/3% of the then outstanding Preferred Shares, voting together as a single class on an as-converted basis, which approval must include the approval of a Class C Investors Majority and a Class B Investors Majority, elect to receive a lesser amount in respect of the Preferred Shares by written notice given to the Corporation on or prior to the effective date of any such transaction, the aggregate consideration receivable by all holders of Preferred Shares and Common Shares shall be allocated among the holders of Preferred Shares and Common Shares on the basis of the relative liquidation preferences to which the holders of each respective series of Preferred Shares and the holders of Common Shares are entitled in a Deemed Liquidation Event in accordance with the Articles in effect immediately prior to the Deemed Liquidation Event (including provisions relating to the allocation of escrow and treatment of contingent consideration); provided, that, notwithstanding the foregoing, if the consideration to be paid in exchange for relevant shares in accordance with this Section 7.5(b)(vi) includes any securities and due receipt thereof by any shareholder would require under applicable law (x) the registration or qualification of such securities or of any person as a broker or dealer or agent with respect to such securities, or (y) the provision to any shareholder of any information other than such information as a prudent issuer would generally furnish in an offering made solely to "accredited investors", as defined in Regulation D promulgated under the *US Securities Act of 1933*, as amended, the Corporation may cause to be paid to any such shareholder in lieu thereof, against surrender of the relevant shares which would have otherwise been sold by such shareholder, an amount in cash equal to the fair value (as determined in good faith by the Board) of the securities which such shareholder would otherwise receive as of the date of the issuance of such securities in exchange for the relevant shares.

(c) No Shareholder shall be a party to a Share Sale unless all holders of Preferred Shares are allowed to participate in such transaction and the consideration received pursuant to such transaction is allocated among the parties thereto in the manner specified in the Articles in effect immediately prior to the Share Sale (as if such transaction were a Deemed Liquidation Event) taking into account only the Shares being sold and the consideration therefor, unless the holders of at least 66 2/3% of the then outstanding Preferred Shares, voting together as a single class on an as-converted basis, which approval must include the approval a Class C Investors Majority and a Class B Investors Majority, elect otherwise by written notice given to the Corporation at least two days prior to the effective date of any such transaction or series of related transactions.

(d) If either the Board and the Class C Investors Majority do not agree as to the return per outstanding Class C Preferred Share for purposes of Section 7.5(a)(3)(ii), then the matter shall be submitted to a mutually agreed third party valuation expert. The determination of such third party valuation expert of the value of the property, rights or securities to be distributed as the return per outstanding Class C Preferred Share for purposes of Section 7.5(a)(3)(ii) shall be conclusive and binding on the Board and the holders of Class C Preferred Shares. The costs for such third party valuation expert shall be borne and paid as to 50% by the holders of the Class C Preferred Shares (pro rata among them, based upon relative ownership of outstanding Class C Preferred Shares) and as to 50% by the Corporation.

(e) The provisions of this Section 7.5 are subject to the provisions of Section 11.9.

7.6 Initial Public Offering

(a) Subject only to Section 5.11(3)(r), if Shareholders holding more than fifty-nine percent (59%) of the Shares (the "**Directing Shareholders**") give notice in writing to the Board of their desire for the Corporation to undertake an Initial Public Offering, then the Board shall take reasonable commercial efforts to engage an investment dealer to undertake such Initial Public Offering and the Corporation shall use reasonable commercial efforts to complete such Initial Public Offering, provided that such IPO shall be on terms and conditions, and at a price, which is acceptable to the Directing Shareholders. The parties acknowledge that certain Shareholders will have the registration rights set out in a separate agreement with the Corporation (as may be amended and/or restated from time to time, the "**Registration Rights Agreement**"). Subject to the terms of the Registration Rights Agreement which will govern any Shareholder who is a party thereto, in the event that the Initial Public Offering is to be accompanied by an offering of Shares by any of the Shareholders, the offering Shareholders shall enter into such agreements with the Corporation and its underwriter(s) as the Corporation and its underwriter(s) may reasonably and customarily request, including a requirement for reimbursement of expenses, on terms not inconsistent with the Registration Rights Agreement. No selling Shareholder shall be required to make any representations or warranties to or agreements with the Corporation or the underwriters other than customary representations, warranties and agreements regarding such Shareholder's title to and liens affecting such Shareholder's Shares, such Shareholder's intended method of distribution and any other representation required by law.

(b) Subject to the terms of the Registration Rights Agreement which will govern any Shareholder who is a party thereto, notwithstanding Section 7.6(a): (i) the respective liability of any Shareholder (including their respective Affiliates) under any agreements required to be entered into pursuant to this Section 7.6 in connection with the Initial Public Offering, including liability for a breach of representation or warranty or for a claim under an indemnity, shall be several and not joint and several and shall not, under any circumstances, exceed the lesser of its *pro rata* proportion of any claim and the consideration payable to it pursuant to the IPO; and (ii) the agreements in connection with the Initial Public Offering shall contain no provision which would prevent or restrict any Shareholder, or any of their respective Affiliates or Associates, from conducting, operating or managing its business as at the time of the Initial Public Offering or at any time prior to that time, or expanding or growing existing businesses, or entering into new businesses, except for such restrictions as are then set out in any such individual's pre-

For greater certainty, the Corporation shall not be considered to be directly or indirectly engaged in any of the foregoing activities merely as a result of selling its products to persons who are engaged in such activities, provided (x) that such products are not products principally related to gambling, gambling services, pornography, tobacco or alcohol products or goods or services that are not legal in the Province of Ontario and (y) the Corporation does not have a material interest in such persons.

11.7 No Collateral Benefits

The Corporation agrees with OCGC that no holder of Securities shall, in such person's capacity as a securityholder of the Corporation, be entitled to receive any benefit, directly or indirectly, as a consequence of its investment in the Corporation that is not otherwise available to any other investor in the Corporation of the same class as held by such securityholder except as contemplated in this Agreement (as amended from time to time). Without limiting the generality of the foregoing, the Corporation agrees with OCGC that it will not enter into, and hereby represents to OCGC that it has not entered into, any agreement or side letter with any existing investor of the Corporation, other than this Agreement (as amended from time to time), in such investor's capacity as a securityholder of the Corporation holding the Securities held by OCGC, that has the effect of establishing rights or otherwise benefiting such investor in a manner more favorable in any respect to such investor than the rights and benefits established in favor of OCGC by the provisions hereof unless, in any such case, OCGC has been offered in writing the opportunity to receive such additional rights. Nothing contained in this Section 11.7 shall relate to, or otherwise impose any limitations or restrictions on the Corporation in connection with, any rights or other benefits which may be provided to an investor (whether a current investor or a new investor) who obtains such rights as a condition to or otherwise in connection with or arising from a future financing.

11.8 OCGC Permitted Disclosures

OCGC shall be permitted to make reasonable disclosure of its investment in the Corporation, consistent with Government of Ontario practice related to grants, loans and investments made by the Government of Ontario in private sector entities, and each Shareholder and the Corporation acknowledges and agrees that OCGC is subject to the *Freedom of Information and Protection of Privacy Act* (Ontario) and as such may be required to disclose this Agreement and any term contained herein in accordance with that Act. Notwithstanding the foregoing, OCGC acknowledges and agrees that all information made available to it or its observers pursuant to this Agreement and otherwise in its capacity as a securityholder of the Corporation (including the terms and conditions of any investments made by OCGC) constitutes information the disclosure of which would prejudice the Corporation's competitive position or otherwise result in material loss to the Corporation (and/or gain to other companies and, in particular, the direct competitors of the Corporation) or which could reasonably be expected to interfere with contractual or other negotiations of the Corporation, and that such information would not be provided to OCGC without OCGC's agreement to maintain such information as confidential. Subject to the foregoing, to the extent practicable, OCGC shall abide by the provisions of Article 15.

11.9 Drag-Along

If:

(a) the third party making the Qualified DLE as contemplated in Section 7.5 is not, at the time of the completion of the Qualified DLE, an Ontario Company,

(b) the consideration to be received pursuant to the Qualified DLE is comprised of, in whole or in part, any securities of the third party;

(c) the third party will not or cannot enter into a written agreement with OCGC containing the covenants set out in Section 11.5 and Section 11.6; and

(d) the securities of the third party are not listed and posted for trading on any of the Toronto Stock Exchange, the New York Stock Exchange, the NASDAQ or any other stock exchange as OCGC may approve;

then the terms and conditions of Section 7.5 shall be deemed to provide that OCGC shall have the option (exercisable within 15 days of the earlier of (i) the date on which the Corporation or such person first notifies OCGC in writing of the fact that the person making the Qualified DLE is not an Ontario Company and (ii) the date on which OCGC first gives notice to the Corporation that it intends to exercise the Buy-Out Option as a result of the fact that such person is not an Ontario Company) to exercise the Buy-Out Option in respect of that portion of the OCGC Securities that would not otherwise be sold to the third party for cash provided that:

(i) the entitlement of OCGC to obtain any amounts pursuant to the exercise of the Buy-Out Option is conditional upon the completion of the Qualified DLE by such person, and if such Qualified DLE is for any reason not completed then the exercise of the Buy-Out Option in respect of such matter shall be deemed to have been revoked as though it had never been made;

(ii) for the purposes of the calculation in Section 11.5(a) the valuator shall deem the value of the consideration being paid by the person making the Qualified DLE to be the fair market value of the Corporation;

(iii) at the time of the completion of the Qualified DLE, OCGC shall be entitled to be paid the cash value of the securities to which it would otherwise be entitled pursuant to the Qualified DLE as set forth in the acquisition agreement as between the parties, in return for the transfer of OCGC's Securities, subject to OCGC's rights to claim that the fair market value of the consideration being offered was in fact greater than the amount stated in the acquisition agreement (it being understood that at the time of the closing, OCGC shall be required to transfer its Securities to the third party purchaser); and

(iv) OCGC shall otherwise be subject to the provisions of Section 7.5.

11.10 Indemnities by OCGC

Notwithstanding any other provision of this Agreement, OCGC shall not, and shall not be required to provide any indemnity in respect of any transaction arising from on in connection with matter under this Agreement, except to the extent such indemnity is limited to the net proceeds received by OCGC in connection with such transaction.

11.11 Remedy re Section 11.5 and Benefit of Article 11

The sole remedy of OCGC in the event of a breach of the provisions of Section 11.5 shall be to exercise the Buy-Out Option. All of the terms and conditions of this Article are for the sole benefit of OCGC, and no other Shareholder shall have any rights arising under this Article. Notwithstanding anything contained in this Agreement, no breach of the provisions of this Article 11 shall be waived, cured or consented to without the prior written consent of OCGC.

Innovation, Science and Economic Development Canada
Corporations Canada

Innovation, Sciences et Développement économique Canada
Corporations Canada

Certificate of Amendment

Canada Business Corporations Act

Certificat de modification

Loi canadienne sur les sociétés par actions

ECOBEE INC.

Corporate name / Dénomination sociale

678147-1

Corporation number / Numéro de société

I HEREBY CERTIFY that the articles of the above-named corporation are amended under section 178 of the *Canada Business Corporations Act* as set out in the attached articles of amendment.

JE CERTIFIE que les statuts de la société susmentionnée sont modifiés aux termes de l'article 178 de la *Loi canadienne sur les sociétés par actions*, tel qu'il est indiqué dans les clauses modificatrices ci-jointes.

Virginie Ethier

Director / Directeur

2018-02-20

Date of amendment (YYYY-MM-DD)
Date de modification (AAAA-MM-JJ)

Canada

If, upon the occurrence of any such event, the assets of the Corporation thus distributed among the holders of the outstanding Class A Preferred Shares shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire remaining assets of the Corporation available for distribution (after payment in full in accordance with Sections 1.1(a) and 1.1(b)) shall be distributed ratably among the holders of the outstanding Class A Preferred Shares in proportion to the full preferential amount that each such holder is otherwise entitled to receive under this Section 1.1(c), were such preferential amount to be paid in full.

The amounts payable with respect to Preferred Shares under this Section 1.1 are hereinafter referred to as the "**Preferred Share Liquidation Payments**".

1.2 **Distribution After Payment of Preferred Share Liquidation Payments**. After the full Preferred Share Liquidation Payments have been made to the holders of Preferred Shares, the entire remaining assets and funds of the Corporation legally available for distribution to shareholders shall be distributed ratably among the holders of the outstanding Common Shares.

1.3 **Distribution Other than Cash**. Whenever the distributions provided for in this Section 1 shall be payable in property other than cash, the value of such distribution shall be the fair market value of such property as determined in good faith by the Board. Upon such determination, the Corporation shall promptly notify each holder of outstanding Preferred Shares of such determination, providing a reasonably detailed basis for the same (the "**FMV Statement**"), and such FMV Statement shall be binding on the Corporation and its shareholders unless, within fifteen (15) days after delivery of the FMV Statement, the holders of at least thirty-three percent (33%) of the then outstanding Class C Preferred Shares notify the Corporation in writing (a "**Dispute Notice**") that such holders dispute the determination of value set forth in the FMV Statement, specifying in reasonable detail the nature of the dispute and the basis therefor. In the event that the Dispute Notice is timely delivered as provided above, the Corporation and such disputing holders shall in good faith resolve any dispute and the FMV Statement, as amended to the extent necessary to reflect the resolution of the dispute, shall be conclusive and binding on the Corporation and its shareholders. In the event the Corporation and the disputing holders of Class C Preferred Shares fail to agree on the value of the property, rights or securities to be distributed under this Section 1.3 within fifteen (15) days after delivery of the Dispute Notice, the matter shall be submitted to a mutually agreed third party valuation expert. The determination of such third party valuation expert of the value of the property, rights or securities to be distributed under this Section 1.3 shall be conclusive and binding on the Corporation and its shareholders. The costs for such third party valuation expert shall be borne and paid as to 50% by the holders of the Class C Preferred Shares (pro rata among them, based upon relative ownership of outstanding Class C Preferred Shares) and as to 50% by the Corporation.

1.4 **Sale of Assets as Liquidation, etc**. In addition to any approval required pursuant to the *Canada Business Corporations Act*, the approval of shareholders of the Corporation pursuant to Sections 5.11 or 7.5 of the USA, as applicable, shall be required to authorize

and approve any liquidation, dissolution or winding up of the Corporation (whether voluntary or involuntary) or to authorize and approve any of the following transactions (each, a "**Deemed Liquidation Event**"): (a) any sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all of the assets and/or intellectual property of the Corporation and its subsidiaries taken as a whole (including by means of the sale of securities of, or merger, amalgamation, or consolidation of one or more subsidiaries of the Corporation); or (b) any share sale, merger, amalgamation, consolidation or other business combination following which the holders of the Corporation's voting shares as of immediately prior to such share sale, merger, amalgamation, consolidation or other business combination hold less than fifty percent (50%) of the voting shares as of immediately after such merger, amalgamation, consolidation or other business combination, but in any event, excluding (i) any share sale, merger, amalgamation, consolidation or other business combination effected exclusively for the purpose of changing the domicile of the Corporation and immediately following which the shareholders of the Corporation hold the outstanding share capital of the successor, acquiring or resulting entity in the same proportions (both in the aggregate and on a relative basis) as held in the Corporation as of immediately prior to such transaction, and (ii) the issuance by the Corporation of newly-issued shares in the capital of the Corporation to one or more investors for the primary purpose of raising capital for the Corporation in a transaction approved in accordance with and otherwise permitted by the USA. If a transaction under clause (a) of the definition of Deemed Liquidation Event is consummated (in whole or in part), all consideration received by the Corporation in such Deemed Liquidation Event less all costs and expenses related to such sale and any debt required to be paid as a result of such Deemed Liquidation Event together with all other available assets of the Corporation shall be distributed in accordance with Section 1.6 toward the amounts payable with respect to the Preferred Shares under Section 1.1.

For greater certainty, if a Deemed Liquidation Event does not result in the sale of all of the shares of the Corporation, or a sale of all or substantially all of the assets and/or intellectual property of the Corporation and its subsidiaries (taken as a whole), subsequent Deemed Liquidation Events shall result in the reapplication of the relevant clauses in these share provisions.

1.5 **Allocation of Escrow and Contingent Consideration.** In the event of a Deemed Liquidation Event pursuant to Section 1.4, if any portion of the consideration payable to the shareholders of the Corporation is deferred or otherwise payable only upon satisfaction of contingencies (the "**Additional Consideration**"), the Transaction Agreement (as defined below) shall provide that: (a) the portion of such consideration that is not Additional Consideration (such portion, the "**Initial Consideration**") shall be allocated among the shareholders of the Corporation in accordance with Sections 1.1 and 1.2 as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event; and (b) any Additional Consideration which becomes payable to the shareholders of the Corporation shall be allocated among the shareholders of the Corporation in accordance with Sections 1.1 and 1.2 after taking into account the previous payment of the Initial Consideration as part of the same transaction. If the aggregate per share consideration paid to all holders of shares in connection with the Initial Consideration

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Commissioner For Taking Affidavits
Andrew Rintoul

Just Energy Announces Proposed Acquisition of its Shares of ecobee Inc.

November 1, 2021

TORONTO, Nov. 01, 2021 (GLOBE NEWSWIRE) -- Just Energy Group Inc. ("**Just Energy**" or the " **Company**") (TSXV:JE; OTC:JENGQ), a retail energy provider specializing in electricity and natural gas commodities and bringing energy efficient solutions, carbon offsets and renewable energy options to customers, announced today that Generac Holdings Inc. ("**Generac**") announced the signing of an agreement to acquire all of the issued and outstanding shares of ecobee Inc. ("**ecobee**"), including all of the ecobee shares held by Just Energy.

The acquisition of all the shares of ecobee will be effected pursuant to a court approved arrangement under the *Canada Business Corporations Act* (Canada). Just Energy will be seeking court approval in its proceedings under the *Companies' Creditors Arrangement Act* (Canada) ("**CCAA**") to enter into a support agreement with an affiliate of Generac to vote in favour of the acquisition.

The ecobee acquisition by Generac is valued at up to USD $770 million, contingent on the achievement of certain performance targets. At closing, Generac will pay the sellers of the ecobee shares an aggregate of USD $200 million in cash, subject to customary adjustments, along with USD $450 million in Generac common stock. Additionally, upon achievement of certain performance targets between closing and June 30, 2023 the sellers may receive up to an aggregate of USD $120 million in shares of Generac common stock.

At closing, Just Energy anticipates receiving approximately CAD $61 million, comprised of approximately CAD $18 million cash and CAD $43 million of Generac stock. Just Energy can receive up to an additional approximate CAD $10 million in Generac stock over calendar 2022 and 2023, provided that certain performance targets are achieved by ecobee. Generac stock trades on the New York Stock Exchange under the symbol GNRC.

The acquisition of ecobee by Generac is expected to close in the fourth quarter of calendar 2021, subject to customary closing conditions, including clearance under the Hart-Scott-Rodino Antitrust Improvements Act.

For further information regarding the acquisition of ecobee by Generac, please see Generac's press release at http://investors.generac.com/news-releases.

As previously reported, FTI Consulting Canada Inc. (the "**Monitor**") is overseeing the proceedings of the Just Energy under the CCAA as the court-appointed Monitor. Further information regarding the CCAA proceedings is available at the Monitor's website at http://cfcanada.fticonsulting.com/justenergy. Information regarding the CCAA proceedings can also be obtained by calling the Monitor's hotline at 416-649-8127 or 1-844-669-6340 or by email at justenergy@fticonsulting.com.

About Just Energy Group Inc.

Just Energy is a retail energy provider specializing in electricity and natural gas commodities and bringing energy efficient solutions, carbon offsets and renewable energy options to customers. Currently operating in the United States and Canada, Just Energy serves residential and commercial customers. Just Energy is the parent company of Amigo Energy, Filter Group, Hudson Energy, Interactive Energy Group, Tara Energy, and terrapass. Visit https://investors.justenergy.com to learn more.

FORWARD-LOOKING STATEMENTS

This press release may contain forward-looking statements, including, without limitation, statements with respect to the sale of the Company's ecobee shares and the anticipated proceeds from the sale of the ecobee shares. These statements are based on current expectations that involve several risks and uncertainties which could cause actual results to differ from those anticipated. These risks include, but are not limited to, risks with respect to: the ability of ecobee or Generac to close the sale and purchase of the ecobee shares; regulatory approval of the acquisition of ecobee by Generac; approval under the CCAA proceedings of Just Energy to sign a support agreement in favour of the sale of the Just Energy's shares of ecobee to Generac; the ability of the Company to continue as a going concern; the outcome of proceedings under the CCAA proceedings and similar legislation in the United States; the outcome of any potential litigation with respect to the February 2021 extreme weather event in Texas (the "**Weather Event**"), the final amount received by the Company with respect to the financing mechanisms to recover certain costs incurred during the Weather Event, the outcome of any invoice dispute with the Electric Reliability Council of Texas; the Company's discussions with key stakeholders regarding the Weather Event and the CCAA proceedings and the outcome thereof; the impact of the evolving COVID-19 pandemic on the Company's business, operations and sales; reliance on suppliers; uncertainties relating to the ultimate spread, severity and duration of COVID-19 and related adverse effects on the economies and financial markets of countries in which the Company operates; the ability of the Company to successfully implement its business continuity plans with respect to the COVID-19 pandemic; the Company's ability to access sufficient capital to provide liquidity to manage its cash flow requirements; general economic, business and market conditions; the ability of management to execute its business plan; levels of customer natural gas and electricity consumption; extreme weather conditions; rates of customer additions and renewals; customer credit risk; rates of customer attrition; fluctuations in natural gas and electricity prices; interest and exchange rates; actions taken by governmental authorities including energy marketing regulation; increases in taxes and changes in government regulations and incentive programs; changes in regulatory regimes; results of litigation and decisions by regulatory authorities; competition; and dependence on certain suppliers. Additional information on these and other factors that could affect Just Energy's operations or financial results are included in Just Energy's annual information form and other reports on file with Canadian securities regulatory authorities which can be accessed through the SEDAR website at www.sedar.com and on the U.S. Securities and Exchange Commission's website at www.sec.gov or through Just Energy's website at www.investors.justenergy.com.

Any forward-looking statement made by Just Energy in this press release speaks only as of the date on which it is made. Just Energy undertakes no obligation to update any forward-looking statement, whether as a result of new information, future developments or otherwise, except as may be

required by law.

Neither TSX Venture Exchange nor its Regulation Services Provider (as that term is defined in the policies of the TSX Venture Exchange) accepts responsibility for the adequacy or accuracy of this release.

FOR FURTHER INFORMATION PLEASE CONTACT:

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Source: Just Energy Group Inc.

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Commissioner For Taking Affidavits
Andrew Rintoul

Generac to Acquire ecobee Inc.

November 1, 2021

Transaction will create a home energy ecosystem that brings benefits to both homeowners and grid operators

WAUKESHA, Wis., Nov. 01, 2021 (GLOBE NEWSWIRE) -- Generac Holdings Inc. (NYSE: GNRC) (“Generac” or the “Company”), a leading global designer and manufacturer of energy technology solutions and other power products, today announced the signing of an agreement to acquire ecobee Inc. (“ecobee”), a leader in sustainable smart home solutions, in a transaction valued up to $770 million contingent on the achievement of certain performance targets.

A pioneer in the smart thermostat market, ecobee was founded in 2007 and is headquartered in Toronto, Canada. With a team of over 500 employees globally, ecobee currently offers several ENERGY STAR-certified thermostats and a suite of home monitoring products, all designed with a focus on conservation, convenience, peace of mind and comfort. ecobee’s smart thermostats intelligently optimize heating and cooling systems to deliver significant energy savings for homeowners. With over two million connected homes, ecobee customers in North America have saved more than 20 TWh of energy, which is the equivalent of saving enough energy to take all the homes in Los Angeles off the grid for an entire year.

“ecobee’s solutions are an important addition to Generac’s extensive residential energy technology portfolio,” said Aaron Jagdfeld, president and chief executive officer of Generac. “Residential HVAC systems represent the largest energy-consuming device in the home today and ecobee’s smart thermostats and sensors offer the most intelligent way to balance comfort with conservation. In addition, the ability to combine ecobee’s cutting-edge technologies with Generac’s power generation, energy storage and energy management devices will allow us to create a clean, efficient, and reliable home energy ecosystem that will not only save homeowners money, but also help grid operators meet the challenges of an electrical grid under enormous stress by providing solutions to better balance supply and demand.”

“Generac’s evolution into an energy technology solutions company creates many opportunities to integrate our ecobee products with their residential device offerings, enabling direct monitoring and control of a significant portion of the home’s electrical load,” said Stuart Lombard, founder and chief executive officer of ecobee. “We are excited to join the Generac team so together we can deliver a cleaner, more resilient and sustainable energy future for our customers and communities.”

At closing and subject to customary adjustments, Generac will pay $200 million in cash along with $450 million in GNRC common stock to the current equity holders of ecobee. Additionally, upon achievement of certain performance targets between closing and June 30, 2023, the sellers may receive up to $120 million in additional shares of GNRC common stock.

The acquisition is expected to close during the fourth quarter, subject to customary closing conditions, including clearance under the Hart-Scott-Rodino Antitrust Improvements Act.

About Generac
Generac is a leading energy technology company that provides backup and prime power systems for home and industrial applications, solar + battery storage solutions, advanced power grid software platforms and engine- and battery-powered tools and equipment. Founded in 1959, Generac introduced the first affordable backup generator and later created the category of automatic home standby generator. The company is committed to sustainable, cleaner energy products poised to revolutionize the 21st century electrical grid.

About ecobee
ecobee Inc. was founded in 2007 with a mission to improve everyday life while creating a more sustainable world. Today, ecobee continues to innovate with smart home solutions that solve everyday problems with comfort, security, and conservation in mind. With ecobee’s products, including the SmartThermostat and SmartCamera both equipped with voice control, ecobee continues to encourage consumers to imagine what home could be. For more information, visit ecobee.com.

Forward Looking Statements
Certain statements contained in this news release, as well as other information provided from time to time by Generac Holdings Inc. or its employees, may contain forward looking statements that involve risks and uncertainties that could cause actual results to differ materially from those in the forward looking statements. Forward-looking statements give Generac's current expectations and projections relating to the Company's financial condition, results of operations, plans, objectives, future performance and business. You can identify forward-looking statements by the fact that they do not relate strictly to historical or current facts. These statements may include words such as "anticipate," "estimate," "expect," "forecast," "project," "plan," "intend," "believe," "confident," "may," "should," "can have," "likely," "future," “optimistic” and other words and terms of similar meaning in connection with any discussion of the timing or nature of future operating or financial performance or other events.

Any such forward looking statements are not guarantees of performance or results, and involve risks, uncertainties (some of which are beyond the Company's control) and assumptions. Although Generac believes any forward-looking statements are based on reasonable assumptions, you should be aware that many factors could affect Generac's actual financial results and cause them to differ materially from those anticipated in any forward-looking statements, including:

- frequency and duration of power outages impacting demand for our products;
- availability, cost and quality of raw materials and key components from our global supply chain and labor needed in producing our products;
- the impact on our results of possible fluctuations in interest rates, foreign currency exchange rates, commodities, product mix and regulatory tariffs;
- the ability to satisfy the closing conditions for the acquisition of ecobee on the timeline expected or at all;

- the possibility that the expected synergies, efficiencies and cost savings of our acquisitions will not be realized, or will not be realized within the expected time period;
- the risk that our acquisitions will not be integrated successfully;
- the duration and scope of the impacts of the COVID-19 pandemic are uncertain and may or will continue to adversely affect our operations, supply chain, and distribution for certain of our products and services;
- difficulties we may encounter as our business expands globally or into new markets;
- our dependence on our distribution network;
- our ability to invest in, develop or adapt to changing technologies and manufacturing techniques;
- loss of our key management and employees;
- increase in product and other liability claims or recalls;
- failures or security breaches of our networks, information technology systems, or connected products; and
- changes in environmental, health and safety, or product compliance laws and regulations affecting our products, operations, or customer demand.

Should one or more of these risks or uncertainties materialize, Generac's actual results may vary in material respects from those projected in any forward-looking statements. In the current environment, some of the above factors have materialized and may or will continue to be impacted by the COVID-19 pandemic, which may cause actual results to vary from these forward-looking statements. A detailed discussion of these and other factors that may affect future results is contained in Generac's filings with the U.S. Securities and Exchange Commission (“SEC”), particularly in the Risk Factors section of the 2020 Annual Report on Form 10-K and in its periodic reports on Form 10-Q. Stockholders, potential investors and other readers should consider these factors carefully in evaluating the forward-looking statements.

Any forward-looking statement made by Generac in this press release speaks only as of the date on which it is made. Generac undertakes no obligation to update any forward-looking statement, whether as a result of new information, future developments or otherwise, except as may be required by law.

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Commissioner For Taking Affidavits
Andrew Rintoul

ARRANGEMENT AGREEMENT

among

13462234 CANADA INC.
("**Purchaser**")

GENERAC POWER SYSTEMS, INC.
("**Parent**")

and

ECOBEE INC.
(the "**Company**")

and

SHAREHOLDER REPRESENTATIVE SERVICES LLC
(the "**Securityholder Representative**")

dated as of

NOVEMBER 1, 2021

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ARRANGEMENT AGREEMENT

This Arrangement Agreement (this "**Agreement**"), dated as of November 1, 2021, is entered into among Generac Power Systems, Inc., a Wisconsin corporation ("**Parent**"), 13462234 Canada Inc., a Canadian federal corporation ("**Purchaser**"), ecobee Inc., a Canadian federal corporation ("**Company**"), and Shareholder Representative Services LLC, a Colorado limited liability company, solely in its capacity as representative, agent and attorney-in-fact of the Company Securityholders ("**Securityholder Representative**").

RECITALS

A. The Company and its subsidiaries are engaged in the business of developing and selling smart thermostats, room sensors, smart light switches, smart cameras and the related services of energy management and demand response services (such business, together with the other businesses conducted by the Company Group on the date hereof or as of the Effective Time, the "**Business**").

B. Purchaser wishes to acquire all of the outstanding securities of the Company through the arrangement (the "**Arrangement**") of the Company under Section 192 of the *Canada Business Corporations Act* (Canada) (the "**CBCA**"), upon the terms and subject to the conditions set forth in this Agreement.

C. The board of directors of the Company (the "**Company Board**"), after having received financial and legal advice, has unanimously (1) determined that this Agreement, the Arrangement and the other Transactions (as defined below) are in the best interests of, the Company and that the Arrangement is fair to its securityholders, (2) approved this Agreement and the Transactions, (3) determined that the Transactions constitute a "Qualified DLE" subject to the "drag-along" provisions set forth in Section 7.5 of the Company Shareholders' Agreement, and (4) resolved to recommend the Company Shareholders vote in favor of the Arrangement Resolution.

D. Contemporaneously herewith, Company Securityholders representing greater than 70% of the outstanding Company Common Shares and greater than 70% of the outstanding Class B and Class C Company Preferred Shares (considered together as a single class) have executed a Support and Voting Agreement, substantially in the form attached hereto as Exhibit A (the "**Support Agreement**"), pursuant to which such Company Securityholders have, among other things, (1) agreed to vote all of their Company Shares in favor of the Arrangement Resolution and (2) approved the Transactions for purposes of the "drag-along" provisions set forth in Section 7.5 of the Company Shareholders' Agreement and agreed that the Transactions constitute a "Qualified DLE" thereunder, (3) waived and agreed not to assert any dissent, appraisal or similar rights in connection with the Transactions, and (4) agreed to be bound by the applicable provisions of this Agreement.

E. It is anticipated that Purchaser or an Affiliate will offer certain employees retention awards that will be conditioned on, among other things, the execution of a new employment agreement containing certain restrictive covenants in favour of the Purchaser.

F. The parties have entered into this Agreement to provide for the matters referred to in the foregoing recitals and for other matters related to the Transactions herein provided for.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1.
DEFINITIONS

The following terms have the meanings specified or referred to in this ARTICLE 1:

"**Acquisition Proposal**" has the meaning set forth in Section 5.05(a).

"**Action**" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, suit, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at Law or in equity.

"**Additional Arrangement Consideration**" means those portions (if any) of the Escrow Funds, the Post-Closing Adjustment, the Earnout Consideration, and the Securityholder Representative Fund that the Company Securityholders actually become entitled to receive pursuant to the terms of this Agreement and the Escrow Agreement.

"**Additional Per Share Arrangement Consideration**" means an amount equal to any Additional Arrangement Consideration, divided by the Fully Diluted Share Number.

"**Advisory Committee**" has the meaning set forth in Section 10.01(c).

"**Affiliate**" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by Contract or otherwise.

"**Agreed Accounting Principles**" means (1) the accounting methods, practices, principles, policies and procedures set forth on Schedule 1.1, (2) second, to the extent not inconsistent with the foregoing, and solely to the extent consistent with GAAP, the accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Audited Financial Statements for the most recent fiscal year end as if such accounts were being prepared and audited as of a fiscal year end, and (3) to the extent not inconsistent with the foregoing, GAAP. For the sake of clarity, in the event of any inconsistency, clause (1) shall prevail over clause (2) and (3) and clause (2) shall prevail over clause (3).

"**Agreement**" has the meaning set forth in the preamble.

"**Ancillary Documents**" means the agreements, documents and instruments contemplated by this Agreement or the Plan of Arrangement to be executed or delivered as part of the Transactions, including the Plan of Arrangement, the Certificate of Arrangement, the Support Agreement, the Arrangement Resolution, the Company Circular, the Letters of Transmittal, the certificates to be delivered at Closing, and the Escrow Agreement.

"**Anti-Corruption Laws**" means Laws relating to anti-bribery or anti-corruption (governmental or commercial), which apply to the Business or the dealings of the Company Group or its Affiliates, including Laws that prohibit the corrupt payment, offer, promise or authorization of the payment or transfer of anything of value (including gifts or entertainment), directly or indirectly, to any government official, commercial entity or any other Person to obtain an improper business advantage. Anti-Corruption Laws include the U.S. Foreign Corrupt Practices Act of 1977 (the "**FCPA**"), the Corruption of Foreign Public Officials Act (Canada), the anti-bribery and corruption provisions of the *Criminal Code of Canada*, the UK Bribery Act 2010 and all Laws enacted to implement the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions.

"**Anti-Money Laundering Laws**" means Laws relating to money laundering, including financial recordkeeping and reporting requirements, which apply to the Business or the dealings of the Company Group or its Affiliates. Anti-Money Laundering Laws include the U.S. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the USA Patriot Act), the U.S. Currency and Foreign Transaction Reporting Act of 1970, the U.S. Money Laundering Control Act of 1986, the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada), the anti-money laundering provisions of the *Criminal Code of Canada*, the UK Proceeds of Crime Act 2002, the UK Terrorism Act 2000, Money Laundering Regulations 2007, Sanctions and Anti-Money Laundering Act 2018 and the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI 2017/692).

"**Arrangement**" has the meaning set forth in the Recitals.

"**Arrangement Consideration**" means the Closing Arrangement Consideration and the Additional Arrangement Consideration.

"**Arrangement Resolution**" means the special resolution, substantially in the form of Exhibit B, to be considered and, if thought fit, passed by the requisite majority of the Company Shareholders, either in writing or at the Company Meeting to approve the Arrangement, in accordance with the Interim Order.

"**Articles of Arrangement**" means the articles of arrangement in respect of the Arrangement, required by the CBCA to be sent to the Director after the Final Order is made, which shall include the Plan of Arrangement and otherwise be in a form satisfactory to the Company and the Purchaser, each acting reasonably.

"**Audited Financial Statements**" has the meaning set forth in Section 3.06(a).

"**Balance Sheet**" means the audited balance sheet of the Company Group as of June 30, 2021 (the "**Balance Sheet Date**").

"**Benefit Plan**" has the meaning set forth in Section 3.23(a).

"**Business**" has the meaning set forth in the Recitals.

"**Business Day**" means any day except Saturday, Sunday or any other day on which commercial banks located in Waukesha, Wisconsin, USA or Toronto, Ontario, Canada are authorized or required by Law to be closed for business.

"**CanCo**" means Axcendo Innovation Corporation, an Ontario corporation and a direct wholly owned subsidiary of the Company.

"**Cardholder Data**" has the meaning set out in Section 3.13(m).

"**CASL**" has the meaning set forth within the definition of Privacy and Security Laws and Standards.

"**CBCA**" has the meaning set forth in the Recitals.

"**CDPQ**" means CDP Investissements Inc.

"**Certificate of Arrangement**" means the certificate of arrangement to be issued by the Director pursuant to subsection 192(7) of the CBCA in respect of the Articles of Arrangement.

"**Closing**" has the meaning set forth in Section 2.01(b).

"**Closing Arrangement Consideration**" means the Purchase Price, plus (s) the Estimated Closing Adjustment, plus (t) the Estimated Closing Cash, minus (u) the Securityholder Representative Fund, minus (v) the General Indemnification Escrow Amount, minus (w) the Special Indemnification Escrow Amount minus (x) the Purchase Price Adjustment Escrow Amount, minus (y) the outstanding Indebtedness as of the Effective Time, and minus (z) the amount of unpaid Transaction Expenses as of the Effective Time.

"**Closing Cash**" means the aggregate amount of cash and cash equivalents of the Company Group, determined in accordance with the Agreed Accounting Principles as of the Effective Time, excluding any cash with respect to the aggregate exercise price of the In-Money Options, the EIP Warrant and the Thomvest Warrant included in the calculation of Closing Per Share Arrangement Consideration.

"**Closing Cash Consideration**" has the meaning set forth in Section 2.04(a).

"**Closing Consideration Shares**" has the meaning set forth in Section 2.04(a).

"**Closing Per Share Arrangement Consideration**" means an amount equal to the Closing Arrangement Consideration plus the aggregate exercise price of the In-Money Options, the EIP Warrant and the Thomvest Warrants, divided by the Fully Diluted Share Number.

"**Closing Statement**" has the meaning set forth in Section 2.08(b).

"**Closing Working Capital**" means: (a) all current assets of the Company Group, excluding (i) Closing Cash, (ii) deferred Tax assets, and (iii) any cash or receivables with respect to the aggregate exercise price of the In-Money Options, the EIP Warrant and the Thomvest Warrant included in the calculation of Closing Per Share Arrangement Consideration, less (b) all current liabilities of the Company Group, excluding (i) the current portion of deferred and unearned revenue; (ii) Indebtedness and Transaction Expenses otherwise taken into account in the calculation of Arrangement Consideration, (iii) any obligations under Company Derivatives that are fully extinguished at the Effective Time by virtue of the Arrangement and taken into account in the allocation of the Arrangement Consideration, and (iv) deferred Tax liabilities, in each case determined in accordance with the Agreed Accounting Principles on a consolidated basis as of the Effective Time. Attached as Schedule 1.2 is a calculation of Closing Working Capital as of June 30, 2021, prepared solely by the Company for illustrative purposes only and without modifying this Agreement.

"**COBRA**" has the meaning set forth in Section 3.23(e).

"**Commercial Message**" means any commercial message sent by email, text or SMS message or other direct electronic means and includes a "commercial electronic message" as defined under CASL

"**Commercial Off-The-Shelf Software**" means any Software (including software provided as a software-as-a-service offering) that is not used in the Company's Products or services and that is in the public domain or that is available to any purchaser or licensee upon acceptance of a publisher's, manufacturer's, distributor's, service provider's, distributor's or reseller's standard contract, license, terms of use or similar contractual provisions for the applicable Software for a cost of less than $500,000 per year in the aggregate for the applicable items of Software; provided that such Intellectual Property, Software or technology has not been misused, customized, or otherwise incorporated into any Company Product.

"**Company**" has the meaning set forth in the preamble.

"**Company 401(k) Plan**" has the meaning set forth in Section 5.13.

"**Company Board**" has the meaning set forth in the recitals.

"**Company Board Recommendation**" has the meaning set forth in Section 3.02(b).

"**Company Circular**" means the notice of the Company Meeting and accompanying management proxy circular, including all schedules, appendices and exhibits to, and information incorporated by reference in, such management proxy circular, to be sent to, among others, the Company Shareholders in connection with the Company Meeting, as amended, supplemented or otherwise modified from time to time in accordance with the terms of this Agreement.

"**Company Common Shares**" means all classes of Common Shares in the capital of the Company, whether existing on the date hereof or prior to the Effective Time.

"**Company Constating Documents**" has the meaning set forth in Section 3.03.

"**Company Derivatives**" means any securities exchangeable, convertible or exercisable for or otherwise carrying the right or obligation to acquire Company Shares, including convertible debt, Company Options, the EIP Warrant, the Thomvest Warrant, and any other rights, options or warrants to acquire Company Shares, but excluding the Company Common Shares and Company Preferred Shares.

"**Company Group**" means the Company and its subsidiaries (CanCo, USCo and UKCo), individually and collectively.

"**Company Intellectual Property**" means any and all Company Owned Intellectual Property and Company Licensed Intellectual Property and Company Purchased Intellectual Property.

"**Company IP Agreements**" means all written licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, waivers, releases, permissions and other written Contracts relating to Intellectual Property to which a member of the Company Group is a party, beneficiary or otherwise bound.

"**Company IT Systems**" means all of the following owned, leased, licensed, or used by the Company Group: computers, computer systems, servers, hardware, Software, firmware, middleware, networks, servers, workstations, automated, computerized, or other information technology (IT) networks and systems (including data communication and telecommunications networks and systems for voice, data, and video), routers, hubs, switches, co-location facilities and equipment, Data repositories or systems, and all other information technology equipment and related items of automated, computerized or Software systems, including any outsourced systems and processes (e.g., hosting locations) and all associated documentation.

"**Company Licensed Intellectual Property**" means the Intellectual Property licensed or otherwise acquired by the Company Group from a third party, other than to the extent constituting Company Owned Intellectual Property.

"**Company Meeting**" means the special meeting of Company Shareholders, including any adjournment or postponement of such special meeting in accordance with the terms of this Agreement, to be called and held in accordance with the Interim Order to consider the Arrangement Resolution and for any other purpose as may be set out in the Company Circular and agreed to in writing by the Purchaser.

"**Company Options**" means the options granted under the Company Stock Option Plan, including any grants made under the UK Sub-Plan of the Company Stock Option Plan.

"**Company Owned Intellectual Property**" means all Intellectual Property owned or purported to be owned by the Company Group including Company Registered Intellectual Property.

"**Company Permits**" has the meaning set forth in Section 3.20(b).

"**Company Preferred Shares**" means, collectively, the Class A Preferred Shares, the Class B Preferred Shares and the Class C Preferred Shares, in each case in the capital of the Company.

"**Company Products**" means each product (including any hardware, Software and firmware product) or service developed or currently under development by or on behalf of the Company or that has been manufactured, distributed or sold by the Company Group or licensed or leased by the Company Group to a third party.

"**Company Purchased Intellectual Property**" has the meaning set forth in Section 3.13(h).

"**Company Registered Intellectual Property**" means the applications, registrations and filings for Intellectual Property that have been registered, filed, certified or otherwise perfected or recorded, with or by any Governmental Authority or Internet domain name registrar, that are owned by, or purported to be owned by or in the name of any of the Company Group, including that listed or ought to be listed on Section 3.13(a) of the Disclosure Letter.

"**Company Securities**" means, collectively, the Company Shares, the Company Options, and the Company Derivatives.

"**Company Securityholder**" means a holder of Company Securities.

"**Company Shareholder**" means a holder of Company Shares.

"**Company Shareholders' Agreement**" means the Seventh Amended and Restated Unanimous Shareholders' Agreement dated as of April 24, 2018 between the Company and the shareholders of the Company party thereto.

"**Company Shares**" means, collectively, the Company Common Shares and Company Preferred Shares.

"**Company Stock Option Plan**" means the Company's Amended and Restated Stock Option Plan for Employees and Key Persons, as amended to October 4, 2018.

"**Connected Homes**" has the meaning set forth in Schedule 2.09.

"**Consideration Shares**" means, collectively, the Closing Consideration Shares and the Earnout Consideration Shares.

"**Consideration Spreadsheet**" means a spreadsheet, in a format substantially similar to Section 3.04(b) of the supplemental letter delivered as of the date hereof and reasonably acceptable to the Exchange Agent, setting forth the following information as of immediately prior to the Effective Time. a list of all Company Securityholders and setting forth for each such Company Securityholder's (a) name, (b) mailing address, (c) electronic contact information, to the extent available, (d) the number and type of Company Securities held by such Company Securityholder, and, with respect to any Company Option, the number of Shares subject to such Company Option, the grant date and exercise price for such Company Option, (d) the Pro Rata Share of such

Company Securityholder, (e) the aggregate dollar amount of the Closing Arrangement Consideration payable to such Company Securityholder (taking into account the exercise price of any Company Options or other Company Derivatives) and (f) such other information as Purchaser or Exchange Agent may reasonably request for the purpose of facilitating and accounting for payments of Arrangement Consideration and complying with any reporting or other obligations with respect thereto.

"**Contaminants**" has the meaning set out in Section 3.13(m).

"**Contracts**" means all contracts, leases, deeds, mortgages, licenses, instruments, notes, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and legally binding arrangements, whether written or oral.

"**Contributors**" has the meaning set forth in Section 3.13(h).

"**Convertible Notes**" means those certain promissory notes issued pursuant to that certain Note Purchase Agreement, dated as of May 5, 2020, by and between the Company and the persons set forth on the signature pages thereto.

"**Court**" means the Ontario Superior Court of Justice (Commercial List), or other court as applicable.

"**COVID-19**" means SARS-CoV-2 or COVID-19.

"**COVID-19 Measures**" means any quarantine, "shelter in place," "stay at home," workforce reduction, social distancing, shut down, closure, sequester, safety or similar laws, directives, restrictions, guidelines, responses or recommendations of or promulgated by any Governmental Entity, including the Centers for Disease Control and Prevention, the World Health Organization, the Province of Ontario, in each case, in connection with or in response to COVID-19 and any evolutions or mutations thereof or related or associated epidemics, pandemics or disease outbreaks.

"**Customer Data**" means any and all Personal Information and any other data or information (including all non-Personal Information): (a) collected by the Company Group or on behalf of the Company Group about customers or users (or potential customers or users) of the Company Products which either (i) identifies such customer or user, (ii) is unique to such customer or user, their business, household or unique users, or their devices (whether or not Personal Information), or (iii) would reasonably be expected to provide insight into such customer's or user's behavior if analyzed, aggregated or otherwise examined; or (b) processed by the Company Group or on behalf of the Company Group for or on behalf of a customer or user of a Company Product.

"**Customization**" has the meaning set out in Section 3.13(i).

"**Data**" means all data collected, generated, derived, inferred, used or received in connection with the development, training, marketing, delivery, support or use of any Company Product by or on behalf of the Company Group, including Third Party Processed Data, Owned Data and Customer Data.

"**Data Processors**" has the meaning set forth in Section 3.14(k).

"**Data Room**" means the virtual data room established by or on behalf of the Company Group pursuant to which documentation in respect of the Company Group and the Business were made available to the Purchaser, which was accessible as of the Closing.

"**Deductible**" has the meaning set forth in Section 8.04(c)(i).

"**D&O Indemnified Party**" has the meaning set forth in Section 5.07(a).

"**Designated Firm**" has the meaning set forth in Section 10.16.

"**Director**" means the Director appointed pursuant to section 260 of the CBCA.

"**Disclosure Letter**" means the confidential Disclosure Letter exchanged by the Company and Purchaser concurrently with the execution and delivery of this Agreement.

"**Disputed Amounts**" has the meaning set forth in Section 2.08(c)(iii).

"**Dollars or $**" means the lawful currency of the United States, unless the context otherwise expressly provides.

"**Earnout Consideration**" has the meaning set forth in Section 2.09(a).

"**Earnout Consideration Shares**" has the meaning set forth in Section 2.04(a).

"**Earnout Measurement Dates**" has the meaning set forth in Section 2.09(a).

"**Earnout Metrics**" has the meaning set forth in Section 2.09(a).

"**Earnout Statement**" has the meaning set forth in Section 2.09(c)(i).

"**Earnout Targets**" has the meaning set forth in Section 2.09(a).

"**Eco+ ARR**" has the meaning set forth in Schedule 2.09.

"**Effective Date**" means the date shown on the Certificate of Arrangement giving effect to the Arrangement.

"**Effective Time**" means 12:01 a.m. on the Effective Date, or such other time as the parties (other than the Securityholder Representative) agree to in writing before the Effective Date.

"**EIP Warrant**" means that certain Warrant to Purchase Common Shares of ecobee Inc., dated as of February 20, 2018, issued by the Company to Energy Impact Fund LP, as amended by that certain Amendment Agreement, dated as of October 31, 2021.

"**Encumbrance**" means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, hypothecations, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind,

including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership, other than generally applicable restrictions on transfers under applicable securities laws.

"**Enforcement Limitation**" means any applicable bankruptcy, reorganization, insolvency, moratorium or other similar Law affecting creditors' rights generally and principles governing the availability of equitable remedies, whether considered in a proceeding in equity or at law.

"**Environmental Claim**" means any written (or to the Company's Knowledge, other) notice by a Person alleging potential liability (including potential liability for investigatory costs, cleanup costs, governmental response costs, natural resources damages, property damages, personal injuries, or penalties) arising out of, based on or resulting from (i) the presence, or release into the environment, of any Hazardous Substances or form of energy at any location, whether or not owned by any member of the Company Group, or (ii) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law.

"**Environmental Law**" means all Laws relating to pollution, compensation for damage or injury caused by pollution or protection of human health or the environment.

"**Environmental Permit**" means any Permit or consent required under or issued, granted, given, authorized by or made pursuant to Environmental Law.

"**ERISA**" means the Employee Retirement Income Security Act of 1974 (United States).

"**ERISA Affiliate**" means all employers (whether or not incorporated) that would be treated together with the Company Group or any of its Affiliates as a "single employer" within the meaning of Section 414 of the U.S. Tax Code.

"**Escrow Agent**" means JP Morgan Chase Bank, N.A.

"**Escrow Agreement**" means the Escrow Agreement to be entered into by Purchaser, Securityholder Representative and the Escrow Agent at the Closing, substantially in the form of Exhibit C.

"**Escrow Funds**" has the meaning set forth in Section 2.06(a)(ii).

"**Estimated Closing Adjustment**" is an amount (which may be positive or negative) equal to the Estimated Closing Working Capital minus $2,000,000 (the "**Target Working Capital**").

"**Estimated Closing Cash**" has the meaning set forth in Section 2.07(a)(iv).

"**Estimated Closing Working Capital**" has the meaning set forth in Section 2.07(a)(iv).

"**Exchange Agent**" has the meaning set forth in Section 2.05(a).

"**Exchange Agent Agreement**" has the meaning set forth in Section 2.05(a).

"**Export Approvals**" has the meaning set forth in Section 3.21(c).

"**Export Control Laws**" has the meaning set forth in Section 3.21(c).

"**Express Representations**" has the meaning set forth in Section 8.11(b).

"**Final Order**" means the final order of the Court approving the Arrangement under section 192 the CBCA, in a form acceptable to the Company and the Purchaser, each acting reasonably, after a hearing upon the procedural and substantive fairness of the terms and conditions of the Arrangement, as such order may be affirmed, amended, modified, supplemented or varied by the Court (with the consent of both the Company and the Purchaser, each acting reasonably) at any time prior to the Effective Date or, if appealed and stayed pending appeal, then, unless such appeal is withdrawn or denied, as affirmed or amended (provided that any such amendment, modification, supplement or variation is acceptable to both the Company and the Purchaser, each acting reasonably) on appeal.

"**Financial Statements**" has the meaning set forth in Section 3.06(a).

"**FIRPTA Statement**" has the meaning set forth in Section 6.05.

"**Fully Diluted Share Number**" means the aggregate number of fully diluted Company Common Shares as of immediately prior to the Effective Time, calculated including all outstanding Company Securities (other than Out-of-Money Options and other than Convertible Notes subject to steps (18) and (19) of Section 3.3 of the Plan of Arrangement, each of which shall be excluded in such calculation) on an as-converted or as-exercised basis.

"**Fundamental Change**" has the meaning set forth in Section 2.09(e).

"**Fundamental Representations**" means the representations and warranties in Section 3.01 (*Organization and Qualification of the Company*), Section 3.02(a) (*Authority, Board Approval*), Section 3.04(a) and (c)–(e) (*Capitalization*), Section 3.25 (*Taxes*), Section 3.23 (*Employee Benefit Matters*), Section 3.29 (*Brokers and Finders*), Section 4.01 (*Organization and Authority of Purchaser*) and Section 4.04 (*Brokers and Finders*).

"**GAAP**" means United States generally accepted accounting principles in effect from time to time.

"**GDPR**" has the meaning set forth within the definition of Privacy and Security Laws and Standards.

"**Generac Common Stock**" means the common stock, par value $0.01 per share, of Generac Holdings.

"**Generac Holdings**" means Generac Holdings Inc., a Delaware corporation and the ultimate parent company of Purchaser.

"**Generac Indebtedness**" means any convertible promissory note or notes issued by the Company to Parent pursuant to that certain letter agreement, dated as of September 13, 2021, by and between the Company and Parent.

"**Generac Material Adverse Effect**" means any material adverse changes to the business, results of operations, financial condition or assets of Generac Holdings and its subsidiaries, taken as a whole; *provided*, *however*, that "Generac Material Adverse Effect" shall not include any change, directly or indirectly, to the extent arising out of or attributable to: (i) general economic or political conditions; (ii) conditions generally affecting the industries in which Generac Holdings and its subsidiaries operate, including as such may reasonably relate to COVID-19 and COVID-19 Measures, including delays or disruptions in the supply of goods or services; (iii) any changes in financial or securities markets in general; (iv) acts of God, calamities, pandemic (including COVID-19 and COVID-19 Measures), acts of war (whether or not declared), armed hostilities or terrorism, or the escalation thereof, national or international political or social conditions; (v) any changes in applicable Laws or accounting rules, including GAAP; (vi) the public announcement, pendency or completion of the Transactions; (vii) the failure (in and of itself) of any Generac Holdings or any of its Affiliates to achieve any internal or external budget, projections, forecasts, estimates or predictions in respect of revenues, earnings or other financial or operating metrics for any period (but, for the avoidance of doubt, the underlying factors contributing to such failure shall be taken into account, to the extent not otherwise excluded); (viii) any decline (in and of itself) in the market price or trading volume of Generac Common Stock, any changes in credit ratings and any changes in any analysts' recommendations or ratings with respect to Generac Holdings or any of its Affiliates (but, for the avoidance of doubt, the underlying factors contributing to such decline shall be taken into account, to the extent not otherwise excluded); (*provided*, *further*, *however*, that any event, occurrence, fact, condition or change referred to in clauses (i) through (v) immediately above shall be taken into account in determining whether a Material Adverse Effect has occurred or would reasonably be expected to occur to the extent that such event, occurrence, fact, condition or change has a disproportionate effect on Generac Holdings and its subsidiaries compared to other participants in the industries in they conduct their businesses.

"**Generac Share Value**" means (a) with respect to the Closing Consideration Shares, $448.9326 (which the parties mutually agree represents the volume-weighted average closing price of Generac Common Stock on the New York Stock Exchange over a period of twenty trading days ending shortly prior to the date of this Agreement) and (b) with respect to any Earnout Consideration Shares, the volume-weighted average closing price of Generac Common Stock on the New York Stock Exchange (or such other stock exchange where Generac Common Stock is primarily listed) over a period of twenty trading days ending on the related Earnout Measurement Date.

"**General Indemnification Escrow Amount**" means $3,250,000.

"**General Indemnification Escrow Fund**" has the meaning set forth in Section 2.06(a)(i).

"**Governmental Authority**" means any federal, provincial, state, territorial, regional, municipal, local, foreign, international or supranational government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any administrative body, commission, authority, self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

"**Governmental Order**" means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

"**Guaranteed Obligations**" has the meaning set forth in Section 10.15.

"**Hazardous Substances**" shall mean pollutants, contaminants, hazardous substances, hazardous wastes, petroleum and fractions thereof, and all other chemicals, wastes, substances and materials listed in or regulated by or identified in any Environmental Law.

"**HITECH**" has the meaning set forth within the definition of Privacy and Security Laws and Standards.

"**HSR Act**" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (United States).

"**In-Money Option**" means any Company Option other than an Out-of-Money Option.

"**Indebtedness**" means, without duplication and with respect to the Company Group, all (a) indebtedness for borrowed money; (b) obligations for the deferred purchase price of property or services (other than Current Liabilities taken into account in the calculation of Closing Working Capital); (c) long or short-term obligations evidenced by notes, bonds, debentures or other similar instruments; (d) obligations under any interest rate, currency swap or other hedging or derivative agreement or arrangement; (e) capital leases determined in accordance with GAAP; (f) reimbursement obligations under any letter of credit, banker's acceptance or similar credit transactions, in each case to the extent drawn; (g) guarantees made on behalf of any third party in respect of obligations of the kind referred to in the foregoing clauses (a) through (f); and (h) any unpaid interest, prepayment penalties, premiums, costs and fees and unamortized prepaid debt issuance costs in each case that are outstanding with respect to, or that are then due and payable as a result of the prepayment of, any of the obligations referred to in the foregoing clauses (a) through (g), in each case calculated in accordance with the Agreed Accounting Principles. Indebtedness as of the Effective Time shall not include any obligations under Company Derivatives that are fully extinguished at the Effective Time by virtue of the Arrangement and taken into account in the allocation of the Arrangement Consideration. In no event shall Indebtedness include any (A) liability included in the definition of Closing Working Capital, (B) inter-company indebtedness among the Company Group, or (C) Transaction Expenses.

"**Indemnification Claim**" has the meaning set forth in Section 8.08(a).

"**Indemnification Escrow Funds**" has the meaning set forth in Section 2.06(a)(ii).

"**Indemnified Party**" means the party making a claim under ARTICLE 8.

"**Indemnifying Party**" the party against whom claims are asserted under ARTICLE 8.

"**Independent Accountant**" has the meaning set forth in Section 2.08(c)(iii).

"**Insurance Policies**" has the meaning set forth in Section 3.18.

"**Intellectual Property**" means: (a) all issued patents, reissued or re-examined patents, revivals of patents, divisions, continuations and continuations-in-part of patents, all improvements, renewals and extensions thereof, utility models, industrial designs and certificates of invention and improvements thereto, regardless of country or formal name; (b) all published or unpublished non-provisional and provisional patent applications, including the right to file other or further applications, re-examination proceedings, invention disclosures and records of invention; (c) all copyrights (whether registered or unregistered) and registrations and applications for registration thereof including all website and social media content; (d) all trademarks, service marks, brand names, logos, trade names, certification marks, trade dress, slogans, product designations, all rights arising under common law in connection with any of the foregoing, designs, Internet domain names, social media tags, proprietary rights in social media accounts, 1-800, 1-888, 1-877 and other "vanity" telephone numbers (to the extent assignable) and all applications for registration, registrations, renewals and extensions of registrations, together with all translations, adaptations, derivations, abbreviations, acronyms, and combinations thereof, all applications for registration and registrations thereof, renewals thereof; (e) industrial designs and similar rights; (f) integrated circuit topographies and similar rights; (g) all proprietary information and materials, whether or not patentable or copyrightable, and whether or not reduced to practice, including all inventions, Trade Secrets, technology, technical data, databases, data repositories, data lakes, data compilations and collections, enrichment, measurement and management tools, computer programs, and all hardware, Software and processes; and (h) any other intellectual property and all other similar intangible assets, properties and rights and the goodwill associated with the foregoing.

"**Interim Financial Statements**" has the meaning set forth in Section 3.06(a).

"**Interim Order**" means the interim order of the Court made pursuant to section 192 of the CBCA after being informed of the intention to rely upon the exemption from registration under Section 3(a)(10) of the U.S. Securities Act with respect to the Consideration Shares issued pursuant to the Arrangement, in a form acceptable to the Company and the Purchaser, each acting reasonably, providing for, among other things, the calling and holding of the Company Meeting, as such order may be amended by the Court with the consent of the Company and the Purchaser, each acting reasonably.

"**Internet of Things**" has the meaning set forth within the definition of Privacy and Security Laws and Standards.

"**Invention Assignment Agreements**" has the meaning set forth in Section 3.13(h).

"**Investment Canada Act**" means the *Investment Canada Act* (Canada).

"**Key Employee**" means each Person listed on Exhibit A to the Support Agreement.

"**Knowledge**" means, when used with respect to the Company, the actual or constructive knowledge of Stuart Lombard, David Brennan, Philip Cheng, Mark Malchiondo, John Metselaar, Penny Farinha, Scott Cleaver, Kevin Banderk, or Greg Fyke, after reasonable inquiry of the employees of the Company Group as of the date hereof who would reasonably be expected to have information about the matter in question.

"**Law**" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority, including the terms of any Permits.

"**Leased Real Property**" has the meaning set forth in Section 3.11(b).

"**Letter of Transmittal**" has the meaning set forth in Section 2.05(b).

"**Liabilities**" has the meaning set forth in Section 3.07.

"**Losses**" means losses, damages, liabilities, Taxes, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the reasonable cost of enforcing any right to indemnification hereunder and the reasonable cost of pursuing any insurance providers; *provided*, *however*, that "**Losses**" shall not include punitive damages, except to the extent actually awarded to a Governmental Authority or other third party.

"**Material Adverse Effect**" means any event, occurrence, fact, condition or change that is, or would reasonably be expected to become, individually or in the aggregate, materially adverse to (a) the Business, results of operations, financial condition or assets of the Company Group, or (b) the ability of the Company Group and the Company Securityholders to consummate the Transactions on a timely basis and perform their respective obligations under this Agreement and the Ancillary Documents; *provided*, *however*, that "Material Adverse Effect" for purposes of the foregoing clause (a) shall not include any event, occurrence, fact, condition or change, directly or indirectly, to the extent arising out of or attributable to: (i) general economic or political conditions; (ii) conditions generally affecting the industries in which the Company Group operates, including as such may reasonably relate to COVID-19 and COVID-19 Measures, including delays or disruptions in the supply of goods or services; (iii) any changes in financial or securities markets in general; (iv) acts of God, calamities, pandemic (including COVID-19 and COVID-19 Measures), acts of war (whether or not declared), armed hostilities or terrorism, or the escalation thereof, national or international political or social conditions; (v) any changes in applicable Laws or accounting rules, including GAAP; (vi) the public announcement, pendency or completion of the Transactions; or (vii) the failure (in and of itself) of any member of the Company Group to achieve any financial projections or budget (but, for the avoidance of doubt, the underlying factors contributing to such failure shall be taken into account, to the extent not otherwise excluded); (*provided*, *further*, *however*, that any event, occurrence, fact, condition or change referred to in clauses (i) through (v) immediately above shall be taken into account in determining whether a Material Adverse Effect has occurred or would reasonably be expected to occur to the extent that such event, occurrence, fact, condition or change has a disproportionate effect on the Company Group compared to other participants in the industries in which the Company Group conducts the Business.

"**Material Company IP Agreements**" has the meaning set forth in Section 3.13(g).

"**Material Contracts**" has the meaning set forth in Section 3.09(a).

"**Material Customers**" has the meaning set forth in Section 3.17(a).

"**Material Suppliers**" has the meaning set forth in Section 3.17(b).

"**Misrepresentation**" means an untrue statement of a material fact or an omission to state a material fact required or necessary to make the statements contained therein not misleading in light of the circumstances in which they are made.

"**Moral Rights**" means moral or equivalent rights in any Intellectual Property, including the right to protect the work from derogatory treatment, the right to be identified as the author by name or under a pseudonym of a work and the right to remain anonymous with respect to authorship of a work.

"**Non-Refundable HST**" means harmonized sales tax or goods and services tax payable under Part IX of the *Excise Tax Act* (Canada) and any Canadian provincial sales tax in respect of which input tax credits cannot properly be claimed based on legal or accounting advice.

"**Non-U.S. Benefit Plan**" has the meaning set forth in Section 3.23(a).

"**OCGC**" means Ontario Capital Growth Corporation.

"**Open Source**" means open source, public source or freeware Intellectual Property, or any modification or derivative thereof, including any version of any Intellectual Property licensed pursuant to any GNU General Public License, GNU Lesser General Public License, Mozilla Public License, Server Side Public License, GNU Affero General Public License or other Intellectual Property that is licensed pursuant to a license that requires, as a condition of use, modification or distribution of such Intellectual Property, that such Intellectual Property: (i) in the case of Software, be made available or distributed in a form other than binary (e.g., Source Code form); (ii) be licensed for the purpose of preparing derivative works; (iii) be licensed under terms that allow such Intellectual Property or portions thereof or interfaces therefor to be reverse engineered, reverse assembled or disassembled (other than by operation of law); or (iv) be redistributable at no license fee.

"Out-of-Money Options" means Company Options having an exercise price in excess of the Closing Per Share Arrangement Consideration, calculated for this purpose as if all Options were included in clause (ii) of the definition of "Closing Arrangement Consideration" and in the definition of "Fully Diluted Share Number."

"**Owned Data**" means each element of data collected, generated, processed, used or received by the Company Group that the Company Group owns.

"**Parent**" has the meaning set forth in the preamble.

"**PCI DSS**" has the meaning set forth within the definition of Privacy and Security Laws and Standards.

"**Permits**" means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

"**Person**" means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

"**Permitted Encumbrance**" means (a) any Encumbrance affecting the freehold title of any Leased Real Property but that does not materially impair the Company Group's present use of such Leased Real Property; (b) materialmen's, mechanics', carriers', workmen's, warehousemen's, repairmen's, landlord's and other similar Encumbrances arising in the ordinary course of business for amounts that are not past due, or deposits to obtain the release of such Encumbrances; (c) Encumbrances for Taxes not yet due and payable, or being contested in good faith and properly reserved in the Financial Statements; (d) any Encumbrances created as a result of any act taken by or through the Buyer or any of its Affiliates; (e) Encumbrances with respect to the Indebtedness satisfied in full as of the Effective Time that are actually released as of the Effective Time; and (f) Encumbrances under the terms of the CIBC Visa credit cards maintained by the Company Group, for amounts not yet due and payable, or being contested in good faith and properly reserved in the Financial Statements.

"**Personal Information**" means any information that identifies, relates to, describes, is capable of being associated with, or would reasonably be linked, directly or indirectly, with an identified or natural person or a natural person who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity of that natural person, including, a name, street address, telephone number, email address, an identification number issued by a Governmental Authority, credit card number, bank account number, biometric data, medical or health information, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person or any other piece of information that allows the identification of a natural person or is otherwise considered "personally identifiable information" or "personal information" or "personal data" under applicable Law relating to the collection, use, sharing, storage, handling, retention, destruction and/or disclosure of such information about an identifiable natural person.

"**Plan of Arrangement**" means the plan of arrangement substantially in the form and content set out in Exhibit D, as amended, modified or supplemented from time to time in accordance with this Agreement and Section 5.1 of the Plan of Arrangement or at the direction of the Court in the Final Order, with the consent of the Company and Purchaser, each acting reasonably.

"**Post-Closing Adjustment**" has the meaning set forth in Section 2.08(a).

"**Post-Closing Tax Period**" means any taxable period beginning on or after the Effective Date and, the portion of any Straddle Period beginning on or after the Effective Date.

"**PPACA**" has the meaning set forth in Section 3.23(i).

"**Pre-Closing Certificate**" has the meaning set forth in Section 2.07(a).

"**Pre-Closing Reorganization**" means the steps and transactions set out in Section 5.12 of the Disclosure Letter.

"**Pre-Closing Tax Period**" means any taxable period ending before the Effective Date and the portion of any Straddle Period ending before the Effective Date.

"**Privacy and Security Laws and Standards**" means applicable generally accepted industry standards concerning the privacy and security of Personal Information, including Payment Card Industry Data Security Standards ("**PCI DSS**"), and any applicable Laws regarding the protection, collection, access, use, storage, disposal, disclosure, or transfer of Personal Information and all regulations promulgated hereunder, including HIPAA, the Health Information Technology for Economic and Clinical Health Act of 2009 ("**HITECH**"), the Gramm-Leach-Bliley Act, the Fair Credit Reporting Act, the Fair and Accurate Credit Transaction Act, the Federal Trade Commission Act, the CAN-SPAM Act, the Telephone Consumer Protection Act, the Telemarketing and Consumer Fraud and Abuse Prevention Act, Children's Online Privacy Protection Act, the California Consumer Privacy Act and other U.S. state privacy Laws, U.S. state data security and breach notification Laws, U.S. state biometric or health information privacy Laws, applicable Laws governing the Internet of Things or the processing of Personal Information using machine-learning or artificial intelligence, Canada's Personal Information Protection and Electronic Documents Act (PIPEDA), *The Act to promote the efficiency and adaptability of the Canadian Economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act (Canada's Anti-Spam Legislation), the Competition Act and the Telecommunications Act (Canada*) ("**CASL**") and provincial privacy laws of Canada, the European Union's e-Privacy Directive, the European Union General Data Protection Regulation (EU) 2016/679 ("**GDPR**") (including the GDPR as saved into United Kingdom law by virtue of Section 3 of the United Kingdom's European Union (Withdrawal) Act 2018) and its predecessor European Union Directive 95/46/EC), and the individual data protection Laws of European or other nations, and any other applicable Law concerning privacy, cybercrime, use of electronic data, Payment Card Industry (PCI) Data Security Standards, Laws regarding website and mobile application privacy policies and practices, data- or web-scraping, call or electronic monitoring or recording or any outbound communications (including outbound calling and text messaging, telemarketing, and e-mail marketing). As used herein, "**Internet of Things**" means a system of interrelated, internet-connected objects that are able to collect and transfer data over Company IT Systems, Company Products or other Company assets.

"**Privacy Policy**" means each external or internal, past or present privacy policy of the Company, including any policy relating to: (a) the privacy of users of any website or mobile application owned or controlled by or on behalf of the Company; (b) the processing of any Customer Data or Personal Information collected, stored, used, or processed by the Company, and (c) any Company employee information.

"**Pro Rata Share**" means, with respect to any Company Securityholder, such Person's ownership interest in the Company as of immediately prior to the Effective Time, determined by dividing (a) the number of Company Common Shares held by such Person, plus the number of Company Common Shares issuable upon conversion, exercise or settlement of Company Preferred Shares or Company Derivatives held by such Person, in each case as of immediately prior to the Effective Time, by (b) the Fully Diluted Share Number; provided, that solely in respect to Section 8.02(f), Pro Rata Share shall be determined solely by inclusion of those Company Securityholders who elect to participate in the Pre-Closing Reorganization, as indicated in the Pre-Closing Certificate (other than CDP Investissements Inc., who shall not be included as a Company Securityholder for such purpose whether or not it elects to participate in the Pre-Closing Reorganization); provided, further that prior to the MOF Consent, the Pro Rata Share of OCGC

shall be reduced to zero without any adjustment to the Pro Rata Share of any other Company Securityholder.

"**Protected Communications**" has the meaning set forth in Section 10.17.

"**Purchase Price**" means $650,000,000.

"**Purchase Price Adjustment Escrow Amount**" means $3,000,000.

"**Purchase Price Adjustment Escrow Fund**" has the meaning set forth in Section 2.06(a)(ii).

"**Purchaser**" has the meaning set forth in the preamble.

"**Purchaser Indemnitees**" has the meaning set forth in Section 8.02.

"**R&W Insurance Policy**" means an acquisition-side representation and warranty insurance policy to be issued to Purchaser by Illinois Union Insurance Company (d/b/a Chubb), substantially in the form made available to the Company prior to the date hereof, and any excess policies with respect thereto.

"**Real Property Lease**" has the meaning set forth in Section 3.11(b).

"**Relevant Person**" has the meaning set forth in Section 3.21(a).

"**Representative**" means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

"**Representative Losses**" has the meaning set forth in Section 10.01(c).

"**Requisite Company Vote**" has the meaning set forth in Section 3.02(a).

"**Resolution Period**" has the meaning set forth in Section 2.08(c)(ii).

"**Response Period**" has the meaning set forth in Section 8.08(a).

"**Restricted Party**" means any Person that is the subject or target of sanctions or other restrictions under Sanctions.

"**Review Period**" has the meaning set forth in Section 2.08(c)(i).

"**Sanctions**" means all Laws relating to economic or trade sanctions administered or enforced by the United States (including by Office of Foreign Assets Control of the United States Department of the Treasury or the U.S. Department of State), Canada, the United Kingdom, the United Nations Security Council, the European Union, any European Union Member State or any other relevant Governmental Authority.

"**Section 431 Election**" has the meaning given to such term in the UK Sub-Plan of the Company Stock Option Plan.

"**Securityholder Indemnitees**" has the meaning set forth in Section 8.03.

"**Securityholder Representative**" has the meaning set forth in the preamble.

"**Securityholder Representative Engagement Agreement**" has the meaning set forth in Section 10.01(c).

"**Securityholder Representative Fund**" has the meaning set forth in Section 2.06(d).

"**Sensitive Information**" has the meaning set forth in Section 3.13(e).

"**Software**" means any computer program, operating system, applications system, firmware or other code of any nature, whether operational, currently under development, or obsolete, including all object code, Source Code, data files, rules, data collections, diagrams, protocols, specifications, interfaces, definitions or methodology derived from the foregoing and any derivations, updates, enhancements and customization of any of the foregoing, processes, operating procedures, technical manuals, user manuals and other documentation thereof, whether in machine-readable form, programming language or any other language or symbols and whether stored, encoded, recorded or written on disk, tape, film, memory device, paper or other media of any nature.

"**Source Code**" means computer software and code, in form other than object code form, including related programmer comments and annotations, help text, data structures, instructions and procedural, object-oriented and other code, which may be printed out or displayed in human readable form.

"**Special Indemnification Escrow Amount**" means $10,000,000.

"**Special Indemnification Escrow Fund**" has the meaning set forth in Section 2.06(a)(ii).

"**SRED Credits**" means investment tax credits for expenditures that qualify as "scientific research and experimental development", within the meaning of the Tax Act, and any comparable tax credits claimed under any Canadian provincial laws.

"**Statement of Objections**" has the meaning set forth in Section 2.08(c)(ii).

"**Straddle Period**" means a taxation or fiscal year or period (or portion thereof) that begins before and ends on or after the Effective Date.

"**Target Working Capital**" has the meaning set forth within the definition of Estimated Closing Adjustment in this ARTICLE 1.

"**Tax Act**" means the Income Tax Act (Canada) R.S.C. 1985 c. 1 (5th Supp.).

"**Tax Benefit**" has the meaning set forth in Section 8.04(a).

"**Tax Contest**" has the meaning set forth in Section 6.08.

"**Tax Related Claims**" has the meaning set forth in Section 8.04(b)(iii).

"**Tax Return**" means any return, declaration, election, filing, declaration, report, claim for refund, information return or statement or other document or information relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

"**Taxes**" means all taxes, including all federal, state, local, foreign and other income, goods and services, gross receipts, sales, harmonized sales, use, production, ad valorem, transfer, land transfer, franchise, registration, profits, license, lease, service, service use, goods and services, corporation, national insurance, stamp duty, value added, withholding, payroll, PAYE, employment, unemployment, social security, Canada Pension Plan, estimated, excise, severance, environmental, stamp, alternative or add-on minimum, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes of any kind whatsoever, or any fees, assessments or charges of any kind whatsoever in the nature of or similar to taxes, and escheat, unclaimed or abandoned property, including all interest, fines, penalties, additions to tax or additional amounts imposed in respect thereof.

"**Third Party Components**" means Third-Party Hardware and Third Party Software.

"**Third Party Hardware**" means any hardware component, part, assembly, tool or product incorporated into any Company Product.

"**Third Party Processed Data**" means all data owned, or purported to be owned, by third parties that is processed by the Company Group.

"**Third Party Software**" means any Software (including object code, binary code, source code, libraries, routines, subroutines or other code, and including commercial, Open Source Software) that is both (i) not solely owned by the Company and (ii) the Company incorporates in, distributes with, or licensed by the Company in the development, use or commercialization of, any Company Product. Third Party Software includes Software that is not solely owned by the Company and that the Company: (A) provides to Company's end-users in any manner, whether for free or for a fee, whether distributed or hosted, and whether embedded or incorporated in or bundled with any Company Product or on a standalone basis; (B) uses for development, maintenance and/or support of any Company Product, including development tools such as compilers, converters, debuggers or parsers, tracking and database tools such as project management Software, source code control and bug tracking Software, and Software that the Company uses for internal testing purposes; and (C) uses to generate code or other Software that is described in clause (A) or (B).

"**Thomvest Warrants**" means (a) that certain Commitment Warrant Certificate, dated as of March 11, 2014, issued by the Company to Thomvest Seed Capital Inc., as assigned by the holder to Structured Alpha LP by agreement dated January 1, 2015, as amended by certain Warrant Amending Agreements, dated as of May 5, 2020 and September 14, 2021; (b) that certain First Note Warrant Certificate, dated as of March 11, 2014, issued by the Company to Thomvest Seed Capital Inc., as assigned by the holder to Structured Alpha LP by agreement dated January 1, 2015, as amended by that certain Warrant Adjustment Agreement dated as of February 15, 2018, and as further amended by certain Warrant Amending Agreements, dated as of May 5, 2020 and September 14, 2021; and (c) that certain 2017 New Loan Warrant Certificate, dated as of September 1, 2017, issued by the Company to Structured Alpha LP.

"**Trade Secrets**" means, collectively, (i) trade secrets and other confidential or sensitive information (including of third parties), inventions (whether or not patentable or reduced to practice), ideas, know-how, processes, methods, techniques, research and development, Source Code, drawings, specifications, layouts, designs, formulae, algorithms, compositions, industrial models, architectures, plans, proposals, technical data, financial, business and marketing plans and proposals, customer and supplier lists, and price and cost information, and (ii) privileged or proprietary information which, if compromised through any theft, unauthorized modification, corruption, loss, misuse or unauthorized access or disclosure, would be reasonably likely to cause serious harm to the organization owning it.

"**Transaction Expenses**" means (a) all fees and expenses incurred by the Company Group and any Affiliate at or prior to the Closing in connection with the preparation, negotiation and execution of this Agreement and the Ancillary Documents and the performance and consummation of the Transactions, (b) any payments triggered or accelerated by the Transactions (including retention, sale-bonus or transaction-related payments to employees or service providers, but excluding payments arising from the termination without cause of employment or services of any Person upon or after the Closing and excluding payments arranged by the Purchaser or its Affiliates) and the employer portion of Taxes payable with respect to any such payments or the Arrangement Consideration, including, for the avoidance of doubt, any payments related to the Company Options (which, for the avoidance of doubt, does not include the employee portion of such Taxes that are actually withheld and deducted pursuant to Section 2.04(c) or Section 2.05(h)), (c) 50% of the costs of the R&W Insurance Policy, (d) any Non-Refundable HST in respect of the foregoing and (e) any other costs or expenses expressly allocated under this Agreement to the pre-Closing Company Group or the Company Securityholders, including the fees and expenses of the Escrow Agent, the Taxes described in Section 6.01(b), 50% of the fees and expenses of the Exchange Agent and 50% of the filing fees for any filings or submissions under Section 5.06(d).

"**Transactions**" means the Arrangement and the other transactions contemplated by this Agreement or the Ancillary Documents.

"**Transaction Tax Deductions**" means deduction for Tax purposes resulting from (a) any compensatory proceeds paid with respect to the Company Options, (b) any sale bonuses paid in connection with the Closing, (c) any costs, fees and expenses (including any breakage fees or deferred or capitalized financing fees) incurred by any of the Company Group with respect to the payment of Indebtedness in connection with the Transactions, or (d) any Transaction Expenses, in each case solely to the extent actually taken into account as a reduction in the calculation of the Arrangement Consideration.

"**U.S. Exchange Act**" means the Securities and Exchange Act of 1934 (United States).

"**U.S. Securities Act**" means the Securities Act of 1933 (United States).

"**U.S. Tax Code**" means the Internal Revenue Code of 1986 (United States).

"**UK Employee**" means an employee of UKCo.

"**UKCo**" means Cocoon Labs Ltd, a U.K. private company limited by shares (company number 09045251) whose registered office address is at 46 The Calls, Leeds, LS2 7EY and which is a direct wholly owned subsidiary of the Company.

"**Undisputed Amounts**" has the meaning set forth in Section 2.08(c)(iii).

"**USCo**" means ecobee Ltd., a Nevada corporation and direct wholly owned subsidiary of the Company.

"**Withholding Agent**" has the meaning set forth in Section 2.04(c).

ARTICLE 2.
THE ARRANGEMENT

Section 2.01 Arrangement, Effective Date.

(a) The Company and Purchaser agree that the Arrangement will be implemented in accordance with and subject to the terms and conditions contained in this Agreement and the Plan of Arrangement. The Articles of Arrangement shall implement the Plan of Arrangement.

(b) Subject to the terms and conditions of this Agreement, the closing of the Transactions contemplated hereby and by the Plan of Arrangement (the "**Closing**") shall take place at the Effective Time remotely by exchange of documents and signatures (or their electronic counterparts), or at such other time on the Effective Date or at such place as the Company and Purchaser may mutually agree upon in writing. Unless otherwise agreed to by the parties (other than the Securityholder Representative) the Effective Date shall occur on the later of (i) December 1, 2021 and (ii) the third Business Day after all of the conditions set forth in ARTICLE 7 have been satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Effective Date, but subject to the satisfaction or waiver thereof) (provided that if such date would be after December 10, 2021, then the Effective Date shall be deferred and shall occur no earlier than January 1, 2022), at which time the Company shall file the Articles of Arrangement, the Final Order and such other documents as may be required to give effect to the Arrangement with the Director pursuant to Section 192 of the CBCA, whereupon the transactions comprising the Arrangement shall occur and be deemed to have occurred at the time and in the order set out therein without any further act or formality.

Section 2.02 Effects of the Arrangement. The Arrangement shall have the effects provided in the Plan of Arrangement.

Section 2.03 Closing Deliverables.

(a) At or prior to the Closing, the Company shall deliver to Purchaser the following:

(i) the Escrow Agreement duly executed by Securityholder Representative;

(ii) the Pre-Closing Certificate pursuant to Section 2.07;

(iii) payoff letters with respect to all Indebtedness, providing for the full and final discharge thereof and the release of all Encumbrances as of Closing;

(iv) resignations of the directors and officers of the Company Group pursuant to Section 5.06, together with any necessary board minutes and documentation to effect or record the same (e.g., Forms TM01 and TM02 for UKCo);

(v) the UKCo's Companies House e-filing authentication code;

(vi) for each UK based Company Securityholder with Company Options, a Section 431 Election duly executed by the (i) UK based Company Securityholder with Company Options, (ii) Company, and (iii) UKCo, in compliance with the UK Sub-Plan of the Company Stock Option Plan;

(vii) a certificate, dated the Effective Date and signed by a duly authorized officer of the Company, that each of the conditions set forth in Section 7.02(a), Section 7.02(b) and Section 7.02(d) have been satisfied;

(viii) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of the Company certifying (A) that attached thereto are true and complete copies of all resolutions or other corporate actions of the Company Board or the Company Shareholders approving this Agreement and the Transactions, (B) that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the Transactions, and (C) as to a list of the officers of the Company authorized to sign this Agreement and the Ancillary Documents;

(ix) a good standing certificate (or its equivalent) from the secretary of state or similar Governmental Authority of the jurisdiction under the Laws in which the Company, USCo and CanCo is organized;

(x) the FIRPTA Statement; and

(xi) registers, statutory books (duly written up to Closing), minute books, definitive share certificates for interests in CanCo, UKCo and USCo (if applicable), and such other corporate records, documentation and credentials as Purchaser shall reasonably request.

(b) At the Closing, Purchaser shall deliver to the Company (or such other Person as may be specified herein) the following:

(i) the Escrow Agreement duly executed by Purchaser;

(ii) payment to holders of outstanding Indebtedness, if any, by wire transfer of immediately available funds that amount of money due and owing from the Company to such holder of outstanding Indebtedness as set forth on the Pre-Closing Certificate;

(iii) payment to third parties to whom any Transaction Expenses are payable by wire transfer of immediately available funds that amount of money due and owing from

the Company to such third parties as Transaction Expenses as set forth on the Pre-Closing Certificate;

(iv) payment to the Securityholder Representative by wire transfer of immediately available funds an amount equal to the Securityholder Representative Fund;

(v) payment to the Exchange Agent by wire transfer of immediately available funds an amount equal to the aggregate Closing Cash Consideration payable in exchange for Company Securities pursuant to this Agreement;

(vi) payment to the Exchange Agent by book-entry of the aggregate amount of Closing Consideration Shares payable in exchange for Company Securities pursuant to this Agreement;

(vii) payment to the Escrow Agent by wire transfer of immediately available funds the General Indemnification Escrow Amount, the Special Indemnification Escrow Amount and the Purchase Price Adjustment Escrow Amount as set forth in Section 2.06;

(viii) evidence that any newly issued Closing Consideration Shares shall have been approved for listing on the New York Stock Exchange, subject to official notice of issuance thereof;

(ix) a certificate, dated the Effective Date and signed by a duly authorized officer of Company, that each of the conditions set forth in Section 7.03(a) and Section 7.03(b) have been satisfied.

Section 2.04 Arrangement Consideration Generally.

(a) Form of Consideration. The Arrangement Consideration shall be payable by the Purchaser in accordance with the Plan of Arrangement. Of the Closing Arrangement Consideration, (a) the first $450,000,000 shall be payable in the form of Generac Common Stock (the "**Closing Consideration Shares**"), with each share thereof valued at the Generac Share Value for this purpose, and (b) the remainder shall be payable in the form of cash, without interest (the "**Closing Cash Consideration**"). The Earnout Consideration shall be payable exclusively in the form of Generac Common Stock (the "**Earnout Consideration Shares**"), with each share thereof valued at the Generac Share Value for this purpose. All other payments of the Arrangement Consideration shall be payable in cash, without interest.

(b) Consideration Shares.

(i) For purposes of calculating the number of Consideration Shares payable under this Agreement, shares of Generac Common Stock shall be valued at the Generac Share Value. For greater certainty, the number of Consideration Shares issuable for any payment shall be equal to the dollar value of such payment divided by the Generac Share Value, regardless of the price or value of shares of Generac Common Stock at the time of such determination or payment or otherwise. The parties have agreed to such use of the fixed Generac Share Value with the understanding that the value of Generac Common

Stock may be materially different than the value of the Consideration Shares at the time of their delivery to or subsequent sale by any Company Securityholder.

(ii) Unless otherwise determined by Generac Holdings, no fractional shares of Generac Common Stock shall be paid pursuant to this Agreement. Accordingly, and notwithstanding anything to the contrary, in lieu of payment of any fractional share of Generac Common Stock, Generac Holdings, Purchaser or the Exchange Agent may make a cash payment, without interest, in an amount equal to the product of (i) such fractional share number multiplied by (ii) the Generac Share Value.

(iii) For the avoidance of doubt, no Company Securityholder shall have any right or interest in Consideration Shares (including any right to receive dividends or exercise voting rights) unless and until such Consideration Shares are paid to such Company Securityholder pursuant to this Agreement.

(iv) Purchaser shall cause Generac Holdings to establish a reserve for the Consideration Shares and to deliver the Consideration Shares as and when required by this Agreement.

(c) Withholding. Each of Purchaser, the Company, the Exchange Agent, the Escrow Agent, and any other applicable withholding agent (each, a "**Withholding Agent**") shall be entitled to deduct and withhold from the amounts otherwise payable to any Person pursuant to this Agreement or the Ancillary Documents such amounts as is required to be deducted and withheld with respect to the making of such payment (or in connection with the underlying transactions that lead to such payment, including the vesting or exercise of Company Derivatives and any loan made in connection therewith) under any provision of Law. To the extent that amounts are so deducted and withheld and remitted to the applicable tax authority, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made. Without limiting the generality of the foregoing, each UK based Company Securityholder with Company Options agrees to the deduction from payments due in respect of Company Securities of any income Tax and employee's and employer's National Insurance contributions which fall to be paid by HM Revenue & Customs by the Company Group under the PAYE system as it applies to income Tax under the Income Tax (Earnings and Pensions) Act 2003 and the PAYE regulations referred to in it or as modified for the purposes of national insurance contributions. Each of Purchaser, the Company, the Exchange Agent and the Escrow Agent agrees that it will cooperate with any Person that would otherwise be subject to any withholding described in this Section 2.04(c) to obtain any reduction or reimbursement of or exemption from any such withholding, including upon being provided with Canada Revenue Agency forms NR301, NR302, and NR303 confirming the eligibility for benefits under an applicable tax treaty.

(d) Adjustments. Without limiting the other provisions of this Agreement, if at any time during the period between the date of this Agreement and the Effective Time, any change in the outstanding shares of capital stock of the Company shall occur, including by reason of any reclassification, recapitalization, stock split (including reverse stock split) or combination, exchange or readjustment of shares, or any stock dividend or distribution paid in stock, the

Arrangement Consideration and any other amounts payable pursuant to this Agreement shall be appropriately adjusted to reflect such change.

(e) Foreign Currency Conversion. Determinations of amounts payable to the Company Securityholders with respect to Company Securities denominated in Canadian dollars or with respect to which the exercise price is denominated in Canadian dollars, the Canadian dollar amount shall be notionally converted to U.S. dollars at the daily average exchange rate published by the Bank of Canada with respect to the date that is five (5) Business Days prior to the Closing.

Section 2.05 Payment Mechanics.

(a) Prior to the Effective Time, Purchaser shall, pursuant to an agreement reasonably acceptable to the Company (the "**Exchange Agent Agreement**"), appoint Computershare Trust Company, N.A. or another institutional exchange agent reasonably acceptable to the Company (the "**Exchange Agent**") to act as the exchange agent to facilitate payment of the Arrangement Consideration to the Company Securityholders. The fees and expenses of the Exchange Agent shall be borne by Purchaser.

(b) Notwithstanding anything to the contrary, the right of each Company Securityholder to receive any Arrangement Consideration shall be conditioned upon such Company Securityholder's prior completion, execution and delivery of a properly completed letter of transmittal in substantially the form attached as Exhibit E together with any original share certificates, affidavits and indemnity of lost share certificate, tax forms, and other documents or information required thereby (together, a "**Letter of Transmittal**") all in accordance with the Plan of Arrangement. Purchaser (or the Exchange Agent acting pursuant to authority delegated by Purchaser) shall have authority to reasonably determine whether a Letter of Transmittal has been duly completed, and may in its sole discretion waive the requirement of a Letter of Transmittal or any irregularity therewith.

(c) The Exchange Agent shall make available to each Company Securityholder the form Letter of Transmittal and related instructions, which may (at the option of Parent or the Exchange Agent) be made available by paper mailing, electronic delivery, online portal, or other reasonable means (or combinations thereof) at least seven Business Days prior to the contemplated Effective Date. The Exchange Agent shall use commercially reasonable efforts to pay each Company Securityholder its portion of the applicable Closing Arrangement Consideration prior to the later of (A) the Effective Date or (B) the fifth Business Day after receipt of a duly completed Letter of Transmittal.

(d) In connection with the payment of any Additional Arrangement Consideration, Purchaser, Generac Holdings, the Exchange Agent or the Escrow Agent may request that Securityholder Representative deliver an updated Consideration Spreadsheet (and each of Purchaser, Generac Holdings, the Exchange Agent and the Escrow Agent shall be entitled to thereafter rely on such Consideration Spreadsheet) and may require one or more Company Securityholders to confirm or provide new payment instructions with respect to such Additional Arrangement Consideration. None of Purchaser, Generac Holdings, the Exchange Agent or the Escrow Agent shall be responsible for failure or delay in making any payment or Arrangement

Consideration to the extent such failure or delay is attributable to the failure of the Securityholders' Representative or affected Company Securityholder to provide such information.

(e) No interest shall be paid or accrued for the benefit of Company Shareholders on any Arrangement Consideration.

(f) If any portion of the Arrangement Consideration is to be paid to a Person other than the Person in whose name the corresponding Company Security is registered, it shall be a condition to such payment that (i) such Company Security shall be properly endorsed or shall otherwise be in proper form for transfer, and (ii) the Person requesting such payment shall pay to Parent or the Exchange Agent any transfer or other Tax required as a result of such payment to a Person other than the registered holder of such Certificate or establish to the reasonable satisfaction of Parent or the Exchange Agent that such Tax has been paid or is not payable.

(g) Any portion of the Closing Arrangement Consideration that remains unclaimed by any Company Securityholder six months after the Effective Time shall be returned to Purchaser upon demand, and any such Company Securityholder shall thereafter look only to Purchaser for payment of the Arrangement Consideration. Notwithstanding anything to the contrary, Purchaser shall not be liable to any Company Securityholder for any amounts paid to a public official pursuant to applicable abandoned property, escheat or similar Laws. Any portion of the Closing Arrangement Consideration remaining unclaimed by Company Securityholders two years after the Effective Time (or such earlier date, immediately prior to such time when the amounts would otherwise escheat to or become property of any Governmental Authority) shall become, to the extent permitted by applicable Law, the property of Purchaser free and clear of any claims or interest of any Person previously entitled thereto, and any portion of the Additional Arrangement Consideration remaining unclaimed by Company Securityholders two years after the date such became payable to Company Securityholders (or such earlier date, immediately prior to such time when the amounts would otherwise escheat to or become property of any Governmental Authority) shall become, to the extent permitted by applicable Law, the property of Purchaser free and clear of any claims or interest of any Person previously entitled thereto.

(h) Notwithstanding anything to the contrary in this Agreement, any compensatory amounts payable pursuant to or as contemplated by this Agreement shall be remitted by the applicable payer to the applicable member of the Company Group for payment to the applicable Person through regular payroll procedures, or otherwise processed as reasonably determined by Purchaser. The Company Group prior to Closing shall take such actions as may be necessary to cause such payments to be made on the Effective Date (or as soon thereafter as is reasonably practicable, if such payments cannot be made on the Effective Date despite reasonable best efforts).

Section 2.06 Escrow Funds; Securityholder Representative Fund.

(a) In accordance with the Escrow Agreement and the Plan of Arrangement, Purchaser shall deposit or cause to be deposited with the Escrow Agent:

(i) the General Indemnification Escrow Amount (such amount, including any interest or other amounts earned thereon and less any disbursements therefrom in accordance with the Escrow Agreement, the "**General Indemnification Escrow Fund**"),

to be held for the purpose of securing any payment obligations of Company Securityholders under this Agreement;

(ii) the Special Indemnification Escrow Amount (such amount, including any interest or other amounts earned thereon and less any disbursements therefrom in accordance with the Escrow Agreement, the "**Special Indemnification Escrow Fund**" and together with the General Indemnification Escrow Fund, the "**Indemnification Escrow Funds**"), to be held for the purpose of securing any payment obligations of Company Securityholders under this Agreement; and

(iii) the Purchase Price Adjustment Escrow Amount (such amount, including any interest or other amounts earned thereon and less any disbursements therefrom in accordance with the Escrow Agreement, the "**Purchase Price Adjustment Escrow Fund**" and together, with the Indemnification Escrow Funds, the "**Escrow Funds**"), to be held for the purpose of securing the obligations of the Company Securityholders in Section 2.08(d)(i).

(b) Upon the termination of an Indemnification Escrow Fund pursuant to the terms of the Escrow Agreement, subject to Section 2.05(d) and Section 8.05(c), the Escrow Agent shall pay any amounts remaining in such Indemnification Escrow Fund to the Company Securityholders (or to the Exchange Agent for distribution to the Company Securityholders) as set forth in the Escrow Agreement in accordance with each Company Securityholder's Pro Rata Shares.

(c) The fees and expenses of the Escrow Agent shall be borne by the Company Securityholders.

(d) In accordance with the Plan of Arrangement, Purchaser shall cause to be deposited $500,000 (the "**Securityholder Representative Fund**") to an account designated in writing by the Securityholder Representative to the Purchaser at the Closing for use by the Securityholder Representative in accordance with Section 10.01 hereof. The Company Securityholders will not receive any interest or earnings on the Securityholder Representative Fund and irrevocably transfer and assign to the Securityholder Representative any ownership right that they may otherwise have had in any such interest or earnings. The Securityholder Representative will hold these funds separate from its corporate funds and will not voluntarily make these funds available to its creditors in the event of bankruptcy. As soon as practicable following the completion of the Securityholder Representative's responsibilities, the Securityholder Representative will deliver any remaining balance of the Securityholder Representative Fund to the Exchange Agent for further distribution to the Company Securityholders (the costs of such distribution to be deducted from such amount, unless such distribution is combined with another distribution hereunder). For Tax and accounting purposes, Securityholder Representative Fund shall be deemed to have been paid to the Company Securityholders (in accordance with their Pro Rata Shares) and voluntarily contributed by them to the Securityholder Representative Fund to fund their collective expenses.

Section 2.07 Pre-Closing Certificate.

(a) By no later than 9:00 a.m. Eastern Standard Time on the third Business Day preceding the anticipated Effective Date, the Company shall prepare and deliver a certificate (the

"**Pre-Closing Certificate**") signed by the Chief Financial Officer of the Company (or another senior executive of the Company reasonably acceptable to Purchaser) that includes or incorporates the following (in a format reasonably acceptable to Purchaser):

(i) an itemized list of all outstanding Indebtedness as of the Effective Time and the Person to whom such outstanding Indebtedness is owed, and an aggregate total of such outstanding Indebtedness;

(ii) an itemized list of all Transaction Expenses remaining unpaid as of the Effective Time and the Person to whom such expense is owed, and an aggregate total of such Transaction Expenses;

(iii) an estimated balance sheet of the Company as of the Effective Date (without giving effect to the Transactions), in a form consistent with that as attached as Exhibit F, prepared in accordance with GAAP applied using (to the extent consistent with GAAP) the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Audited Financial Statements for the most recent fiscal year end as if such estimated balance sheet was being prepared and audited as of a fiscal year end;

(iv) the Company's estimate of Closing Working Capital (the "**Estimated Closing Working Capital**") and the Company's estimate of Closing Cash (the "**Estimated Closing Cash**"), derived from such estimated balance sheet and calculated in accordance with this Agreement, together with a reasonably detailed calculation thereof;

(v) the Fully Diluted Share Number;

(vi) the Pro Rata Share applicable to each Company Securityholder, including with respect to Section 8.02(f);

(vii) the resulting calculations of the Estimated Closing Adjustment, the Closing Arrangement Consideration, and the Closing Per Share Arrangement Consideration;

(viii) the Consideration Spreadsheet; and

(ix) a certification by such officer that such Pre-Closing Certificate has been prepared in good faith and in accordance with this Agreement and that the information therein is true and correct in all respects (or, in the case of information expressly identified as an estimate, that such estimate is a reasonable and good faith estimate reflecting the best information then available to the Company).

(b) Prior to delivery of the Pre-Closing Certificate, the Company shall afford Purchaser with a reasonable opportunity to review and comment on a draft of the Pre-Closing Certificate. To that end, the Company shall deliver a reasonably complete draft of the Pre-Closing Certificate to Purchaser by no later than 9:00 a.m. Eastern Standard Time on the fifth Business Day preceding the anticipated Effective Date. The Company shall upon request provide Purchaser access to all relevant documentation, supporting workpapers used in the preparation of the Pre-Closing Certificate, and the Company's employees and service providers for purposes of Purchaser's

review of the Pre-Closing Certificate. The Company shall reasonably consider and address any comments made by Purchaser with respect to the Pre-Closing Certificate.

(c) Purchaser shall be entitled to rely entirely upon the Pre-Closing Certificate and shall take no responsibility or liability for any errors therein. The opportunity to review and comment on the Pre-Closing Certificate, and any revisions to the Pre-Closing Certificate, shall not limit any rights, privileges or remedies of Purchaser under this Agreement.

Section 2.08 Post-Closing Adjustment.

(a) Generally. The Closing Arrangement Consideration necessarily reflects the use of estimates and shall be subject to adjustment after Closing as set forth in this Section 2.08. The "**Post-Closing Adjustment**" shall be an amount (which may be positive or negative) equal to the Closing Working Capital plus the Closing Cash (as finally determined) minus the Estimated Closing Working Capital minus the Estimated Closing Cash minus the aggregate amount of any outstanding Indebtedness or unpaid Transaction Expenses outstanding as of the Effective Time that was not taken into account in the calculation of Closing Arrangement Consideration.

(b) Closing Statement. Within 90 days after the Effective Date, the Securityholder Representative shall prepare, or cause to be prepared, and deliver to Purchaser a statement (the "**Closing Statement**") setting forth its calculation of Closing Working Capital, the Closing Cash and the Post-Closing Adjustment, which statement shall contain an itemized list of any Indebtedness or Transaction Expenses subject to the Post-Closing Adjustment, an unaudited balance sheet of the Company as of the Effective Date (without giving effect to the Closing), a calculation of Closing Working Capital and Closing Cash and a certificate of the Securityholder Representative that the Closing Statement was prepared in accordance with GAAP applied using (to the extent consistent with GAAP) the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Audited Financial Statements for the most recent fiscal year end as if such Closing Statement was being prepared and audited as of a fiscal year end. During the forty-five (45) days preceding the delivery of the Closing Statement, Purchaser will provide, and cause the Company to provide, the Securityholder Representative with reasonable access (during normal business hours and upon reasonable prior notice) to the accounting information and accounting personnel of the Company necessary to prepare the Closing Statement; provided, that the Securityholder Representative shall have executed all release letters reasonably requested by Purchaser's and the Company's accountants in connection therewith.

(c) Examination and Review.

(i) Examination. After receipt of the Closing Statement, Purchaser shall have 90 days (the "**Review Period**") to review the Closing Statement. During the Review Period, Purchaser and its Representatives shall have reasonable access to the books and records and personnel of, and work papers prepared by or for, Securityholder Representative to the extent that they relate to the Closing Statement and to such historical financial information (to the extent in Securityholder Representative's possession) relating

to the Closing Statement as Purchaser may reasonably request for the purpose of reviewing the Closing Statement and to prepare a Statement of Objections (defined below).

(ii) Objection. On or prior to the last day of the Review Period, Purchaser may object to the Closing Statement by delivering to Securityholder Representative a written statement setting forth its objections in reasonable detail, indicating each disputed item or amount and the basis for its disagreement therewith (the "**Statement of Objections**"). If Purchaser fails to deliver the Statement of Objections before the expiration of the Review Period, the Closing Statement and the Post-Closing Adjustment, as the case may be, reflected in the Closing Statement shall be deemed to have been accepted by Purchaser. If Purchaser delivers the Statement of Objections before the expiration of the Review Period, Securityholder Representative and Purchaser shall negotiate in good faith to resolve such objections within 30 days after the delivery of the Statement of Objections (the "**Resolution Period**"), and, if the same are so resolved within the Resolution Period, the Post-Closing Adjustment and the Closing Statement with such changes as may have been previously agreed in writing by Securityholder Representative and Purchaser, shall be final and binding.

(iii) Resolution of Disputes. If Purchaser and Securityholder Representative fail to reach an agreement with respect to all of the matters set forth in the Statement of Objections before expiration of the Resolution Period, then either of them may elect that any amounts remaining in dispute ("**Disputed Amounts**" and any amounts not so disputed, the "**Undisputed Amounts**") be submitted for resolution to Ernst & Young LLP or, if Ernst & Young LLP is unable to serve, Securityholder Representative and Purchaser shall appoint by mutual agreement the office of an impartial nationally recognized firm of independent certified public accountants (the "**Independent Accountant**") who, acting as experts and not arbitrators, shall resolve the Disputed Amounts only and make any adjustments to the Post-Closing Adjustment, as the case may be, and the Closing Statement. The parties hereto agree that all adjustments shall be made without regard to materiality. The Independent Accountant shall only decide the specific items under dispute by the parties and their decision for each Disputed Amount must be within the range of values assigned to each such item in the Closing Statement and the Statement of Objections, respectively.

(iv) Fees of the Independent Accountant. The fees and expenses of the Independent Accountant shall be paid by the Securityholder Representative (on behalf of the Company Securityholders), on the one hand, and by Purchaser, on the other hand, based upon the percentage that the amount actually contested but not awarded to the Purchaser or Securityholder Representative and Company Securityholders, respectively, bears to the aggregate amount actually contested by the Purchaser and Securityholder Representative.

(v) Determination by Independent Accountant. The Independent Accountant shall be instructed to make a determination as soon as practicable within 30 days (or such other time as the parties hereto shall agree in writing) after their engagement and shall be given access to all materials and information requested by it for such purpose. The decision of the Independent Accountant with respect to any Disputed Amounts, and any resulting adjustments to the Closing Statement and/or the Post-Closing Adjustment therefrom, shall

be conclusive and binding upon the parties hereto, and shall not be subject to appeal by any party, absent actual fraud or manifest error.

(d) Payment of Post-Closing Adjustment. Subject to Section 2.05(d) and Section 8.05(c):

(i) If the Post-Closing Adjustment is a negative number, then within three Business Days after the final determination of the Post-Closing Adjustment, Purchaser and Securityholder Representative shall jointly instruct the Escrow Agent to disburse from the Purchase Price Adjustment Escrow Fund until it is depleted (and then, to the extent the Purchase Price Adjustment Escrow Fund is insufficient for such adjustment, from other Escrow Funds and/or by recovery by offset of amounts otherwise payable by Purchaser or Parent pursuant to this Agreement (the order of recovery from such sources being as determined by the Purchaser Indemnitee)) by wire transfer of immediately available funds (I) to Purchaser, the Post-Closing Adjustment, and (II) to the Exchange Agent, for distribution to the Company Securityholders in accordance with their Pro Rata Shares, any amounts remaining in the Purchase Price Adjustment Escrow Fund. The Escrow Funds and recovery by offset of amounts otherwise payable by Purchaser or Parent pursuant to this Agreement shall be the sole recourse of the Purchaser and its Affiliates with respect to the Post-Closing Adjustment.

(ii) If the Post-Closing Adjustment is a positive number, Purchaser shall, within three Business Days after the final determination of the Post-Closing Adjustment, (A) deposit with the Exchange Agent, for distribution to the Company Securityholders in accordance with their Pro Rata Shares, the amount of such Post-Closing Adjustment and (B) Securityholder Representative and Purchaser shall jointly instruct the Escrow Agent to disburse from the Purchase Price Adjustment Escrow Fund by wire transfer of immediately available funds to the Exchange Agent, for distribution to the Company Securityholders in accordance with their Pro Rata Shares, the entire balance of the Purchase Price Adjustment Escrow Fund.

(e) Adjustments for Tax Purposes. Any payments made pursuant to this Section 2.08 shall be treated as an adjustment to the Purchase Price by the parties for Tax purposes, unless otherwise required by Law.

Section 2.09 Earnout Consideration.

(a) Generally. As a component of the Arrangement Consideration, the Company Securityholders shall have the opportunity to receive up to a maximum of $120,000,000 of additional consideration based upon the post-Closing performance of the Business as provided in Schedule 2.09 (the "**Earnout Consideration**"). The Earnout Consideration shall be calculated based upon two metrics defined in Schedule 2.09: Connected Homes and Eco+ ARR (the "**Earnout Metrics**"), which will be compared as of two measurement dates: June 30, 2022 and June 30, 2023 (the "**Earnout Measurement Dates**"), against the four corresponding targets set forth in Schedule 2.09 (the "**Earnout Targets**"). With respect to each Earnout Metric as of each Earnout Measurement Date, if the actual performance of such Earnout Metric stated as a percentage of the corresponding Earnout Target is (1) less than 80%, then no Earnout

Consideration shall be payable with respect thereto, (2) between 80% and 120% (inclusive), then an amount equal to such percentage multiplied by the target Earnout Consideration for such Earnout Target (as set forth in Schedule 2.09 under the heading "100%") shall be payable with respect thereto, and (3) greater than 120%, then the corresponding amount set forth in Schedule 2.09 under "≥120%" shall be payable with respect thereto (such amount being the absolute maximum that could be payable with respect to such Earnout Target). For the avoidance of doubt, except as expressly provided in Section 2.09(b), performance with respect to each of Earnout Targets shall be determined independently of the other Earnout Targets.

(b) Catch-Up. With respect to each Earnout Metric, if actual performance for such Earnout Metric exceeds 120% of the applicable Earnout Target as of June 30, 2023, then performance with respect to such Earnout Metric as of June 30, 2022 shall be retroactively adjusted by adding the amount of such excess performance at the latter Earnout Measurement Date (stated as a percentage) to the performance at the earlier Earnout Measurement Date (stated as a percentage) and determining the Earnout Consideration that would have been payable with respect to such earlier Earnout Measurement Date based upon such adjusted percentage achievement. If such adjusted Earnout Consideration amount exceeds the corresponding Earnout Consideration previously paid, then the amount of such excess shall be paid as additional Earnout Consideration concurrently with payment of the Earnout Consideration for the latter Earnout Measurement Date.

(c) Calculation, Review and Payment.

(i) Within 120 days following each Earnout Measurement Date, Purchaser shall deliver to the Securityholder Representative a statement (each, an "**Earnout Statement**") setting forth Purchaser's calculation of (A) the performance of the Business with respect to each Earnout Metric as of such Earnout Measurement Date, stated both as the actual number and as a percentage of the corresponding Earnout Target, (B) if Section 2.09(b) is applicable, the adjusted performance of the Business with respect to each affected Earnout Metric as of the prior Earnout Measurement Date, stated as a percentage, and (C) the amount (if any) of Earnout Consideration payable with respect to such Earnout Targets.

(ii) After receipt of each Earnout Statement, Securityholder Representative shall have 30 days to review the Earnout Statement. The provisions of Section 2.08(c) shall apply to such review and any objections *mutatis mutandis* (with references to the Review Period being deemed references to such 30-day period, references to the Closing Statement being deemed to be references to the Earnout Statement, and with Securityholder Representative being the reviewing party, etc.). Any claim, objection, or request to adjust Earnout Consideration pursuant to or in respect of Section 2.09(d) must be asserted with specificity in writing by the Securityholder Representative by the end of the Review Period for such Earnout Consideration, and any claim not so timely asserted shall expire and no longer be waived.

(iii) Subject to Section 2.05(d) and Section 8.05(c), within five Business Days after final determination of all Earnout Consideration payable with respect to an Earnout Measurement Date, Purchaser shall pay or cause Generac Holdings to pay such Earnout Consideration to the Company Securityholders (or to the Exchange Agent for distribution

to the Company Securityholders) in accordance with their Pro Rata Shares. For the avoidance of doubt, any Transaction Expenses that become payable by virtue of any Earnout Consideration shall be borne by the Company Securityholders. In furtherance thereof, upon written direction from the Securityholder Representative to the Purchaser, the amount of the Earnout Consideration otherwise payable hereunder shall be reduced as indicated by Securityholder Representative in such written direction to satisfy the Transaction Expense payable to Bank of America in respect of such payment of Earnout Consideration, with the Generac Common Stock valued using the applicable Generac Share Value and Purchaser to remit to Bank of America, in accordance with written instructions provided by the Securityholder Representative to Purchaser, the corresponding cash amount to Bank of America concurrent with payment of such Earnout Consideration.

(d) Operation of Business. During the period beginning on the Effective Date and ending on June 30, 2023, Purchaser shall, and shall cause its Affiliates (including the Company Group subsequent to the Closing) to, (x) use commercially reasonable efforts to operate the Business in good faith and (y) not intentionally take or omit to take any action for the purpose of avoiding or reducing the Earnout Consideration. Subject to the foregoing and except as expressly set forth in this Section 2.09(d), Generac Holdings, Purchaser and their respective Affiliates and successors-in-interest (i) other than as set forth in the following clause (ii), will have the right to conduct their operations, including with regard to all matters relating to the Company Group and the Business, as they determine in their sole discretion and shall not have any obligation to operate their respective businesses in order to generate or maximize any Earnout Consideration, (ii) shall be obligated to provide funding for the Business sufficient to fund aggregate operating expenses as set forth in Schedule 2.09; provided, that Purchaser may adjust such budget, in which case Purchaser and the Securityholder Representative shall discuss in good faith and agree to an adjustment to the applicable Earnout Consideration provisions (whether by adjusting the amount of the Earnout Target, the time period for measuring the Earnout Metric, or the calculation thereof), if necessary, so that the amount of Earnout Consideration paid to the Company Securityholders is not adversely impacted thereby, and (iii) may acquire, create, own or operate other businesses (including similar businesses). In addition, if Purchaser or its Affiliates takes an affirmative action with respect to the Business that is permitted by this Agreement but would reasonably be expected to materially and adversely affect the amount of the aggregate amount of the Earnout Considerations, then (x) prior to the end of the Review Period applicable to the affected Earnout Consideration, Securityholder Representative may, by written notice within sixty (60) days of a Key Employee, member of the Advisory Committee or the Securityholder Representative first having actual knowledge of such affirmative action and its reasonably expected material effect on the Earnout Considerations, request that Purchaser and Securityholder Representative discuss such action, and (y) upon such timely request, Purchaser and Securityholder Representative shall meet and shall discuss in good faith and agree to an adjustment to the applicable Earnout Consideration provisions (whether by adjusting the amount of the Earnout Target, the time period for measuring the Earnout Metric, or the calculation thereof), if necessary (as reasonably determined by the parties based on the objective information available at the time), so that the amount of Earnout Consideration paid to the Company Securityholders is not reasonably expected to be materially and adversely impacted thereby. Purchaser shall use commercially reasonable efforts to provide written notice to the Securityholder Representative not later than five (5) Business Days subsequent to any adjustment by Purchaser in the aforementioned budget or of Purchaser or its Affiliates taking an affirmative action with respect to the Business that is permitted by this

Agreement but is expected by Purchaser to materially and adversely affect the amount of the aggregate amount of the Earnout Considerations. No representation or warranty has been, is made or will be made by any Person (including Generac Holdings, Purchaser, or their respective Affiliates or Representatives) relating to the number of Connected Homes or the amount of Eco+ ARR that may be achieved or, other than as explicitly set forth herein, as to the timing or amount of any resulting Earnout Consideration, nor will any Company Securityholder or any other Person have any claims against Generac Holdings, Purchaser, or their respective Affiliates or Representatives arising from the failure to meet for any reason any specific level of Connected Homes or Eco+ ARR or to achieve any particular Earnout Consideration, other than as a result of a breach of this clause (e).

(e) Acceleration of Earnout. If prior to June 30, 2023, there is a Change in Control (as defined in the form of Director Indemnification Agreement of Generac Holdings filed as an exhibit to the Annual Report on Form 10-K filed by Generac Holdings on March 4, 2021), a sale of more than 51% of the combined voting power of the Company Group other than to an Affiliate of Generac Holdings or Parent, or a sale of all or substantially all the assets of the Company Group other than to an Affiliate of Generac Holdings or Parent (each, a "**Fundamental Change**"), then (i) if a Fundamental Change occurs prior to June 30, 2022, the Earnout Consideration shall be fixed at an amount equal to the greater of (x) the Earnout Consideration upon satisfaction of 100% Earnout Targets as of each Earnout Measurement Date less the amount of Earnout Consideration previously paid pursuant to this Agreement and (y) the Earnout Consideration earned as of the date of such Fundamental Change, based on "run-rate" performance as of such date, applied to each Earnout Measurement Date, and (ii) if a Fundamental Change occurs after June 30, 2022 but before June 30, 2023, the remaining Earnout Consideration shall be fixed at an amount equal to the Earnout Consideration earned as of such date, based on "run-rate" performance as of such date, and Section 2.09(d) shall no longer apply. Any Earnout Consideration fixed pursuant to this Section 2.09(e) shall be determined and paid in accordance with Section 2.09(c), provided that the Earnout Consideration shall be determined and paid promptly following such Fundamental Change.

(f) Nature of Earnout. The right to receive any Earnout Consideration (i) is an integral part of the Arrangement Consideration. Any right to receive any Earnout Consideration, (ii) does not represent an equity or ownership interest in Generac Holdings, Purchaser, the Company or any other Person, (iii) does not entitle any Person to any rights (including voting, dividend or other rights or any right to continued employment) other than as and to the extent expressly provided in this Section 2.09, (iv) is not a "security" within the meaning of the U.S. Securities Act or any other securities Law, (v) will not be represented by any form of certificate or instrument, and (vi) is not assignable or transferable without the prior written consent of Purchaser, not to be unreasonably withheld, conditioned or delayed, as required by Law or by will or the Laws of descent and distribution. For the avoidance of doubt, except for the reserve established by Generac Holdings with its transfer agent for the potential future issuance of the Earnout Consideration Shares, neither Generac Holdings nor Purchaser is required to segregate any monies from their general funds, to create any trust or to make any special deposits with respect to the Earnout Consideration.

Section 2.10 Arrangement Process.

(a) Arrangement. The Company and the Purchaser agree that the Arrangement will be implemented in accordance with the terms and subject to the conditions contained in this Agreement and the Plan of Arrangement.

(b) Interim Order. As soon as reasonably practicable after the date of this Agreement, and in any event by November 12, 2021, the Company shall apply in a manner reasonably acceptable to the Purchaser pursuant to section 192 of the CBCA and, in cooperation with the Purchaser, prepare, file and diligently pursue a motion for the Interim Order, which shall provide, among other things:

(i) for the classes of persons to whom notice is to be provided in respect of the Arrangement and the Company Meeting and for the manner in which such notice is to be provided;

(ii) confirmation of the record date for the purposes of determining the Company Shareholders entitled to notice of the Company Meeting and to vote at the Company Meeting (or consent to the Arrangement Resolution in writing, as applicable) in accordance with the Interim Order;

(iii) that the Company Meeting may be adjourned or postponed from time to time in accordance with the terms of this Agreement without the need for additional approval of the Court;

(iv) that, notwithstanding the other provisions of the Interim Order relating to the Company Meeting, the Company Meeting may be dispensed with by the Company if the Company Shareholders holding 100% of the issued and outstanding Company Shares approve the Arrangement Resolution in writing;

(v) that the record date for the Company Shareholders entitled to notice of the Company Meeting and to vote at the Company Meeting (or consent to the Arrangement Resolution in writing, as applicable) will not change in respect of any adjournment(s) of the Company Meeting, unless required by applicable Laws;

(vi) that (i) subject to the discretion of the Court, the Company Meeting may be held as a virtual-only or hybrid shareholder meeting and that Company Shareholders that participate in the Company Meeting by virtual means will be deemed to be present at the Company Meeting for all purposes thereof, and (ii) if a virtual-only Company Meeting is held with the approval of the Court, such Company Meeting will be deemed to be held at the location of the Company's registered office;

(vii) that the required level of approval for the Arrangement Resolution shall be the Requisite Company Vote;

(viii) for the notice requirements with respect to the presentation of the application to the Court for the Final Order;

(ix) that the parties intend to rely upon the exemption from registration requirements of the U.S. Securities Act provided by Section 3(a)(10) thereunder, subject to and conditioned on the Court's affirmative determination, prior to the issuance of the Final Order approving the Arrangement, that the Arrangement is both substantively and procedurally fair to Company Securityholders who are entitled to receive Consideration Shares, pursuant to the Arrangement;

(x) that, in all other respects, the terms, restrictions and conditions of the Company Constating Documents, including quorum requirements and all other matters, shall apply in respect of the Company Meeting; and

(xi) for such other matters as the Purchaser or the Company may reasonably require, subject to obtaining the prior consent of the other, such consent not to be unreasonably withheld, conditioned or delayed.

(c) The Company Meeting. Subject to the terms of this Agreement and (other than Section 2.10(c)(i)) the receipt of the Interim Order, the Company shall:

(i) in consultation with Purchaser, fix a record date for the purposes of determining Company Shareholders entitled to receive notice of and vote at the Company Meeting (or consent to the Arrangement Resolution in writing, as applicable) (such record date to be as soon as practicable following the date hereof);

(ii) unless the Company Meeting is dispensed with in accordance with the Interim Order, convene and conduct the Company Meeting in accordance with the Interim Order, the Company Constating Documents and applicable Law as soon as reasonably practicable, and in any event on or before November 25, 2021, and not adjourn, postpone or cancel (or propose the adjournment, postponement or cancellation of) the Company Meeting without the prior written consent of the Purchaser, except as required for quorum purposes (in which case the Company Meeting shall be adjourned and not cancelled), by applicable Law or by a Governmental Authority;

(iii) use commercially reasonable efforts to solicit proxies in favor of the approval of the Arrangement Resolution and the completion of the Arrangement;

(iv) unless the Company Meeting is dispensed with in accordance with the Interim Order, give notice to the Purchaser of the Company Meeting and allow the Purchaser's Representatives to attend the Company Meeting;

(v) promptly advise the Purchaser, at such times as the Purchaser may reasonably request and at least on a daily basis on each of the last 5 Business Days prior to the date of the Company Meeting, as to the aggregate tally of the proxies received by the Company in respect of the Arrangement Resolution;

(vi) promptly advise the Purchaser of receipt of any communication (written or oral) from any Company Shareholder or other Company Securityholder in opposition to the Arrangement (except for non-substantive communications) and/or relating to the exercise or purported exercise or withdrawal of any dissent rights; and

(vii) not change the record date for the Company Shareholders entitled to vote at the Company Meeting (or consent to the Arrangement Resolution in writing, as applicable) in connection with any adjournment or postponement of the Company Meeting (unless required by Law or the Interim Order, or the Purchaser's written consent is provided); and

(viii) not make any payment or settlement offer, or agree to any payment or settlement prior to the Effective Time with respect to any dissent rights without the prior written consent of the Purchaser.

(d) The Company Circular.

(i) Subject to the Purchaser's compliance with Section 2.10(d)(iv), the Company shall promptly prepare and complete, in consultation with the Purchaser, the Company Circular together with any other documents required by Law in connection with the Company Meeting and the Arrangement, and the Company shall, promptly after obtaining the Interim Order, cause the Company Circular, the Letter of Transmittal and such other documents to be sent to each Company Shareholder and other Person as required by the Interim Order and Law, in each case so as to permit the Company Meeting to be held as soon as reasonably practicable as specified in Section 2.10(c)(ii).

(ii) On the date of mailing or sending thereof, the Company shall ensure that the Company Circular complies with Law and the Interim Order, does not contain any Misrepresentation (except that the Company shall not be responsible for any information included in the Company Circular related to the Parent, the Purchaser and their respective Affiliates that was furnished by the Purchaser for inclusion in the Company Circular pursuant to Section 2.10(d)(iv)) and provides the Company Shareholders with sufficient information to permit them to form a reasoned judgement concerning the matters to be placed before the Company Meeting. Without limiting the generality of the foregoing, the Company Circular shall include: (i) a statement that the Board has unanimously, after receiving legal and financial advice, determined that the Arrangement Resolution is in the best interests of the Company and recommends that the Company Shareholders vote in favor of the Arrangement Resolution, and (ii) a statement as to the number and percentage of Company Shares held by Company Securityholders who have voted in favor of the Arrangement pursuant to the terms hereof.

(iii) The Company shall give the Purchaser and its legal counsel a reasonable opportunity to review and comment on drafts of the Company Circular and other related documents, and shall give reasonable consideration to any comments made by them, and agrees that all information relating solely to the Purchaser or the Parent or any of their respective Affiliates included in the Company Circular must be in a form and content satisfactory to the Purchaser and the Parent, acting reasonably.

(iv) The Purchaser shall provide all necessary information regarding the Purchaser, the Parent, and their respective Affiliates, as required by applicable Laws for inclusion in the Company Circular in writing. The Purchaser represents, warrants and covenants that any information provided to the Company pursuant to this Section

2.10(d)(iv) will, on the date of mailing or sending thereof, be true and correct and will not contain, or cause the Company Circular to contain, any Misrepresentation.

(v) Each Party shall promptly notify the other Parties if it becomes aware that the Company Circular contains a Misrepresentation, or otherwise requires an amendment or supplement. The Parties shall co-operate in the preparation of any such amendment or supplement as required or appropriate, and the Company shall promptly mail or otherwise publicly disseminate any such amendment or supplement to the Company Shareholders and, if required by the Court or by Law, file the same with any applicable Governmental Authority.

(e) Final Order. If the Interim Order is obtained and the Arrangement Resolution is approved in accordance with the terms of the Interim Order, the Company shall take all steps necessary to submit the Arrangement to the Court and diligently pursue an application for the Final Order pursuant to section 192 of the CBCA, as soon as reasonably practicable, but in any event not later than five Business Days after the Arrangement Resolution is passed as provided for in the Interim Order.

(f) Court Proceedings. The Purchaser and the Parent shall cooperate with and assist the Company in, and consent to the Company, seeking the Interim Order and the Final Order, including by providing the Company with any necessary information regarding the Purchaser, the Parent or their respective Affiliates as reasonably requested by the Company or as required by Law to be supplied by the Purchaser or the Parent or their respective Affiliates in connection therewith. In connection with all Court proceedings relating to obtaining the Interim Order and the Final Order, and in each case subject to Law and the terms of this Agreement, the Company shall:

(i) diligently pursue, and cooperate with the Purchaser in diligently pursuing, the Interim Order and the Final Order;

(ii) provide the Purchaser and its legal counsel with a reasonable opportunity to review and comment upon drafts of all material to be filed with the Court in connection with the Arrangement, and give reasonable consideration to all such comments;

(iii) provide legal counsel to the Purchaser with copies of any notice of appearance, evidence or other documents served on the Company or its legal counsel in respect of the application for the Interim Order or the Final Order or any appeal from them, and any notice, written or oral, indicating the intention of any Person to appeal, or oppose the granting of, the Interim Order or the Final Order;

(iv) not object to legal counsel to the Purchaser making such submissions on the hearing of the motion for the Interim Order and the application for the Final Order as such counsel considers appropriate, provided that (A) the Purchaser advises the Company of the nature of any submissions on a timely basis prior to the hearing and provides copies to the Company of any notice of appearance, motions or other documents supporting such submissions, in each case, on a timely basis prior to the hearing, and (B) such submissions are consistent in all material respects with this Agreement and the Plan of Arrangement;

(v) ensure that all material filed with the Court in connection with the Arrangement is consistent in all material respects with this Agreement and the Plan of Arrangement;

(vi) oppose any proposal from any party that the Final Order contain any provision inconsistent with this Agreement;

(vii) if, at any time after the issuance of the Final Order and prior to the Effective Date, the Company is required by the terms of the Final Order or by Law to return to Court with respect to the Final Order, it shall do so after notice to, and in consultation and cooperation with, the Purchaser; and

(viii) not file any material with the Court in connection with the Arrangement or serve any such material, or agree to modify or amend any material so filed or served, except as contemplated by this Agreement or with the Purchaser's prior written consent, which consent may not be unreasonably withheld, conditioned or delayed, provided that the Purchaser may, in its sole discretion, withhold its consent with respect to any increase in or variation in the form of the Consideration or other modification or amendment to such filed or served materials that expands or increases the Purchaser's or the Parent's obligations or diminishes or limits the Purchaser's or the Parent's rights set forth in any such filed or served materials or under this Agreement.

Section 2.11 Certain Securities Law Matters.

(a) The parties (other than the Securityholder Representative) agree that the Arrangement will be carried out with the intention that, and will use their commercially reasonable efforts to ensure that, all Consideration Shares payable pursuant to the Transactions will be transferred by Generac Holdings in reliance on the exemption from the registration requirements of the U.S. Securities Act provided by Section 3(a)(10) thereunder and pursuant to exemptions from other applicable securities Laws. In order to ensure the availability of the exemption under Section 3(a)(10) of the U.S. Securities Act, the Parties agree that the Arrangement will be carried out on the following basis:

(i) the Arrangement will be subject to the approval of the Court;

(ii) the Court will be advised as to the intention of the parties to rely on the exemption under Section 3(a)(10) of the U.S. Securities Act prior to the hearing required to approve the procedural and substantive fairness of the terms and conditions of the Arrangement to the Company Securityholders to whom Consideration Shares will be delivered;

(iii) the Court will be advised prior to the hearing to approve the Interim Order that its approval of the Arrangement will be relied upon as a determination that the Court has satisfied itself as to the procedural and substantive fairness of the terms and conditions of the Arrangement to all Company Securityholders who are entitled to receive Consideration Shares, pursuant to the Arrangement;

(iv) the Company will ensure that each Person entitled to receive the Consideration Shares pursuant to the Arrangement will be given adequate notice advising them of their right to attend the hearing of the Court to give approval of the Arrangement and providing them with the sufficient information necessary for them to exercise that right;

(v) each Person entitled to receive the Consideration Shares will be advised that the Consideration Shares delivered pursuant to the Arrangement have not been and will not be registered under the U.S. Securities Act and will be delivered by Purchaser, Parent or one of their respective Affiliates in reliance on the exemption under Section 3(a)(10) of the U.S. Securities Act, and that certain restrictions on resale under the U.S. Securities Laws, including, to the extent such person is an "affiliate" of Generac Holdings, Rule 144 under the U.S. Securities Act, may be applicable with respect to securities delivered by Purchaser, Parent or one of their Affiliates;

(vi) the Final Order will expressly state that the Arrangement serves as a basis of a claim to the exemption under Section 3(a)(10) of the U.S. Securities Act from the registration requirements otherwise imposed by the U.S. Securities Act regarding the distribution of securities pursuant to the Plan of Arrangement and is approved by the Court as being substantively and procedurally fair to the Company Securityholders; and

(vii) the Interim Order will specify that each Company Securityholder will have the right to appear before the Court at the hearing of the Court to give approval of the Arrangement so long as they enter an appearance within a reasonable time and in accordance with the requirements of Section 3(a)(10) under the U.S. Securities Act.

(b) By executing a Support Agreement or Letter of Transmittal, each Company Securityholder (i) confirms it is aware, and that it will advise its Affiliates and Representatives, that applicable securities Laws prohibit any person who has material, non-public information about a company from purchasing or selling securities of such a company or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that the person is likely to purchase or sell those securities, (ii) acknowledges it may have access to certain material, non-public information about Generac Holdings by virtue of the Transactions, and (iii) agrees it shall, and shall cause its Affiliates to, comply with applicable securities Laws in connection with any purchase or sale of Generac Common Stock and refrain from trading in Generac Common Stock on the basis of any material non-public information obtained in connection with this the Transactions. In addition, each employee of the Company Group as of Closing will become subject to the Code of Ethics and Business Conduct of Generac Holdings and the Insider Trading Policy referred to therein, and nothing in this Agreement relieves any such Person of their obligations thereunder.

ARTICLE 3.
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth in the correspondingly numbered Section of the Disclosure Letter or the supplemental letter delivered as of the date hereof, the Company represents and warrants to

Purchaser that the statements contained in this ARTICLE 3 are true and correct as of the date hereof.

Section 3.01 Organization and Qualification of the Company. The Company is a corporation duly organized, validly existing and in good standing under the CBCA. USCo is a corporation duly organized, validly existing and in good standing under the laws of the State of Nevada. UKCo is a private limited company duly organized and validly existing under the laws of England and Wales. CanCo is a corporation duly organized and validly existing under the laws of Ontario. Each member of the Company Group has full corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on the Business as it is currently conducted. Each member of the Company Group is duly licensed or qualified to do business and is in good standing in each jurisdiction (to the extent such concept is recognized in that jurisdiction) in which the properties owned or leased by it or the operation of the Business as currently conducted makes such licensing or qualification necessary, except where the failure to be so qualified would not have a Material Adverse Effect. Section 3.01 of the Disclosure Letter sets forth, for each member of the Company Group, each jurisdiction in which such member of the Company Group is qualified to do business as a foreign corporation. None of the Company Group has pending any winding up, dissolution, liquidation, appointment of an administrator or receiver, statutory demand, or other similar action.

Section 3.02 Authority; Board Approval.

(a) Each member of the Company Group has full corporate power and authority to enter into and perform its obligations under this Agreement and the Ancillary Documents to which it is a party and to consummate the Transactions, subject to, in the case of the consummation of the Arrangement, adoption of the Arrangement Resolution by either (i) the affirmative vote of Company Shareholders representing two thirds of the votes cast on the Arrangement Resolution by Company Shareholders present in person or represented by proxy at the Company Meeting voting together as a single class, or (ii) the affirmative consent in writing of the Arrangement Resolution by Company Shareholders holding 100% of the issued and outstanding Company Shares ("**Requisite Company Vote**"). The execution, delivery and performance by each member of the Company Group of this Agreement and any Ancillary Document to which it is a party and the consummation by such member of the Company Group of the Transactions have been duly authorized by all requisite corporate action on the part of such member of the Company Group and no other corporate proceedings on the part of the Company Group are necessary to authorize the execution, delivery and performance of this Agreement or to consummate the Transactions, subject only, in the case of consummation of the Arrangement, to the receipt of the Requisite Company Vote. The Requisite Company Vote is the only vote or consent of the holders of any class or series of Company Securities, in their capacity as such, required in connection with this Agreement, the Ancillary Documents or the Transactions. This Agreement has been duly executed and delivered by the Company, and (assuming due authorization, execution and delivery by each other party hereto) this Agreement constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms (subject to the Enforcement Limitation). When each Ancillary Document to which a member of the Company Group is or will be a party has been duly executed and delivered by such member of the Company Group (assuming due authorization, execution and delivery by each other party thereto), such Ancillary Document

will constitute a legal and binding obligation of such member of the Company Group enforceable against it in accordance with its terms (subject to the Enforcement Limitation).

(b) The Company Board, by resolutions duly adopted by unanimous vote at a meeting of all directors of the Company duly called and held or by means of consent in lieu of such meeting and, as of the hereof, not subsequently rescinded or modified in any way, has, as of the date hereof (i) determined that this Agreement and the Transactions, including the determined that this Agreement, the Arrangement and the other Transactions are in the best interests of the Company and that the Arrangement is fair to the Company Securityholders, (2) approved this Agreement and the Transactions, (3) determined that the Transactions constitute a "Qualified DLE" subject to the "drag-along" provisions set forth in Section 7.5 of the Company Shareholders' Agreement, and (4) resolved to recommend the Company Shareholders vote in favor of the Arrangement Resolution (the "**Company Board Recommendation**").

Section 3.03 No Conflicts; Consents. Except as set forth in Section 3.03 of the Disclosure Letter and for any applicable filings and approvals under the HSR Act, the execution, delivery and performance by each member of the Company Group of this Agreement and the Ancillary Documents to which it is a party, and the consummation of the Transactions, including the Arrangement, do not and will not: (i) conflict with or result in a violation or breach of, or default under, any provision of the articles of incorporation, by-laws, Company Shareholders' Agreement, or other organizational documents of the Company or any other member of the Company Group (collectively, the "**Company Constating Documents**"); (ii) subject to, in the case of the Arrangement, obtaining the Requisite Company Vote, conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to the Company or any other member of the Company Group; (iii) require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any Material Contract to which the Company Group is a party or by which the Company Group is bound or to which any of their respective properties and assets are subject (including any Material Contract) or any Permit affecting the properties, assets or the Business of the Company Group, except for those that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; or (iv) result in the creation or imposition of any Encumbrance on any properties or assets of the Company Group. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to any member of the Company Group in connection with the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the Transactions, except for applicable filings and approvals under the HSR Act and as expressly provided in Section 2.10.

Section 3.04 Capitalization.

(a) The authorized capital stock of the Company is as set forth on Section 3.04(a) of the Disclosure Letter. There will be no change to the authorized or issued capital stock of the Company between the date hereof and the Closing, except for (i) forfeitures of outstanding Company Options in accordance with their terms or changes resulting from the exercise, (ii) conversion of outstanding Company Preferred Shares or Company Derivatives in accordance with their terms, (iii) as permitted by Section 5.01(a) hereof, or (iv) as contemplated by Schedule 5.12.

The Company Shares have the rights, preferences privileges and restrictions set forth in the Company Constating Documents.

(b) The Company has provided Purchaser with a supplemental letter on the date hereof setting forth all of the information that would be required to be set forth in the Consideration Spreadsheet if it were prepared as of the date hereof, other than the amount of Closing Arrangement Consideration payable to each Company Securityholder.

(c) All outstanding Company Shares are, and all Company Shares which may be issued pursuant to the exercise, conversion or settlement of Company Preferred Shares or Company Derivatives, when issued in accordance with the applicable security, will be (i) duly authorized, validly issued, fully paid and non-assessable; (ii) issued in compliance with any preemptive rights created by statute, the Company Constating Documents or any agreement to which the Company Group is a party; and (iii) free of any Encumbrances created by the Company Group in respect thereof, other than as such may exist pursuant to the Company Shareholders' Agreement. All outstanding Company Securities were issued in compliance with applicable Law.

(d) Each Company Option was granted in compliance with all applicable Laws and all of the terms and conditions of the Company Stock Option Plan pursuant to which it was issued. Each Company Option was granted with an exercise price per share equal to or greater than the fair market value of the underlying shares on the date of grant and has a grant date identical to the date on which the Company Board or compensation committee actually awarded the Company Option or such later date as designated by the Company Board or compensation committee. True and correct copies of the form of documents pursuant to which any Company Options have been granted by the Company Group have been made available to Purchaser prior to the date hereof.

(e) Except for the Company Securities disclosed on Section 3.04(b) of the Disclosure Letter and other than the Generac Indebtedness, there is (i) no subscription, warrant, option, convertible or exchangeable security, or other right (contingent or otherwise) to purchase or otherwise acquire equity securities of the Company or any other member of the Company Group is authorized or outstanding, and (ii) no commitment by the Company or any other member of the Company Group to issue shares, subscriptions, warrants, options, convertible or exchangeable securities, or other such rights or to distribute to holders of any of its equity securities any evidence of Indebtedness or asset, to repurchase or redeem any securities of the Company or such other member of the Company Group or to grant, extend, accelerate the vesting of, change the price of, or otherwise amend any warrant, option, convertible or exchangeable security or other such right. There are no declared or accrued unpaid dividends with respect to any Company Shares.

(f) Except with respect to Company Options, which are subject to the vesting and forfeiture conditions provided in the Company Stock Option Plan and award agreements thereunder and other than as set forth on Section 3.04(f) of the supplemental letter dated the date hereof, no outstanding Company Securities are subject to vesting or forfeiture rights or repurchase by the Company. There are no outstanding or authorized stock appreciation, dividend equivalent, phantom stock, profit participation or other similar rights with respect to the Company or any of its securities.

(g) All distributions, dividends, repurchases and redemptions of the capital stock (or other equity interests) of the Company were undertaken in compliance with the Company Constating Documents then in effect, any agreement to which the Company then was a party and in compliance with applicable Law.

Section 3.05 Subsidiaries.

(a) The Company legally and beneficially owns 100% of the issued and outstanding equity interests in each of USCo, UKCo and CanCo, free and clear of all Encumbrances. Except for such interests, the Company does not own any equity interest in, or have any other interest in any corporation, partnership, limited liability company, association or other business entity. No member of the Company Group is a participant in any joint venture, shareholder, partnership, limited liability company or similar arrangement or agreement. Since its inception, except for its acquisitions of equity interests in each of USCo, UKCo and CanCo, the Company has not consolidated or merged with, acquired all or substantially all of the assets of, or acquired the stock of or any interest in any corporation, partnership, limited liability company or other business entity.

(b) Other than as set forth on Section 3.05 of the Disclosure Letter, all outstanding equity interests in each of USCo, UKCo and CanCo are (i) duly authorized, validly issued, fully paid and, in the case of CanCo and USCo, non-assessable; (ii) issued in compliance with any preemptive rights created by statute, the Company Constating Documents or any agreement to which the Company Group is a party; and (iii) free of any Encumbrances created by the Company Group in respect thereof. All outstanding equity interest in each of USCo, UKCo and CanCo were issued in compliance with applicable Law.

Section 3.06 Financial Statements.

(a) Complete copies of the Company's audited financial statements consisting of the consolidated statements of financial position of the Company Group as at June 30, 2021 and 2020 and the related consolidated statements of operation and comprehensive loss, changes in equity and cash flows for the years then ended (the "**Audited Financial Statements**"), and unaudited financial statements consisting of the consolidated balance sheet of the Company Group as at August 31, 2021, and the related consolidated statements of operation and comprehensive loss, changes in equity and cash flows for the two-month period then ended (the "**Interim Financial Statements**" and together with the Audited Financial Statements, the "**Financial Statements**") have been made available to Purchaser. The Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the period involved, subject, in the case of the Interim Financial Statements, to normal and recurring year-end adjustments (the effect of which will not be materially adverse) and the absence of notes (that, if presented, would not differ materially from those presented in the Audited Financial Statements) and fairly and accurately present, in all material respects, the financial position of the Company Group as of the dates thereof and their consolidated results of operations for the periods then ended. The Financial Statements are based on the books and records of the Company, are true, complete and correct as to the financial condition of the Company as of the respective dates they were prepared and the results of the operations of the Company for the periods indicated. The Company maintains a standard system of accounting established and administered in accordance with GAAP.

(b) Except as disclosed on Section 3.06(b) of the Disclosure Letter, each member of the Company Group maintains disclosure controls and procedures designed to ensure that information required to be disclosed by such member of the Company Group is recorded and reported on a timely basis. The Company has disclosed to Parent any significant deficiencies or material weaknesses in the design or operation of any internal controls over financial reporting of the Company Group that, to the Company's Knowledge, would be reasonably likely to adversely affect any member of the Company Group's ability to record, process, summarize, and report financial information.

(c) Since December 31, 2017, no complaints from any source regarding accounting, internal accounting controls, or auditing matters relating to any member of the Company Group, and no concerns from any employees of the Company Group regarding questionable accounting or auditing matters relating to any member of the Company Group have been received by the Company, any other member of the Company Group or its management. No attorney representing the Company Group, whether or not employed by the Company Group, has reported evidence of a violation of securities Laws, breach of fiduciary duty or similar violation by any member of the Company Group or any of their respective officers, managers, employees, or agents to an executive officer, audit committee (or other committee designated for the purpose) or the board of managers or similar governing body of any member of the Company Group, including pursuant to any internal policy contemplating such reporting.

(d) No member of the Company Group, individually or in the aggregate, (a) is insolvent (either because its financial condition is such that the sum of its debts is greater than the fair value of its assets or because the fair salable value of its assets is less than the amount required to pay its probable liability on its existing debts as they mature), or (b) has incurred debts beyond its ability to pay as they become due. In completing the Transactions, none of the Sellers or the Company Group intends to hinder, delay or defraud any present or future creditors of any Seller or member of the Company Group.

Section 3.07 Undisclosed Liabilities. Except as disclosed in Section 3.07 of the Disclosure Letter, no member of the Company Group has any liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise ("**Liabilities**"), except (a) those which are adequately reflected or reserved against in the Balance Sheet as of the Balance Sheet Date, (b) those which have been incurred in the ordinary course of business consistent with past practice since the Balance Sheet Date, (c) future performance obligations of a type not required to be disclosed in financial statements prepared in accordance with GAAP, to the extent arising under any Contracts set forth in the Disclosure Letter and under other contracts entered into in the ordinary course of business that are not required to be listed in the Disclosure Letter, (d) liabilities that will actually be included in the computation of Closing Cash, Closing Working Capital, Indebtedness, Transaction Expenses or the Closing Arrangement Consideration, (e) any liabilities incurred by or for the account of Purchaser or its Affiliates, and (f) any other liabilities that are, in the aggregate, less than $250,000.

Section 3.08 Absence of Certain Changes, Events and Conditions. Since the Balance Sheet Date, except as set forth in Section 3.08 of the Disclosure Letter or as such may relate to the execution and delivery of this Agreement and the consummation of the Transactions and except

for any COVID-19 Measures, each member of the Company Group has conducted its business in all material respects in the ordinary course of business and, other than in the ordinary course of business consistent with past practice, there has not been, with respect to any member of the Company Group, any:

(a) Material Adverse Effect;

(b) material change to a Material Contract;

(c) except as disclosed in a supplemental letter dated the date hereof from the Company to Purchaser, any material change in any compensation arrangement or agreement with any employee, officer, or director, other than any change in the ordinary course of business;

(d) resignation or termination of employment of any officer or Key Employee of the Company Group;

(e) any Encumbrance (other than a Permitted Encumbrance), created by the Company Group, with respect to any of its material properties or assets;

(f) except as disclosed in a supplemental letter dated the date hereof from the Company to Purchaser, any loans or guarantees made by the Company Group to or for the benefit of its employees, officers or directors, or any members of their immediate families, other than travel advances and other advances made in the ordinary course of the Business;

(g) declaration, setting aside or payment or other distribution in respect of any of the Company Group's capital stock, or any direct or indirect redemption, purchase, or other acquisition of any of such stock by the Company Group;

(h) receipt of written (or, to the Company's Knowledge, other) notice that there has been a loss of any Material Customer;

(i) waiver by the Company Group of any claim with a potential value in excess of $100,000;

(j) sale, assignment, or exclusive license or transfer of any Intellectual Property other than in the ordinary course of business and consistent with past practices; or

(k) arrangement or commitment by the Company Group to do any of the acts described in subsection (a) through (k) above.

Section 3.09 Material Contracts.

(a) Section 3.09(a) of the Disclosure Letter lists each of the following Contracts of the Company Group (such types of Contracts, and all Material Company IP Agreements, being "**Material Contracts**") with executory rights or obligations as of the date hereof:

(i) all Contracts having obligations (contingent or otherwise) of, or payments to, the Company in excess of $500,000 within the 12 month period from and after the date

of this Agreement, other than purchase orders or customer contracts entered into in the ordinary course of business;

(ii) all Contracts that provide for material (A) restrictions on the development, manufacture or distribution of the Company Products; (B) non-competition, exclusive dealing, non-solicitation, or similar restrictive covenants that restrict the operations of the Company Group or its Affiliate, or (C) other provisions that would materially limit the ability of the Company Group and its Affiliates (including after Closing, Purchaser and its Affiliates) to freely operate their businesses;

(iii) all Contracts that provide for an indemnification by the Company Group with respect to infringements of Intellectual Property, excluding those pursuant to the Company's standard form of customer agreements as made available to Purchaser;

(iv) all Real Property Leases;

(v) all Contracts that require the Company Group to purchase its total requirements of any product or service from a third party, that contain "take or pay" provisions, or that grant to any other Person "most-favored nations" rights;

(vi) all Contracts that provide for the indemnification by the Company Group of any Person (other than customary incidental indemnification provisions in Contracts entered into in the ordinary course of business) or the assumption of any Tax, environmental or other liability of any Person, excluding those pursuant to the Company's standard form of customer agreements as made available to Purchaser;

(vii) all joint ventures, legal partnerships or similar Contracts or arrangements;

(viii) except as disclosed in a supplemental letter dated the date hereof from the Company to Purchaser, all employment agreements to which the Company is a party which are not cancellable without more than the minimum notice requirement under applicable Law and that require annual base salary payments by the Company Group in excess of $100,000, and all Contracts with independent contractors or consultants (or similar arrangements) to which the Company is a party and the Company is obligated to pay in excess of $100,000 in any 12 month period and which are not cancellable without material penalty;

(ix) all collective bargaining or works council agreements;

(x) all Contracts relating to Indebtedness (including guarantees) of the Company Group;

(xi) all material Contracts with a Governmental Authority;

(xii) all Contracts that relate to the acquisition or disposition of any business, a material amount of stock or assets of the Company Group or any other Person or any real property (whether by merger, sale of stock, sale of assets or otherwise), or any other

business combination, to the extent a member of the Company Group has material rights or material executory obligations thereunder;

(xiii) all material settlement agreements, to the extent a member of the Company Group has material rights or material executory obligations thereunder;

(xiv) any Contract with any Person listed on Section 3.17 of the Disclosure Letter;

(xv) all Contracts between any member of the Company Group on the one hand, and any officer, director or employee of the Company or any other member of the Company Group, any Securityholder holding at least 1% of the Company Shares or any Related Person of any such Person, on the other hand.

(b) Each Material Contract is in full force and effect and is enforceable in accordance with its terms against the applicable member of the Company Group (subject to the Enforceability Limitation) and, to the Company's Knowledge, each other party thereto and is not subject to any claims, charges, set offs or defenses (subject to the Enforceability Exceptions). No member of the Company Group or, to the Company's Knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under) in any material respect, or has provided or received any notice of any intention to terminate, any Material Contract. To the Company's Knowledge, no event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. No member of the Company Group has received any written (or, to the Company's Knowledge, other) notice from any counterparties in connection with any of the Material Contracts of (i) any material breach or default under any Material Contract, (ii) that any such party intends to terminate, not renew, cancel or substantially decrease its business with the Company Group, or (iii) any claim for damages or indemnification with respect to the products or performance of services pursuant to any Material Contract. Complete and correct copies of each Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder) have been made available to Purchaser.

(c) Neither the Company Group nor any of its Affiliates is a party to any agreement, arrangement, conduct or concerted practice or is carrying on any practice which contravenes or is invalidated by any anti-trust, competition, fair trading, consumer protection or similar legislation in any jurisdiction where the Company Group has assets or carries on business or in respect of which any filing, registration or notification is required or is advisable to be made (whether or not it has in fact been made).

Section 3.10 Title to Properties and Assets.

(a) The Company Group has good and marketable title to its properties and assets, and has a valid leasehold interest to all its leasehold interests, in each case subject to no Encumbrance other than Permitted Encumbrances.

(b) The rights, properties and assets of the Company Group, tangible and intangible, are sufficient for the continued conduct of the Business after the Closing in substantially the same

manner as conducted prior to the Closing and constitute all of the rights, property and assets necessary to conduct the Business as currently conducted or contemplated to be conducted.

Section 3.11 Real Property.

(a) No member of the Company Group owns, or has ever owned, any real property.

(b) Section 3.11(b) of the Disclosure Letter lists (i) the street address of all real property that is leased by any member of the Company Group (any real property leased by any member of the Company Group being "**Leased Real Property**"), and (ii) each Contract and all amendments, modifications, supplements, and assignments thereto pursuant to which any member of the Company Group leases any Leased Real Property (each such Contract, a "**Real Property Lease**").

(c) No member of the Company Group has given any mortgagee or other Person any estoppel certificate or similar instrument that would preclude assertion of any claim under any Real Property Lease, affect any right or obligation under any Real Property Lease or otherwise be binding upon any successor to the position of the applicable member of the Company Group under any Real Property Lease. No member of the Company Group has contested, and no member of the Company Group is currently contesting, any operating cost, real estate Tax or assessment or other charge payable by the tenant under any Real Property Lease. There is no purchase option, right of first refusal, first option or other right held by any member of the Company Group with respect to, or any real estate or building affected by, any Real Property Lease that is not contained within such Real Property Lease. No member of the Company Group has exercised any option or right to terminate, renew or extend or otherwise affect any right or obligation of the tenant under any Real Property Lease or to purchase the real property subject to any Real Property Lease.

(d) To the Company's Knowledge, there is no pending or threatened expropriation or other eminent domain Action affecting any Leased Real Property or any sale or other disposition of any Leased Real Property in lieu of expropriation, and no Leased Real Property has suffered any material damage by fire or other casualty that has not been completely repaired and restored. All of the land, buildings, structures and other improvements used by any member of the Company Group in the conduct of the Business are sufficient for the operation of the Business as currently conducted and, to the Company's Knowledge, in good working condition and none of such buildings, structures, and other improvements is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost. Except for the Real Property Leases, there is no lease (including sublease) or occupancy agreement in effect with respect to any Leased Real Property. There is no dispute, oral agreement or forbearance program in effect with respect to any Real Property Lease.

Section 3.12 Compliance with Other Instruments.

No member of the Company Group is in violation or default (i) of any term of the Company Constating Documents, each as amended to date, (ii) of any Governmental Order, or (iii) to the Company's Knowledge, any Law applicable to such member of the Company Group. Except as set forth in Section 3.12 to the Disclosure Letter, the execution and delivery this Agreement by the Company, the performance by the Company of its obligations pursuant to this Agreement, and the Arrangement will not result in any such violation or be in conflict or constitute, with or without

the passage of time and giving of notice, either (i) a material default under any such term, Governmental Order or Law or (ii) an event which results in the creation of any material Encumbrance (other than a Permitted Encumbrance) upon any of the properties or assets of the Company Group or the suspension, revocation, impairment, forfeiture or nonrenewal of any material Permit of the Company Group.

Section 3.13 Intellectual Property.

(a) Section 3.13(a) of the Disclosure Letter sets forth a true, correct and complete list of all of the Company Registered Intellectual Property. The Company Group has taken all actions reasonably necessary to maintain and protect all Company Registered Intellectual Property, including payment of applicable maintenance fees, filing of applicable statements of use, timely response to office actions and disclosure of any required information, and recording all assignments (and licenses where required) of the Company Registered Intellectual Property with the appropriate Governmental Authorities. Section 3.13(a) of the Disclosure Letter includes a true and complete list as of the date of this Agreement of all material actions that must be taken within one hundred eighty (180) calendar days of the date hereof with respect to any of the Company Registered Intellectual Property. The Company Group has complied in all material respects with all applicable notice and marking requirements for the Company Registered Intellectual Property. None of the Company Registered Intellectual Property that has been issued or registered has been adjudged invalid or unenforceable in whole or part by a Governmental Authority or court of competent jurisdiction in a final non-appealable decision and, to the Company's Knowledge, none of the Company Registered Intellectual Property is invalid or unenforceable. With respect to Company Registered Intellectual Property, a member of the Company Group is listed in the records of the appropriate Canadian, United States, and other state and/or foreign authorities as the sole owner for each item thereof.

(b) The Company Group owns, possesses or otherwise holds all rights in the Company Intellectual Property reasonably necessary to the Business as conducted in the past and as currently conducted. The Company Registered Intellectual Property is owned by the Company free and clear of any Encumbrance, other than Permitted Encumbrances. The consummation of the Transactions will not (1) alter, restrict, encumber, impair or extinguish any rights in any Company Intellectual Property, or (2) result in the creation of any Encumbrance with respect to any of the Company Owned Intellectual Property.

(c) Except as set forth in Section 3.13(c) of the Disclosure Letter, no Person, other than the Company Group, possesses any current or contingent rights to license, sell or otherwise distribute the Company Products or Company Owned Intellectual Property, other than distribution agreements entered into in the ordinary course of business on commercially reasonable terms and under which the Company Group is not entitled to revenue in any twelve month period in excess of $1,000,000. There are no restrictions binding on the Company Group respecting the disclosure, use, license, transfer or other disposition of any Company Intellectual Property or Company Products. The Company Group has not (1) transferred ownership of, or granted any exclusive license with respect to, any Company Owned Intellectual Property to any other Person, nor (2) granted any customer the right to use any Company Product or portion thereof on anything other than a non-exclusive basis or for anything other than such customer's internal business purposes or for personal use, or (3) granted any Third Party the right to access or use any source code other

than upon the occurrence of specified release events pursuant to a written source code escrow agreement, and no such release event has ever occurred or been claimed to have occurred.

(d) Section 3.13(d) of the Company Disclosure Letter lists and describes the status of each Action or, to the Company's Knowledge, threatened Action (i) alleging infringement, misappropriation or any other violation of any Intellectual Property rights of any Person by the Company Group or by any Company Products, or (ii) challenging the scope, ownership, validity, or enforceability of any Company Owned Intellectual Property or of the Company Group's rights under the Company Intellectual Property, regardless of whether such Action or threatened Action has been settled, withdrawn or otherwise resolved. The Company Group has not infringed, misappropriated or otherwise violated any Intellectual Property rights of any Person or, except in connection with the Actions set forth on Section 3.13(d) of the Disclosure Letter, received any written notice of alleged infringement or potential infringement of any such rights. No Company Product marketed or sold by any member of the Company Group violates or infringes on any Intellectual Property rights of any third party. Except as set forth in Section 3.13(d) of the Disclosure Letter, no member of the Company Group has received any written unsolicited offer, written invitation to license, cease and desist letter, or other written or, to the Knowledge of the Company, oral notice from any Person in each case claiming that the Company Group, the exploitation of the Company Intellectual Property or the Company Products, or the operation of the Business, infringes, conflicts with, misappropriates or otherwise violates the rights of any Person in or to any Intellectual Property, violates any publicity right, or constitutes passing off, unfair competition or trade practices under the Laws of any jurisdiction (nor to the Knowledge of the Company, is there any basis therefor).

(e) The Company Group has taken reasonable steps to protect their rights in the Company Intellectual Property and to protect any confidential information provided to them by any other Person under any contractual obligation of confidentiality. Without limiting the foregoing, the Company Group has taken reasonable security measures to protect the secrecy, confidentiality and value of all Trade Secrets and Data of the Company Group or the Business, and any Trade Secrets and other confidential information of third parties provided thereto under a contractual obligation of confidentiality (collectively, "**Sensitive Information**"), according to applicable Law of the applicable jurisdictions where such Sensitive Information is developed, practiced or disclosed or with respect to third party Sensitive Information, under the governing law of the applicable Contract. All current and former employees, consultants and contractors of the Company Group and any third party having access to such Sensitive Information have executed and delivered to the Company a written legally binding agreement regarding the protection of such Sensitive Information. Except as set out in Section 3.13(e) of the Disclosure Letter or a supplemental letter dated as of the date hereof, the Company Group has not experienced any breach of security or otherwise unauthorized access by third parties to such Sensitive Information.

(f) No member of the Company Group is or has been a member or promoter of, or contributor to, any industry standards body or similar organization that requires or obligates them to grant or offer to any other Person any license or right to any Company Intellectual Property.

(g) Section 3.13(g) of the Disclosure Letter contains a correct, current and complete list of all material Company IP Agreements separately identifying: (i) under which the Company is a licensor or otherwise grants to any Person any right or interest relating to any Company Owned

Intellectual Property; (ii) under which the Company is a licensee or otherwise granted any right or interest relating to the Intellectual Property of any Person; and (iii) which otherwise relate to the Company's ownership or use of Company Intellectual Property; provided, however, that the Company has no obligation under this Section 3.13(g) to disclose (x) any Commercial Off-The-Shelf Software or (y) licenses pursuant to the Company Group's standard form of agreements made available to the Purchaser. The Company IP Agreements disclosed or required to be disclosed on Section 3.13(g) of the Disclosure Letter may be referred to as the "**Material Company IP Agreements**".

(h) All current and former employees, consultants and contractors of the Company and other Persons that have participated in the authorship, conception, creation, reduction to practice or development of any Company Owned Intellectual Property (other than the Company Owned Intellectual Property set forth on Section 3.13(h) of the Disclosure Letter (the "**Company Purchased Intellectual Property**")) for the Company ("**Contributors**") have executed valid and enforceable (subject to the Enforcement Limitation) agreements in which they have expressly assigned all of their rights in and to this Company Owned Intellectual Property to a member of the Company Group (such as but not limited to by a present assignment), have waived all Moral Rights in this Company Owned Intellectual Property to the extent legally permissible and have agreed to maintain the confidentiality of this Company Owned Intellectual Property (such agreements, "**Invention Assignment Agreements**"). The Company is not, and no other party is, in material breach of any Invention Assignment Agreement. All inventions, creations, developments, designs and modifications of Company Owned Intellectual Property (other than Company Purchased Intellectual Property) was undertaken by Contributors within the scope of their engagement with a Company Group. At no time during the conception of or reduction to practice of any Company Owned Intellectual Property (other than Company Purchased Intellectual Property) was any Contributor operating under any grants from any Governmental Authority or educational institution, performing research sponsored by any Governmental Authority or educational institution, utilizing the facilities of any Governmental Authority or educational institution or subject to any employment agreement or invention assignment or nondisclosure agreement or other obligation with any third party. No current or former employees, consultants or contractors of the Company Group owns any Company Intellectual Property, other than licenses to the Company as may be included in the applicable employee, consultant, or contractor Invention Assignment Agreement with the Company Group. No Person has asserted to the Company Group, and to the Company's Knowledge, no Person has, any ownership right, title, interest or other claim in, or the right to receive any royalties or other consideration with respect to any Company Owned Intellectual Property. To the Company's Knowledge, none of its employees is obligated under any Contract (including licenses, covenants or commitments of any nature) or other agreement, or subject to any judgement, decree or order of any court or administrative agency, that would materially interfere with their duties to the Company.

(i) Where the Company Group (or any Person on behalf of the Company Group) has authored, conceived, created, reduced to practice, or developed any Intellectual Property for a customer of the Company Group ("**Customization**") and either ownership of such Customization does not vest in the Company Group or the Company Group is not licensed to (including to use) such Customization without restriction, such Customization was developed to meet that customer's specific requirements. No such Customization: (i) has been provided to any other

licensees or customers of the Company or (ii) is necessary for the ongoing operation of the business of the Company.

(j) The Transactions will not result in the Purchaser, the Company Group or any of their respective Affiliates, under any Contract to which the Company is bound: (i) granting to any third party any incremental right to or with respect to any Intellectual Property owned by, or licensed to, any of them, (ii) except as contemplated by this Agreement, being bound by, or subject to, any incremental non-compete or other incremental material restriction on the operation or scope of their respective businesses, or (iii) being obligated to pay any incremental royalties or other material amounts, or offer any incremental discounts, to any third party. As used in this Section 3.13(j), an "incremental" right, non-compete, restriction, royalty or discount refers to a right, non-compete, restriction, royalty or discount, as applicable, in excess of the rights, non-competes, restrictions, royalties or discounts payable that would have been required to be offered or granted, as applicable, had the parties not entered into this Agreement or consummated the Transactions.

(k) Section 3.13(k) of the Disclosure Letter sets forth a list of all (i) Company Products and versions thereof on or before the date of this Agreement, and (ii) Third Party Components (excluding Open Source), in each case identifying (A) the Company Products and versions thereof associated with such Third Party Component, (B) for licensed Third Party Components, the Contract granting the Company rights in and to such Third Party Component. With respect to any Third Party Component that constitutes Open Source used in or made available to users through, Company Products, the Company is and has been in material compliance with all applicable licenses with respect thereto. No Open Source has been modified, distributed or made available by or on behalf of the Company in such a manner as would require the Company to (i) publicly make available any Source Code that is part of the Company Products or Company Intellectual Property, (ii) license, distribute, or make available any Source Code for the purpose of reverse engineering or making derivative works of such Source Code, or to permit any other Person to perform such actions, (iii) permit the Company-owned portions of the Company Products or Company Intellectual Property to be reverse engineered, reverse assembled or disassembled (other than by operation of law), or (iv) be restricted or limited from charging for distribution of any Company-owned portions of the Company Products or any Company Intellectual Property.

(l) The execution of this Agreement or any of the Transactions, will not result in the required disclosure to a third Person of any Source Code for Software that is Company Intellectual Property (including any release from escrow of any such Source Code) or the grant of incremental rights to a Person with regard to such Source Code. No event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time, or both) will, or would reasonably be expected to, result in the disclosure or delivery by any Person acting on behalf of the Company to any Person of any Source Code for Software that is Company Intellectual Property, and, other than as set forth on Section 3.13(l) of the Disclosure Letter, no portions of such Source Code have been disclosed, delivered or licensed to a third Person (other than employees, consultants or contractors of the Company involved in the development or maintenance of such Source Code and bound by written confidentiality and non-disclosure agreements with respect thereto). As used in this Section 3.13(l), an "incremental" right refers to a right in excess of the rights that would have been required to be offered or granted had the parties not entered into this Agreement or consummated the Transactions.

(m) All Company IT Systems and, to the extent owned by the Company Group, Company Products are in good working condition and are sufficient for the operation of the Business as currently conducted. Except as set forth on Section 3.13(m) of the Disclosure Letter or in the supplemental letter, in the past three years, there has been no material malfunction, failure, continued substandard performance, denial-of-service, or other cyber incident, including any cyberattack, or other impairment of the Company IT Systems or Company Products. The Company Group has taken reasonable precautions (including through the use of encryption and password protection) to (i) protect the confidentiality, integrity and security of the Company IT Systems and Company Products and all information stored or contained therein or transmitted thereby from any theft, corruption, loss or unauthorized use, access, interruption or modification by any Person and (ii) ensure that all Company IT Systems and Company Products are (A) fully functional and operate and run in a reasonable and efficient business manner in all material respects, and (B) free from (i) any critical defects, including any critical error or critical omission in the processing of any transactions and (ii) any disabling codes or instructions and any "back door," "time bomb," "Trojan horse," "worm," "drop dead device," "virus" or other software routines or hardware components that permit unauthorized access or the unauthorized disruption, impairment, disablement or erasure of such information technology systems, computers or Company Intellectual Property (or any parts thereof) or data or other Software of users ("**Contaminants**"). The Business, Company Products and all Company Intellectual Property are free of Contaminants. None of the Software included in the Company IT Systems, Company Products and to the Company's Knowledge, Company Intellectual Property constitutes, contains or is considered "spyware" or "trackware" (as these terms are commonly understood in the software industry), records a user's actions without the user's knowledge or employs a user's Internet connection without the user's knowledge to gather or transmit information on the user or the user's behavior. The Company Group has reasonably appropriate disaster recovery and business continuity procedures and facilities for the Business. The Company has implemented security patches or upgrades that are generally available for such information technology systems and computers where such patches or upgrades are reasonably required to maintain their security. To the extent that the Company Group receives, processes, transmits or stores any financial account numbers (such as credit cards, bank accounts, PayPal accounts, debit cards), passwords, CVV data, or other related data ("**Cardholder Data**"), the Company has at all times met or exceeded all applicable information security Laws, legal or contractual standards to which it is bound, and applicable rules and requirements related to the collection, storage, processing and transmission of Cardholder Data, including those established by applicable Governmental Authorities, and the payment card industry.

Section 3.14 Information Practices.

(a) Except as set forth on Section 3.14(a) of the Disclosure Letter, each member of the Company Group is currently, and has been, in compliance with in all material respects: (i) all applicable Privacy and Security Laws and Standards; and (ii) any obligations of such member of the Company Group under Contracts to which such member of the Company Group is a party concerning the protection, collection, access, use, storage, disposal, disclosure, or transfer of Personal Information and any related notifications. Without limiting the foregoing, each member of the Company Group has posted in accordance with Privacy and Security Laws and Standards a privacy policy governing its use of Personal Information on its public websites and internally for its employees.

(b) The Company Group has (i) developed, implemented, and conducted its business in material compliance with its own written public privacy notices, and data security or privacy policies and procedures (copies of which have been made available to Purchaser); (ii) maintained commercially reasonable and necessary administrative, physical and technical safeguards designed to protect the confidentiality, integrity and availability of Personal Information in its possession or control, and to prevent the loss and unauthorized use, access, alteration, destruction or disclosure of such Personal Information; and (iii) trained its employees to follow these policies and procedures.

(c) No member of the Company Group has been subject to or received written notice of any Government Order or Action by any Governmental Authority or Person or any written complaints regarding the protection, collection, access, use, storage, disposal, disclosure, or transfer of Personal Information or the violation of any applicable Privacy and Security Law or Standard. To the Company's Knowledge, no such Action is threatened against any member of the Company Group.

(d) No member of the Company Group has suffered, discovered or been notified in writing of any unauthorized acquisition, use, disclosure, access to, or breach of any Personal Information that (i) except as set forth on Section 3.14(d) of the Disclosure Letter or in the supplemental letter, constitutes a breach or a data security incident under any applicable Privacy and Security Law or Standard or would trigger a notification or reporting requirement under any Contract or the PCI DSS; or (ii) materially compromises (individually or in the aggregate) the security or privacy of such Personal Information.

(e) No member of the Company Group has any Contract obligation to maintain Personal Information in a manner that physically separates data of one customer from that of another.

(f) The Company Group has (i) performed periodic security risk assessments and (ii) created and maintained related documentation in material compliance with applicable Privacy and Security Laws and Standards. The Company Group has addressed and remediated all high-level threats and deficiencies identified in such security risk assessment.

(g) No member of the Company Group has reported a breach or compromise of Personal Information to any Person or Governmental Authority, either voluntarily or based on Contract obligations or Privacy and Security Laws and Standards.

(h) The consummation of the Transactions does not violate any Privacy and Security Laws and Standards, Contract obligation related to Personal Information, or a Company published privacy policy. Upon the Effective Date, the surviving entity will own and continue to have the right to use all Data and Personal Information on materially identical terms and conditions as the Company Group enjoyed immediately prior to the Effective Date.

(i) The Company Group has not (i) transferred Personal Information collected from data subjects located in the European Economic Area to countries outside of the European Economic Area, or (ii) transferred Personal Information collected from data subjects located in

Canada to countries outside of Canada, unless in accordance with the applicable Information Privacy and Security Laws and Requirements.

(j) The Company Group has all necessary authority to process the Data including the Personal Information in its possession or under its control in connection with the operation of the Business. The Company Group has at all times made all disclosures to, and obtained any necessary consents and authorizations from, users, customers, employees, contractors and other applicable Persons required (i) by applicable Laws relating to privacy, security or data protection or transmission of electronic messages, including Information Privacy and Security Laws and Requirements or (ii) to disclose Personal Information to the Purchaser in order to evaluate or complete the Transactions.

(k) The Company Group has only shared Personal Information with third-party contractors and vendors, in their role under the applicable Information Privacy and Security Laws and Requirements as either data controllers or data processors or sub-processors, in accordance with the applicable Information Privacy and Security Laws and Requirements. The Company Group has contractually obligated all vendors, service providers or other Persons whose relationship with the Company Group involves their processing of Customer Data on behalf of the Company Group ("**Data Processors**"), to comply with all Information Privacy and Security Laws and the Privacy Policies with respect to Personal Information. The Company Group has taken reasonable measures to ensure that all Data Processors have complied with their contractual obligations, and to the Knowledge of the Company Group, no Data Processors are in breach of their contractual obligations.

(l) The Company Group has all necessary rights, permissions, and authorizations, including under Privacy and Security Laws and Requirements, to process or to have processed all Third Party Processed Data, retain, produce copies of, prepare derivative works of, disclose, combine with other data, grant third parties rights to, as the case may be, and otherwise process, all Third Party Processed Data as necessary for the operation of the Business as presently conducted. The Company Group has been and is in compliance in all material respects with all Contracts pursuant to which the Company Group processes or has processed Third Party Processed Data.

(m) The Company Group is the owner of all necessary right, title and interest in and to each element of Owned Data. The Company Group has (and after Closing will continue to have) all necessary rights, permissions, and authorizations to process all Owned Data in the manner processed by or behalf of the Company Group without obtaining any additional consent, permission or authorization of any Person

(n) No member of the Company Group uses, or has ever used, web scraping, bots, spiders or similar methods or technology to collect data from the websites, online services or applications of any other Person.

(o) In relation to Personal Information originating from the European Economic Area or the United Kingdom, where processing of such Personal Information is based on the consent of a data subject (including marketing by electronic means), the Company Group is able to reasonably demonstrate that data subjects have freely and unambiguously given their specific and informed

consent to all such processing of their Personal Information carried on by or on behalf of the Company Group in accordance with applicable Privacy and Security Laws and Standards.

(p) To the Company's Knowledge or as set forth on Section 3.14(p) of the Disclosure Letter, no member of the Company Group has transferred Personal Information outside the European Economic Area or United Kingdom: (i) as a controller, other than in material compliance with Articles 45 and 46(2) of the GDPR or other applicable Privacy and Security Laws and Standards; or (ii) as a processor, other than in accordance with the instructions of the controller of that Personal Information and in material compliance with Articles 45 and 46(2) of the GDPR or other applicable Privacy and Security Laws and Standards.

Section 3.15 Inventory. All inventory of the Company Group, whether or not reflected in the Balance Sheet, consists of a quality and quantity usable and salable in the ordinary course of business consistent with past practice, except for obsolete, damaged, defective or slow-moving items that have been written off or written down to fair market value or for which adequate reserves have been established. Other than as set forth on Section 3.15 of the Disclosure Letter, all such inventory is owned by the Company Group free and clear of all Encumbrances (other than Permitted Encumbrances), no inventory is held on a consignment basis, and the quantities of each item of inventory (whether raw materials, work-in-process or finished goods) are not excessive, but are reasonable in the present circumstances of the Company Group and as are reasonably required to maintain its normal level of operations consistent with past practices.

Section 3.16 Accounts Receivable. The accounts receivable reflected on the Balance Sheet and the accounts receivable arising after the date thereof (a) have arisen from bona fide transactions entered into by the Company Group involving the sale of goods or the rendering of services in the ordinary course of business consistent with past practice; and (b) are or will be valid and enforceable claims of the Company Group. The reserve for bad debts shown on the Interim Balance Sheet or, with respect to accounts receivable arising after the Interim Balance Sheet Date, on the accounting records of the Company Group have been determined in accordance with GAAP, consistently applied, subject to normal year-end adjustments and the absence of disclosures normally made in footnotes. No counterclaims, offsetting claims or defenses to collection of such receivables that are material to the current consolidated amount of such receivables are pending or, to the Company's Knowledge, threatened, and all asserted counterclaims or offsetting claims or defenses with respect to accounts receivable have been deducted or reserved against on the Financial Statements. Except as set forth in Section 3.16 of the Disclosure Letter, no Person has any Encumbrance, other than Permitted Encumbrances, on any accounts receivable of the Company Group.

Section 3.17 Customers and Suppliers.

(a) Section 3.17(a) of the Disclosure Letter sets forth (i) each customer who has paid aggregate consideration to the Company Group for Company Products in an amount greater than or equal to $1,000,000 for either of the two most recent fiscal years (collectively, the "**Material Customers**"); and (ii) the amount of consideration paid by each Material Customer during such periods. Except as set forth in Section 3.17(a) of the Disclosure Letter, the Company Group has not received any written notice, and, to the Company's Knowledge, none of its Material Customers

has ceased, or intends to cease after the Closing, to use Company Products or to otherwise terminate or materially reduce its relationship with the Company Group.

(b) Section 3.17(b) of the Disclosure Letter sets forth (i) each supplier to whom the Company Group has paid consideration for goods or services rendered in an amount greater than or equal to $1,000,000 for either of the two most recent fiscal years (collectively, the "**Material Suppliers**"); and (ii) the amount of purchases from each Material Supplier during such periods. Except as set forth in Section 3.17(b) of the Disclosure Letter, the Company Group has not received any notice, and has no reason to believe, that any of its Material Suppliers has ceased, or intends to cease, to supply goods or services to the Company Group or to otherwise terminate or materially reduce its relationship with the Company Group.

Section 3.18 Insurance. Section 3.18 of the Disclosure Letter sets forth a true and complete list of all current policies or binders of fire, liability, product liability, umbrella liability, real and personal property, workers' compensation, vehicular, directors' and officers' liability, fiduciary liability and other casualty and property insurance maintained by the Company Group and relating to the assets, business, operations, employees, officers and directors of the Company Group (collectively, the "**Insurance Policies**"). Each of the Insurance Policies is valid and enforceable (subject to the Enforcement Limitation) and, to the Company's Knowledge, is not void or voidable. All premiums due in respect of the Insurance Policies have been paid. The Company Group has not done or omitted to do anything which might result in an increase in the premium payable under any of the Insurance Policies. Except as set forth on Section 3.18 of the Disclosure Letter, there is no claim outstanding under any of the Insurance Policies and, to the Company's Knowledge, there is no fact or circumstance which might give rise to any such claim. All Insurance Policies are, and all similar insurance policies maintained by the Company Group in the past five years were, placed with financially sound and reputable insurers.

Section 3.19 Legal Proceedings; Governmental Orders.

(a) Except as disclosed in a supplemental letter dated the date hereof from the Company to Purchaser, there are no, and since December 31, 2017, have not been any Actions pending against, affecting or involving any member of the Company Group or its properties or rights (nor has the Company received any notice or other communication of any threat thereof) before any Governmental Authority against any member of the Company Group or any officer, director or Key Employee of the Company Group arising out of their employment or board relationship with the Company Group. None of the Company Group nor, to the Company's Knowledge, any of their officers or directors, is a party or subject to the provisions of any Order of any Governmental Authority with respect to the Company Group (in the case of officers or directors, such as would materially and adversely affect the Company Group). There is no Action by any member of the Company Group pending or which the Company Group intends to initiate. The foregoing includes Actions pending or threatened in writing (or any basis therefor known to the Company Group) involving the prior employment of any of the Company Group's employees, their services provided to the Company Group or in connection with the Business, or any information or techniques allegedly proprietary to any of their former employers, or their obligations under any agreements with prior employers. There are no Actions pending or, to the Company's Knowledge, threatened challenging the validity or enforceability of this Agreement or the Ancillary Documents.

(b) There are no outstanding Governmental Orders against any member of the Company Group or any of its properties or assets.

Section 3.20 Compliance With Laws; Permits.

(a) Each member of the Company Group has complied, and is now complying, in all material respects with all Laws applicable to it or its business, properties or assets. Each member of the Company Group has in place compliance programs reasonably designed to cause such member of the Company Group and its employees to comply with all applicable Laws and has made copies of such compliance program policies available to Purchaser.

(b) Each member of the Company Group has all material Permits necessary for the conduct of its business as now being conducted or that are necessary for the lawful ownership, development and disposition of their respective properties and assets (collectively, the "**Company Permits**") each of which is identified on Section 3.20(b) of the Disclosure Letter. Each Company Permit is valid and in full force and effect either pursuant to its terms or by operation of Law. No member of the Company Group is in default in any material respect under any Company Permit. As of the date hereof and to the Company's Knowledge, no Governmental Authority has commenced, or given notice to the Company that it intends to commence, an Action to revoke or suspend any Company Permit, or given written notice that it intends not to renew any Company Permit. All applications required to have been filed for the renewal of any Company Permits have been duly filed on a timely basis with the appropriate Governmental Authorities, and all other filings required to have been made with respect to such Company Permits have been duly made on a timely basis with the appropriate Governmental Authority. To the Company's Knowledge, no event has occurred or condition or state of facts exists that constitutes or, after notice or lapse of time or both, would reasonably be expected to constitute, a default or violation under any of the Company Permits or would permit revocation or termination of, or limitation or restrictions upon, any of those Company Permits or would reasonably be expected to give rise to a material fine or other material liability against any member of the Company Group with respect to any Company Permit.

Section 3.21 Anti-Corruption, Anti-Money Laundering, Sanctions, and Trade Regulation.

(a) Since January 1, 2016, none of (i) the members of the Company Group or, to the Company's Knowledge, any Affiliate of the Company Group, (ii) the Company Group's officers, directors and Key Employees or (iii) to the Company's Knowledge, any agents of the foregoing Persons (each, a "**Relevant Person**"), have: (A) violated any Anti-Corruption Laws; or (B) offered, paid, promised to pay, authorized the payment of, received or solicited anything of value under circumstances such that all or a portion of such thing of value would be offered, given or promised, directly or indirectly, to any Person to obtain any improper advantage for the Company Group.

(b) At no time since January 1, 2016, has any Relevant Person (i) conducted or initiated any internal investigation or made a voluntary, directed, or involuntary disclosure to any Governmental Authority or similar agency with respect to any alleged act or omission arising under or relating to any potential noncompliance with any Anti-Corruption Laws, Anti-Money

Laundering Law or anti-fraud law, or (ii) been the subject of current, pending or, to the Company's Knowledge, threatened investigation, inquiry or enforcement proceedings for violations of any Anti-Corruption Laws, Anti-Money Laundering Law or anti-fraud law or received any notice, request or citation for any actual or potential noncompliance with any Anti-Corruption Law, Anti-Money Laundering Law or anti-fraud law.

(c) Each member of the Company Group is, and since January 1, 2016 has been, in compliance with the Arms Export Control Act, the International Emergency Economic Powers Act, the International Traffic in Arms Regulations, the Export Administration Regulations, the Laws and orders administered by the U.S. Department of Treasury's Office of Foreign Assets Control, the Laws relating to anti-boycott requirements administered by the U.S. Department of Commerce, the U.S. Department of the Treasury, similar Laws and orders of non-U.S. Governmental Authorities and any other Laws and orders governing the export of items, materials, technology or data (collectively, the "**Export Control Laws**"). Without limiting the foregoing, each member of the Company Group: (i) has obtained in a timely manner all export licenses and other consents and Permits from, and has made and filed all necessary notices, registrations, declarations and filings with, any Governmental Authority that are required by applicable Law in connection with the export of Company Products or other operations of the Company Group, and has met the requirements of any license exceptions or exemptions, as required in connection with the export and re-export of Company Products, and releases of technology and technical data to foreign nationals located in the United States and abroad ("**Export Approvals**"); and (ii) is in compliance with the terms of all applicable Export Approvals. There are no pending or, to the Company's Knowledge, threatened Actions involving any member of the Company Group with respect to Export Approvals or Export Control Laws. No member of the Company Group has, during the five-year period prior to the Effective Date, committed any violation of applicable customs and import Laws and there are no unresolved proceedings concerning any liability of the Company Group with respect to any such Laws. No member of the Company Group has submitted any disclosures or received any notice that it is subject to any civil or criminal investigation, audit or any other inquiry involving or otherwise relating to any alleged or actual material violation of applicable customs and import Laws, nor has any such Person made or provided any false statement or omission to any Governmental Authority or to any purchaser of Company Products in connection with the importation of items, the valuation or classification of imported items, the duty treatment of imported items, the eligibility of imported items for favorable duty rates or other special treatment, country-of-origin marking, marking and labeling requirements, other statements or certificates concerning origin, quota or visa rights, export licenses or other export authorizations, U.S.-content requirements, licenses or other approvals required by a Governmental Authority.

(d) No Relevant Person:

(i) has violated or is violating any applicable Sanctions;

(ii) is a Restricted Party;

(iii) will use, directly or indirectly, the payments made pursuant to this Agreement or any Ancillary Document to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose

government is, the subject of Sanctions, or in any other manner that would result in a violation of Sanctions, Anti-Money Laundering Laws or Any-Corruption Laws by any Person; or

(iv) has received notice of or is aware of any claim, action, suit, proceeding or investigation against it with respect to Sanctions by any Sanctions Authority.

(e) The Company Group has established procedures and controls that comply with Law and that the Company Group reasonably believes are adequate and effective to ensure that the Company Group is and will continue to be in compliance with all Sanctions, Anti-Money Laundering Laws Anti-Corruption Laws, and Export Control Laws. The Company has made available to Purchaser true, correct and complete copies as in effect as of the date hereof of the Company Group's (i) policies designed to avoid corruption, bribery, money laundering, political contributions or unlawful payments or gifts to government officials, (ii) personal securities trading policies, and (iii) codes of conduct and ethics.

Section 3.22 Environmental and Safety Matters.

(a) Each member of the Company Group is and has been in compliance in all material respects with all applicable Environmental Laws. Without limiting the foregoing, each member of the Company Group: (a) has timely obtained, and is and has been in compliance in all material respects with, all Environmental Permits for the ownership, lease, operation or use of the respective businesses or assets of the Company Group; and (b) has prepared and timely filed with the appropriate jurisdictions all reports, data, documentation and filings required pursuant to any Environmental Law. All of the Environmental Permits that are currently held by any member of the Company Group are listed in Section 3.22(a) of the Disclosure Letter. No incident, condition, change or circumstance with respect to any member of the Company Group has occurred or exists to the Company's Knowledge that would reasonably be expected to prevent or interfere with such compliance by any member of the Company Group as the businesses are currently conducted, including any failure to make a timely application or submission for renewal of any Environmental Permit.

(b) There is no Environmental Claim pending or, to the Company's Knowledge, threatened against any member of the Company Group (or against any Person whose liability for such Environmental Claim any member of the Company Group has retained or assumed by Contract or under any Law). No incident, condition, change or circumstance has occurred or exists to the Company's Knowledge that would reasonably be expected to form the basis of an Environmental Claim against any member of the Company Group (or against any Person whose liability for such Environmental Claim any member of the Company Group has or retained or assumed by Contract or under any Law).

(c) To the Company's Knowledge, there is not present in, on or under any of the Leased Real Property any Hazardous Substance in such form or quantity so as to reasonably be expected to create any liability for any member of the Company Group under any Environmental Law. Except as set forth on Section 3.22(c) of the Disclosure Letter, no member of the Company Group has released, stored, generated, disposed of or arranged for the disposal of, transported, handled, distributed, or exposed any Person to, any Hazardous Substance, or to the Company's Knowledge,

owned any property or facility contaminated by any Hazardous Substance, in each case, so as to create any material liability under any Environmental Law for any member of the Company Group.

(d) The Company has made available to Purchaser true and complete copies, if any, of all material reports, notifications from Governmental Authorities, Environmental Permits, pending Environmental Permit applications, engineering studies and environmental studies or assessments relating to the environmental condition of any of the Leased Real Property or otherwise relating to the business of any member of the Company Group with respect to any Environmental Law, including that the Company has made available to Purchaser a true, correct and complete copy of all Phase I and Phase II environmental site assessments related to any of the Leased Real Property, in each case, that are in the possession or control of any member of the Company Group.

(e) No member of the Company Group has assumed or provided an indemnity with respect to any liability of any other Person with respect to Environmental Laws or any Hazardous Substance, other than general contractual indemnities entered pursuant to a lease or credit agreement in the ordinary course of business.

Section 3.23 Employee Benefit Matters.

(a) Section 3.23(a) of the supplemental letter dated the date hereof contains a true and complete list of each pension, supplemental retirement plan, savings, benefit, retirement, compensation, employment, consulting, profit-sharing, deferred compensation, incentive, bonus, performance award, phantom equity, stock or stock-based, change in control, retention, severance, vacation, paid time off (PTO), medical, vision, dental, disability, welfare, supplemental unemployment benefits, Code Section 125 cafeteria, fringe-benefit and other similar agreement, plan, policy, practice, undertaking, program or arrangement, in each case whether or not reduced to writing and whether funded or unfunded, whether insured or uninsured, whether registered or not registered, including each "employee benefit plan" within the meaning of Section 3(3) of ERISA, which is maintained, sponsored, contributed to, or required to be contributed to by the Company or the Company Group or with respect to which the Company or the Company Group has or may have any liability (as listed on Section 3.23(a) of the Disclosure Letter, each, a "**Benefit Plan**"). The Company has separately identified in Section 3.23(a) of the Disclosure Letter each Benefit Plan that is maintained, sponsored, contributed to, or required to be contributed to by a member of the Company Group primarily for the benefit of employees outside of the United States (a "**Non-U.S. Benefit Plan**").

(b) In so far as they concern the Company's participation in the Benefit Plans, a true and correct copy of the most recent versions of each of the Benefit Plans has been made available to Purchaser. In the case of any Benefit Plan that is not in written form, an accurate description of its material terms as in effect on the date hereof has been made available to Purchaser. A true and correct copy of the most recent annual report, actuarial report, accountant's opinion of the plan's financial statements, summary plan description and Internal Revenue Service determination letter with respect to each Benefit Plan, to the extent applicable, has been supplied or made available to Purchaser, and there have been no material changes in the financial condition in the respective plans.

(c) Each Benefit Plan has been established, administered and maintained materially in accordance with its terms and materially in compliance with all applicable Laws and no event has occurred which will or would reasonably be expected to cause any such Benefit Plan to fail to comply with such requirements and no notice has been issued by any Governmental Authority questioning or challenging such compliance. Each such Benefit Plan that is intended to meet the requirements of a "qualified plan" under Section 401(a) of the U.S. Tax Code has received a current favorable determination letter or may rely upon a current opinion or advisory letter from the Internal Revenue Service, and nothing has occurred that would reasonably be expected to adversely affect the qualified status of such Benefit Plan. Each Benefit Plan that is required to be registered under the Tax Act for tax preferred or tax exempt status has been and has continuously been so registered, and no fact or circumstance exists that would reasonably be expected to adversely affect the existing tax preferred or tax exempt status of such Benefit Plan.

(d) No Benefit Plan is, and neither the Company nor any ERISA Affiliate has any obligation to contribute to, or has any current or contingent liability or obligations under or with respect to: (i) a "defined benefit plan" (as defined in Section 3(35) of ERISA) or a plan that is or has been subject to the minimum funding requirements of Section 412 of the U.S. Tax Code or Title IV of ERISA; (ii) an occupational pension scheme to which section 75 of the Pensions Act 1995 applies in respect of any current or former UK Employee, (iii) a "multiemployer plan" (as defined in Section 3(37) of ERISA), (iv) a "multiple employer plan" (within the meaning of Section 210 of ERISA or Section 413(c) of the U.S. Tax Code); (v) a "multiple employer welfare arrangement" (as such term is defined in Section 3(40) of ERISA), (vi) a "registered pension plan", a "registered pension plan" containing a "defined benefit provision", "retirement compensation arrangement", "employee life and health trust", "employee trust" or "employees profit sharing plan" as such terms are defined in Section 248(1) of the Tax Act, (vii) a plan, agreement or arrangement that is intended to be, or that has been determined by the Minister of National Revenue to be, a "salary deferral arrangement" as such term is defined in Section 248(1) of the Tax Act, or (viii) any other defined benefit pension plan.

(e) No member of the Company Group and none of their ERISA Affiliates have any liability or contingent liability for providing, under any Benefit Plan or otherwise, any post-termination medical or life insurance benefits, other than statutory liability for providing group health plan continuation coverage under Part 6 of Title I of ERISA and Section 4980B of the U.S. Tax Code ("**COBRA**") or any applicable Law for which the covered person pays the full cost of coverage.

(f) Other than routine and undisputed claims for benefits, there is no pending or, to the Company's Knowledge, threatened Action relating to a Benefit Plan or the assets thereof and no facts exist which would reasonably be likely to give rise to any such Actions. There has been no "prohibited transaction" within the meaning of Section 4975 of the U.S. Tax Code or Sections 406 of ERISA and no breach of fiduciary duty (as determined under ERISA) with respect to any Benefit Plan. All amounts that the Company Group is legally or contractually required to either: (i) deduct from its employees' salaries and any other compensation or benefit or to transfer to such employees' Benefit Plan; or (ii) withhold from employees' salaries and any other compensation or benefit and to pay to any Governmental Authority as required by any applicable Law have in either case, been duly deducted, transferred, withheld and paid, and the Company Group does not have any outstanding obligation to make any such deduction, transfer, withholding or payment (other

than routine payments, deductions or withholdings to be timely made in the ordinary course). With respect to each Benefit Plan, all contributions, distributions, reimbursements and premium payments that are due by the Company have been timely made and all contributions, distributions, reimbursements and premium payments for any period ending on or before the Effective Date that are not yet due have been made or properly accrued.

(g) Each Benefit Plan that is a "nonqualified deferred compensation plan" (as such term is defined under Section 409A(d)(1) of the U.S. Tax Code and the guidance thereunder) is and has been maintained in all respects in form and operation in compliance with the requirements of Section 409A of the U.S. Tax Code and applicable guidance issued thereunder, and no amounts under any such plan, agreement or arrangement is, will be or has been subject to the interest and additional tax set forth under Section 409A(a)(1)(B) of the U.S. Tax Code.

(h) Each Company Option qualifies for the tax and accounting treatment afforded to such Company Option in the Company's Tax Returns and the Company's Financial Statements. Each stock option granted by the Company is exempt from, or otherwise not subject to, Section 409A of the U.S. Tax Code. The Company Group does not have any actual or potential indemnity obligations (including an obligation to "gross-up" any Person) for any Taxes imposed under Sections 4999 or 409A of the U.S. Tax Code.

(i) The Company Group and each ERISA Affiliate have complied and are in compliance with the requirements of COBRA as well as the Patient Protection and Affordable Care Act, including the Health Care and Education Reconciliation Act of 2010 ("**PPACA**"). No member of the Company Group has incurred (whether or not assessed), or is reasonably expected to incur or to be subject to, any Tax or other penalty under PPACA (including with respect to the reporting requirements under Sections 6055 and 6056 of the U.S. Tax Code, as applicable) or Section 4980B, 4980D or 4980H of the U.S. Tax Code.

(j) Except as disclosed in a supplemental letter dated the date hereof from the Company to Purchaser, neither the execution of this Agreement nor any of the Transactions will (either alone or upon the occurrence of any additional or subsequent events): (i) entitle any current or former director, officer, employee, independent contractor or consultant of the Company Group to severance pay or any other payment; (ii) accelerate the time or payment, funding or vesting, or increase the amount of compensation (including stock-based compensation) due to any such individual; (iii) limit or restrict the right of any Company Group member to merge, amend or terminate any Benefit Plan; (iv) increase the amount payable under or result in any other material obligation pursuant to any Benefit Plan; or (v) result in "excess parachute payments" within the meaning of Section 280G(b) of the U.S. Tax Code.

(k) There has been no amendment to, written interpretation or announcement (whether or not written) by any member of the Company Group relating to, or change in participation or coverage under, any Benefit Plan that would materially increase the expense of maintaining such Benefit Plan.

(l) All Benefit Plans providing health and welfare benefits are either fully insured or, if self-insured, subject to stop-loss arrangements.

Section 3.24 Employee Matters.

(a) The supplemental letter dated the date hereof from the Company to Purchaser sets forth a list of each employee, worker and independent contractor providing services to the Company Group as of the date of this Agreement, and in the case of each such employee, worker and independent contractor, the following information, as applicable, as of the date hereof: (i) title or position; (ii) date of hire or commencement of services (including any prior service credited for any other employment purposes); (iii) work location; (iv) whether full-time or part-time; (v) for U.S. employees, whether exempt or non-exempt from the Fair Labor Standards Act and for non-U.S. employees, whether exempt or non-exempt from applicable overtime Laws; (vi) whether covered by the terms of an employment or independent contractor agreement (other than employment agreements providing the minimum statutory entitlements under applicable Law); (vii) whether absent from active employment (other than routine time off) and if so, the date such absence commenced, the reason for such absence, and the anticipated date of return to active employment; (viii) annual salary, hourly rate or fee arrangement, and if applicable, bonus target or other incentive compensation; (ix) accrued but unused vacation or paid time off; (x) employing entity; and (xi) whether they are an employee, worker or independent contractor.

(b) No member of the Company Group is party to any collective bargaining agreements or works council agreements with any of its employees. No member of the Company Group is bound by or subject to (and none of its assets or properties is bound by or subject to) any written or oral, express or implied, Contract, commitment or arrangement with any labor union or other employee representative body, and, to the Company's Knowledge, there is no labor union or other employee representative body organizing activity pending or threatened with respect to the Company Group nor have any such events occurred over the past three (3) years. No member of the Company Group or, to the Company's Knowledge, any of its Representatives, have committed any unfair labor practice in connection with the conduct of the business, and there is no charge or complaint against the Company Group by the Ministry of Labour or any comparable Governmental Authority pending or, to the Company's Knowledge, threatened.

(c) The Company Group is not delinquent in payments to any of its employees, consultants, or independent contractors for any wages, salaries, commissions, bonuses, or other direct compensation for any service performed for it to the date hereof or amounts required to be reimbursed to such employees, consultants, or independent contractors.

(d) The Company Group has complied in all material respects with all applicable equal employment opportunity Laws and with other Laws related to employment, including those related to wages, hours, worker classification, collective bargaining, discrimination, harassment, retaliation, immigration, workers' compensation, unemployment compensation, withholding, and occupational safety and health. All independent contractors and consultants providing services to the Company Group have been properly classified as independent contractors or consultants for purposes of all Laws, including Laws with respect to employee benefits, employee rights and taxes and all U.S. employees of the Company Group have been properly classified under the Fair Labor Standards Act and similar state or provincial laws. The Company Group has withheld and paid to the appropriate Governmental Authority or is holding for payment not yet due to such Governmental Authority all amounts required to be withheld from employees of the Company

Group and is not liable for any arrears of wages, Taxes, penalties, or other sums for failure to comply with any of the foregoing.

(e) Except as disclosed in a supplemental letter dated the date hereof from the Company to Purchaser, to the Company's Knowledge, no officer, Key Employee or group of employees intends to terminate his, her or their employment with the Company Group. No member of the Company Group has any present intention to terminate the employment of any officer, Key Employee or group of more than twenty-five (25) employees. Except as disclosed in a supplemental letter dated the date hereof from the Company to Purchaser, the employment of each U.S.-based employee of the Company Group is terminable at will. All Canadian employees of the Company Group are subject to a written employment contract with the Company Group, and the Company has not made any material oral modifications to any individual written employment contract. Except as disclosed in a supplemental letter dated the date hereof from the Company to Purchaser, there are no Actions pending, or to the Company's Knowledge, threatened, by any former or current employee concerning such person's employment by the Company Group, and the Company Group has no policy, practice, plan, or program of paying severance pay (except for any statutory obligations) or any form of severance compensation (except for any statutory obligations) in connection with the termination of employment services.

(f) Except as disclosed in a supplemental letter dated the date hereof from the Company to Purchaser, all employment Contracts between any employee of the Company Group in Canada or the United Kingdom are terminable at any time on not more than three months' notice without compensation or any liability on the part of the Company Group. All US employees are engaged by the Company Group on an at-will basis.

(g) With respect to the Transactions, any notice required under any Law or Contract with respect to any employee has been given. Except as disclosed in a supplemental letter dated the date hereof from the Company to Purchaser, throughout the past three (3) years, the Company Group has not implemented any plant closing or layoff of employees or redundancies that would reasonably be likely to implicate any notice or consultation obligations under the U.S. Worker Adjustment and Retraining Notification Act of 1988 or any similar Law, nor does the Company Group have any such actions currently planned.

(h) The Company Group has not made any representations regarding equity incentives to any officer, employee, director or consultant that are materially inconsistent with the applicable plan and award agreement therefore and all such equity incentives were duly approved by the Company's Board of Directors.

(i) No executive officer or other Key Employee or, to the Knowledge of the Company, any other employee of the Company Group is subject to any noncompete, nonsolicitation, nondisclosure, confidentiality, employment, consulting or similar agreement relating to, affecting or in conflict with the present business activities of the Company Group.

(j) The Company Group has investigated or reviewed all sexual harassment or other harassment, discrimination or retaliation allegations (that were made to a member of management or human resources personnel) of which it has knowledge. With respect to each such allegation

with potential merit, the Company Group has taken corrective action that is reasonably calculated to prevent further improper action.

(k) A Form I-9 or other required immigration documentation has been completed and retained with respect to each current employee and, where required by law, former employees and every employee, worker or independent contractor of the Company Group is, to the Company's Knowledge, authorized to work for the Company Group in the jurisdiction where they are employed or engaged. In the past three (3) years, the Company Group has not been the subject of any audit or other action, suit, proceeding, claim, demand, assessment or judgments nor has the Company Group been the subject of an Action involving any immigration authority or relating to immigration Laws.

(l) Except as disclosed in a supplemental letter dated the date hereof from the Company to Purchaser, as of the date hereof no offer of employment or engagement has been made by the Company Group, in respect of any prospective employee to earn base salary of more than $50,000 per annum, that has not yet been accepted, or which has been accepted but where the employment has not yet started.

(m) Except as disclosed in a supplemental letter dated the date hereof from the Company to Purchaser, the Company Group has not varied in any material respect during the prior six (6) months, and has no plans to vary in any material respect, (whether to take effect prior to, on or after the Effective Date) any of the terms of employment or benefits or other entitlements of any employee of the Company Group, other than as provided for in any written Contracts or required by applicable Law.

(n) During the past three (3) years, there has been no relevant transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 affecting the Company Group or any UK Employee.

Section 3.25 Taxes.

(a) All income and other material Tax Returns required to be filed on or before the Effective Date (taking into account any applicable extensions) by each member of the Company Group have been, or will be, timely and duly filed. Such Tax Returns are, or will be, true, complete and correct in all material respects. All Taxes due and payable by the Company Group (whether or not shown on any Tax Return) have been, or will be, timely paid.

(b) Each member of the Company Group has withheld and paid each Tax required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, customer, shareholder or other party, and complied with all related information reporting and backup withholding provisions of applicable Law.

(c) Each member of the Company Group has collected all material sales, value added and use Taxes required to be collected, and has remitted, or will remit on a timely basis, such amounts to the appropriate governmental authorities, or has been furnished properly completed exemption certificates and has maintained with respect to such Taxes all such records and supporting documents in material compliance with the manner required by all applicable sales and use Tax statutes and regulations.

(d) No written claim has been made by any taxing authority in any jurisdiction where each member of the Company Group does not currently file Tax Returns that it is, or may be, subject to Tax by that jurisdiction.

(e) No extensions or waivers of statutes of limitations have been given or requested with respect to any Taxes of the Company Group, in each case that are still in effect (other than extension resulting from an automatic extension of the time for filing any Tax Return obtained in the ordinary course of business).

(f) The amount of the Company Group's liability for unpaid Taxes for all periods ending on or before the Balance Sheet Date does not, in the aggregate, exceed the amount of accruals for Taxes (excluding reserves for deferred Taxes) reflected on the Financial Statements. The amount of the Company Group's liability for unpaid Taxes for all periods following the end of the recent period covered by the Financial Statements shall not, in the aggregate, exceed the amount of accruals for Taxes (excluding reserves for deferred Taxes) as adjusted for the passage of time in accordance with the past custom and practice of the Company Group (and which accruals shall not exceed comparable amounts incurred in similar periods in prior years).

(g) All deficiencies asserted, or assessments made, with respect to a tax period for which the statute of limitations has not closed, against each member of the Company Group as a result of any examinations by any taxing authority have been fully paid.

(h) No member of the Company Group is a party to any Action by any taxing authority. There are no pending Actions by any taxing authority. The Company Group is not negotiating any final or draft assessment or reassessment in respect of Taxes with any Governmental Authority and the Company Group has not received any written notice from any Governmental Authority that an assessment or reassessment is proposed or may be proposed in respect of any Taxes.

(i) The Company has made available to Purchaser copies of all federal, state, local and foreign income, corporation, franchise and similar Tax Returns, examination reports, and statements of deficiencies assessed against, or agreed to by, each member of the Company Group for all Tax periods ending after 2017.

(j) There are no Encumbrances for Taxes (other than for current Taxes not yet due and payable) upon the assets of the Company Group.

(k) No member of the Company Group is a party to, or bound by, any Tax indemnity, Tax sharing or Tax allocation agreement (other than an agreement (such as a lease) the principal purpose of which is not the sharing or allocation of Tax).

(l) No private letter rulings, technical advice memoranda or similar agreement or rulings have been requested, entered into or issued by any taxing authority with respect to any member of the Company Group.

(m) No member of the Company Group has been a member of an affiliated, combined, consolidated or unitary Tax group for Tax purposes. The Company Group has no liability for Taxes of any Person (other than the Company) under Treasury Regulations Section 1.1502-6 (or any corresponding provision of Law), as transferee or successor.

(n) The Company Group will not be required to include any item of income in, or exclude any item or deduction from, taxable income for taxable period or portion thereof ending after the Effective Date as a result of:

(i) any change in a method of accounting under Section 481 of the U.S. Tax Code (or any comparable provision of state, local or foreign Tax Laws), or use of an improper method of accounting (with respect to item of income that economically accrued on or prior to the Effective Date or a deduction that is economically borne on or after the Effective Date), in each case for a taxable period ending on or prior to the Effective Date;

(ii) an installment sale or open transaction occurring prior to the Closing;

(iii) a prepaid amount, other than deferred revenue, received on or before the Closing;

(iv) any closing agreement under Section 7121 of the U.S. Tax Code, or similar provision of Law executed prior to Closing;

(v) any election under Section 108(i) of the U.S. Tax Code made before the Closing;

(vi) a reserve claimed by the Company Group in a taxable period ending on or prior to the Effective Date; or

(vii) the deferral of any payment of or Taxes otherwise due (including through any automatic extension or other grant of relief provided pursuant to any COVID-19 Laws).

(o) No member of the Company Group is, or has ever been, a United States real property holding corporation (as defined in Section 897(c)(2) of the U.S. Tax Code) during the applicable period specified in Section 897(c)(1)(a) of the U.S. Tax Code.

(p) No member of the Company Group has been a "distributing corporation" or a "controlled corporation" in connection with a distribution described in Section 355 of the U.S. Tax Code in the two years prior to the date of this Agreement.

(q) The Company is not, and has not been, a party to, or a promoter of a "listed transaction" within the meaning of Treasury Regulation Section 1.6011-4(c) or a "reportable transaction" within the meaning of Section 6707A(c)(1) of the U.S. Tax Code and Treasury Regulation Section 1.6011-4(b). To the extent required by Law, the Company has disclosed on its U.S. federal income Tax Returns all positions taken therein that would reasonably be likely to give rise to a substantial understatement of U.S. federal income Tax within the meaning of Section 6662 of the U.S. Tax Code.

(r) No member of the Company Group has ever (i) had a permanent establishment in a foreign country (within the meaning of the applicable Tax treaty) or otherwise had an office or fixed place of business in a country outside the country of its incorporation; (ii) engaged in a trade or business in any country other than the country of its incorporation that subjected any of them

to Tax in such country; (iv) participated in an international boycott, as defined in Section 999 of the U.S. Tax Code, or (v) entered into a gain recognition agreement as contemplated in the Treasury Regulations promulgated under Section 367 of the U.S. Tax Code.

(s) The Company Group has not deferred the payment of any payroll Taxes pursuant to any COVID-19 Laws, including Section 2302 of the CARES Act and Internal Revenue Service Notice 2020-65 or pursuant to any other COVID-19 Laws. The Company has not entered into a transaction, participated in an event (or a series of transactions or events) or taken an action (or failed to take an action) described in both of paragraphs 125.7(6)(a) and (b) of the Tax Act.

(t) The Company and CanCo are duly registered for the purposes of subdivision d of Division V of Part IX of the *Excise Tax Act* (Canada).

(u) The Company is, and has at all times been, a "Canadian-controlled private corporation" for purposes of the Tax Act, provided that the Company shall cease to be a "Canadian-controlled private corporation" for certain purposes upon execution of this Agreement.

(v) The Company Group has not, either directly or indirectly, transferred property to or acquired property from, or provided services to or received services from, a person with whom they were not dealing at arm's length (as that term is understood for purposes of the Tax Act) for consideration other than consideration equal to the fair market value of the property or services provided, as applicable, at the time of the disposition or acquisition thereof or provision of services, and otherwise has complied with all applicable transfer pricing requirements and such transaction have been properly documented.

(w) No facts, circumstances or events exist or have existed that have resulted or may result in the application to the Company Group of any debt forgiveness, debt parking or property seizure provisions under any applicable Law, or the provisions of section 17, 67 or 78 of the Tax Act and any corresponding provisions of any other applicable Laws.

(x) All amounts payable by each member of the Company Group in respect of compensation, including but not limited to salary, wages or other remuneration (other than reasonable vacation or holiday pay), have been paid within 180 days of the end of the taxation year in which the expense was incurred.

(y) The Company Group does not have any liability for Taxes under sections 159 or 160 of the Tax Act (or the corresponding provisions of any other applicable Laws).

(z) The Company Group has not made an "excessive eligible dividend election" as defined in subsection 89(1) of the Tax Act in respect of any dividend paid, or deemed by any provision of the Tax Act to have been paid on any class of shares of its capital.

(aa) The Company Group has not made a capital dividend election under subsection 83(2) of the Tax Act in an amount which exceeds the amount in such purchased corporation's capital dividend account (as defined in the Tax Act) at the time of such election.

(bb) At no time during the 60-month period immediately preceding the date hereof has more than 50% of the fair market value of the Company Shares been derived, directly or indirectly,

from one or any combination of real or immovable property situated in Canada, Canadian resource properties, timber resource properties or options in respect of, or interests in, or for civil law rights in, any such property, whether or not the property exists (as each such term is interpreted for purposes of the definition of taxable Canadian property in the Tax Act).

(cc) All research and development investment tax credits were claimed by each member of the Company Group in accordance with the Tax Act and the relevant provincial tax laws and each member of the Company Group satisfied at all times the relevant criteria and conditions entitling it to such tax credits. All refunds of research and development investment tax credits received or receivable by each member of the Company Group in any taxation year were claimed in accordance with the Tax Act and the relevant provincial tax laws and each member of the Company Group satisfied at all times the relevant criteria and conditions entitling it to claim a refund of such tax credits.

(dd) The Company meets all eligibility requirements for, and is entitled to, all amounts applied for or received under or in connection with any application filed under section 125.7 of the Tax Act, including any support or program adopted pursuant to Canada's COVID-19 Economic Response Plan or related measures, and any applications, declarations or other filings made in connection therewith are complete and accurate.

(ee) The Company Group is in compliance in all material respects with section 247 of the Tax Act and all other applicable transfer pricing laws and regulations.

(ff) All Tax and national insurance contributions deductible under the PAYE system and/or any other Tax statute or legislation have, so far as required to be deducted, been deducted from all payments made (or treated as made) by the Company Group.

(gg) Notwithstanding anything to the contrary, nothing in this Section 3.25 or elsewhere in this Agreement shall be construed as a representation or warranty with respect to the amount or availability of any net operating loss, non-capital loss, capital loss, or other tax attributes of the Company Group, and except for the representations and warranties in Section 3.25(k), Section 3.25(m), Section 3.25(n), Section 3.25(p), Section 3.25(r)(v), Section 3.25(t), Section 3.25(w), Section 3.25(s), Section 3.25(z), and Section 3.25(aa), the representations or warranties in this Section 3.25 apply solely to Pre-Closing Tax Periods.

(hh) For the avoidance of doubt, the matters pertaining to Taxes set forth on Schedule 8.02(g) shall be deemed disclosed for all purposes of this Section 3.25, so long as application to such matter to the applicable provision of this Section 3.25 is reasonably apparent from the reading of such disclosure.

Section 3.26 Books and Records. The statutory books, and minute books and stock record books of the Company Group, all of which have been made available to Purchaser, are complete and correct and have been maintained in accordance with sound business practices. The minute books of the Company Group contain accurate and complete records of all meetings, and actions taken by written consent of, the Company Shareholders, the Company Board and any boards of the Company Group and any committees of the Company Board or boards of the Company Group, and no meeting, or action taken by written consent, of any such Company

Shareholders, Company Board or committee has been held for which minutes have not been prepared and are not contained in such minute books. At the Closing, all of those books and records will be in the possession of the Company Group. The Company Constating Documents of the Company Group are in the form provided to Purchaser. The copy of the minute books of the Company Group provided to Purchaser contains minutes of all meetings of directors and Company Shareholders and all actions by written consent without a meeting by the directors and Shareholders since the date of incorporation and accurately reflects in all material respects all actions by the directors (and any committee of directors) and Company Shareholders with respect to all transactions referred to in such minutes.

Section 3.27 Product Liability; Product Warranties and Recalls.

(a) Accurate and complete copies of each standard or product warranty currently used by the Company Group with respect to Company Products have been made available to Purchaser. There have not been any material deviations from such warranties with respect to Company Products, and neither the Company Group nor any of its employees or agents is authorized to undertake obligations to any customer or to other third parties in respect of Company Products in addition to or in excess of such warranties.

(b) Section 3.27(b) of the Disclosure Letter includes an accurate and complete list of warranty claims and rebate reports, in each case with respect to product malfunctions or property damage issues, for the three years ended on the date of this Agreement.

(c) Except as set forth on Section 3.28(c) of the Disclosure Letter, during the past three years there has been no Action pending or, to the Company's Knowledge, threatened, relating to alleged defects in Company Products or the failure of any such products to meet the warranty specifications or material contractual commitments applicable to such products.

(d) There are no pending, or to the Company's Knowledge, threatened recalls for the Company Products. During the past three years there have been no product recalls or market withdrawals or post-sale warnings involving any Company Product.

Section 3.28 Related Party Transactions. Except as disclosed in a supplemental letter dated the date hereof from the Company to Purchaser and other than employment relationships, payment of compensation, benefits and expense reimbursements and advances in the ordinary course of business, no executive officer or director of the Company Group or any person owning 5% or more of the Shares (or any of such person's immediate family members or Affiliates or associates) is a party to any Contract with or binding upon the Company Group or any of its assets, rights or properties or has any interest in any property owned by the Company Group or has engaged in any transaction with any of the foregoing within the last 12 months.

Section 3.29 Brokers or Finders. Except for Bank of America (the fees and expenses of whom constitute Transaction Expenses), no member of the Company Group has incurred, and will not incur, directly or indirectly, as a result of any action taken by the Company Group, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement or any of the Transactions.

ARTICLE 4.
REPRESENTATIONS AND WARRANTIES OF PARENT AND PURCHASER

Except as set forth in the correspondingly numbered Section of the Disclosure Letter, Parent and Purchaser each severally represents and warrants to the Company that the statements contained in this ARTICLE 4 are true and correct as of the date hereof.

Section 4.01 Organization and Authority of Purchaser. Each of Purchaser, Parent and Generac Holdings is a corporation duly organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation. Each of them has full corporate power and authority to enter into and perform its obligations under this Agreement and the Ancillary Documents to which it is a party and to consummate the Transactions. The execution, delivery and performance by Purchaser, Parent and Generac Holdings of this Agreement and any Ancillary Document to which they are a party and the consummation by then of the Transactions have been duly authorized by all requisite corporate action on their part and no other corporate proceedings on the part of Purchaser, Parent and Generac Holdings are necessary to authorize the execution, delivery and performance of this Agreement or to consummate the Transactions. This Agreement has been duly executed and delivered by Parent and Purchaser, and (assuming due authorization, execution and delivery by each other party hereto) this Agreement constitutes a legal, valid and binding obligation of each of Parent and Purchaser enforceable against each of Parent and Purchaser in accordance with its terms (subject to the Enforcement Limitation). When each Ancillary Document to which Purchaser, Parent or Generac Holdings is or will be a party has been duly executed and delivered by Purchaser or Generac Holdings (assuming due authorization, execution and delivery by each other party thereto), such Ancillary Document will constitute a legal and binding obligation of Purchaser, Parent or Generac Holdings enforceable against it in accordance with its terms.

Section 4.02 No Conflicts; Consents. The execution, delivery and performance by Purchaser, Parent and Generac Holdings of this Agreement and the Ancillary Documents to which they are a party, and the consummation of the Transactions, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws or other organizational documents of Purchaser, Parent and Generac Holdings; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Purchaser, Parent and Generac Holdings; or (c) require the consent, notice or other action by any Person under any Contract to which Purchaser, Parent or Generac Holdings is a party, except in the case of clauses (b) and (c) as would not reasonably be expected to have a material adverse effect on the ability of Purchaser, Parent and Generac Holdings to consummate the Transactions. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Purchaser, Parent or Generac Holdings in connection with the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the Transactions, except pursuant to the HSR Act or as would not reasonably be expected to have a material adverse effect on the ability of Purchaser, Parent and Generac Holdings to consummate the Transactions. The issuance and sale of the Consideration Shares pursuant to the terms and conditions of this Agreement will not contravene the rules and regulations of the New York Stock Exchange.

Section 4.03 Legal Proceedings. There are no Actions pending or, to Purchaser's knowledge, threatened against or by Purchaser, Parent, Generac Holdings or any of their respective Affiliates that challenge or seek to prevent, enjoin or otherwise delay the Transactions.

Section 4.04 Sufficiency of Funds; Solvency. Purchaser has access to sufficient cash on hand or other sources of immediately available funds to enable it to make payment of the Closing Cash Consideration and consummate the Transactions. Immediately after giving effect to the Transactions, assuming the accuracy of the representations and warranties set forth in ARTICLE 3, none of Purchaser, Parent or Generac Holdings, individually or in the aggregate shall (a) be insolvent (either because its financial condition is such that the sum of its debts is greater than the fair value of its assets or because the fair salable value of its assets is less than the amount required to pay its probable liability on its existing debts as they mature), (b) have unreasonably small capital with which to engage in its business or (c) have incurred debts beyond its ability to pay as they become due. In completing the Transactions, none of the Purchaser, Parent or Generac Holdings intends to hinder, delay or defraud any present or future creditors of any of the Company Group.

Section 4.05 Capitalization. Generac Holdings has, and shall have at the Closing, sufficient authorized shares of Generac Common Stock to deliver all of the Consideration Shares, and the Consideration Shares will be, when issued, duly authorized, validly issued, fully paid and nonassessable and free of all Encumbrances of any nature (other than pursuant to applicable securities Laws) imposed by or through Generac Holdings, and not subject to, or issued in violation of, any purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of Generac Holdings' organizational documents.

Section 4.06 Generac Holdings SEC Reports; Controls and Procedures.

(a) As of its filing date, each periodic or current report filed by Generac Holdings with the U.S. Securities and Exchange Commission pursuant to the U.S. Exchange Act since December 31, 2020 (i) complied as to form in all material respects with the applicable requirements of the U.S. Exchange Act and the U.S. Securities Act and (ii) did not contain any Misrepresentation.

(b) Generac Holdings maintains a system of internal control over financial reporting (as such term is defined in Rule 13a-15(f) under the U.S. Exchange Act) that complies in all material respects with the requirements of the U.S. Exchange Act and has been designed by Generac Holdings' principal executive officer and principal financial officer, or under their supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP. Generac Holdings' internal control over financial reporting is effective for purposes of Rules 13a-15 and 15d-15 under the Exchange Act.

Section 4.07 Investment Canada Act. Purchaser is a Trade Agreement Investor for the purposes of the Investment Canada Act.

Section 4.08 Brokers or Finders. Except for Goldman Sachs, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection

with the Transactions based upon arrangements made by or on behalf of Purchaser or Generac Holdings.

Section 4.09 R&W Insurance Policy. Purchaser has provided the Company with a true and correct copy of the substantially final draft of the binder agreement (including form of R&W Insurance Policy) that Parent intends to enter into concurrently with its entry into this Agreement with respect to the R&W Insurance Policy. Purchaser has not materially breached any provision of such commitment in a manner that would reasonably be expected to prevent the R&W Insurance Policy from being issued. The R&W Insurance Policy shall contain an express waiver of rights of subrogation against the Company Securityholders, and a provision that each such Person is an express third-party beneficiary thereof, as set forth in such substantially final draft of the policy.

Section 4.10 Investment Representations.

(a) The Company Securities are being acquired by the Purchaser solely for the Purchaser's own account, for investment purposes only and with no present intention of distributing, selling or otherwise disposing of them in violation of the Securities Act of 1933, as amended, or any other securities law.

(b) The Purchaser has such knowledge and experience in financial and business matters that the Purchaser is capable of evaluating the merits and risks of the proposed investment in the Company Securities.

(c) The Purchaser understands that the Company Securities may not be sold, transferred or otherwise disposed of by it without registration under the Securities Act of 1933, as amended, and any applicable securities laws, or an exemption therefrom, and that in the absence of an effective registration statement covering such Company Securities or an available exemption from registration, such Company Securities may be required to be held indefinitely.

ARTICLE 5.
COVENANTS

Section 5.01 Conduct of the Business Prior to the Closing.

(a) From the date hereof until the Closing, except as otherwise provided in this Agreement or consented to in writing by Purchaser (which consent shall not be unreasonably withheld or delayed), the Company shall, and shall cause each other member of the Company Group to, use commercially reasonable efforts to (x) conduct the Business in the ordinary course of business consistent with past practice (except for any actions taken reasonably and in good faith in response to COVID-19 or COVID-19 Measures); and (y) maintain and preserve intact the current organization, Business and franchise of the Company Group and to preserve the rights, franchises, goodwill and relationships of its employees, customers, lenders, suppliers, regulators and others having business relationships with the Company Group. Without limiting the foregoing, from the date hereof until the Closing, the Company shall, and shall cause each other member of the Company Group to, use commercially reasonable efforts to:

(i) preserve and maintain all of its Permits;

(ii) pay its debts, Taxes and other obligations when due;

(iii) maintain the properties and assets owned, operated or used by it in the same condition as they were on the date of this Agreement, subject to reasonable wear and tear;

(iv) continue in full force and effect without modification all Insurance Policies, except as required by applicable Law;

(v) defend and protect its properties and assets from infringement or usurpation;

(vi) perform all of its obligations under all Contracts relating to or affecting its properties, assets or the Business;

(vii) maintain existing relations with customers, suppliers, licensors, licensees, advertisers, distributors, employees and other third parties having material business dealings with the Company Group;

(viii) maintain its books and records in accordance with past practice; and

(ix) comply in all material respects with all applicable Laws.

(b) From the date hereof until the Closing, except as set forth on Schedule 5.01(b) hereto and other than ordinary course renewals or expenditures with or from any existing Material Customer or Material Suppliers, as otherwise expressly provided in this Agreement (including in connection with the Pre-Closing Reorganization) or as consented to in writing by Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed), the Company shall not, and shall cause the other member of the Company Group not to:

(i) other than as disclosed in a supplemental letter dated the date hereof from the Company to Purchaser, issue, sell, deliver, award or grant (A) any equity interests in the Company Group or (B) any options, warrants, rights of conversion or other rights, agreements, arrangements or commitments obligating any member of the Company Group to issue, deliver or sell any equity interests in any member of the Company Group;

(ii) acquire or agree to acquire in any manner (whether by merger or consolidation, the purchase of an equity interest in or a material portion of the assets of or otherwise) any business or any corporation, partnership, association or other business organization or division thereof of any other Person other than the acquisition of assets in the ordinary course of business;

(iii) amend the Company Constating Documents;

(iv) sell, lease, assign, license, convey or otherwise dispose of any assets outside of the ordinary course of business;

(v) hire or terminate (other than for cause) any officer or any employee of the Company Group with an annualized salary of $200,000 or more (other than any hiring as may be necessary to replace an employee whose employment has terminated (and, in such

case, such hiring shall be on terms comparable to those of the employee who is being replaced));

(vi) except as otherwise contemplated herein, change any Tax election, change an annual accounting period, change any accounting method with respect to Taxes, file any amended Tax Return, enter into any closing agreement, settle or compromise any proceeding with respect to any Tax claim or assessment relating to the Company Group, surrender any right to claim a refund of Taxes, consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment relating to the Company Group, or take any other similar action relating to the filing of any Tax Return or the payment of any Tax;

(vii) sell, license or assign any Intellectual Property of the Company Group, except in the ordinary course of business;

(viii) enter into, materially modify, waive, renew or terminate any Material Contracts or enter into any Contract, which if entered into prior to the date hereof, would be a Material Contract;

(ix) perform any act, or attempt to perform any act, or permit any act or omission to act, which would cause a material breach of any Material Contract;

(x) authorize, or make any commitment with respect to, any capital expenditures in excess of $625,000 in the aggregate;

(xi) make any change to any compensation or benefit arrangement for (A) any employee that has the title of "Director" or any title above "Director" or (B) other than in the ordinary course of business and consistent with past practice, any other current or former employee, officer, director, independent contractor or consultant;

(xii) initiate any Action or settle or compromise any Action;

(xiii) cancel or fail to renew any Insurance Policy;

(xiv) make any change in its accounting policies, unless such change is required by GAAP or applicable Law after the date hereof;

(xv) accelerate the collection of accounts receivable, defer the payment of any liability or take any similar action outside the ordinary course of business which would be reasonably expected to decrease the Closing Working Capital of the Company;

(xvi) take any action for the winding up, liquidation, dissolution or reorganization of any member of the Company Group or for the appointment of a receiver, administrator or administrative receiver, trustee or similar officer of all or any assets or revenues of any member of the Company Group;

(xvii) enter into any transaction with any officer, director, equityholder or Affiliate of the Company Group;

(xviii) other than as set forth on Schedule 5.12, (A) split, combine or reclassify any of the securities of any member of the Company Group; (B) reduce the stated capital or capital account of the shares of any member of the Company Group; (C) redeem, repurchase or otherwise acquire or offer to redeem, repurchase or otherwise acquire any securities of any member of the Company Group; (D) reorganize, amalgamate or merge any member of the Company Group with any other Person; or (E) transfer the securities or assets of any member of the Company Group to any other Person; or

(xix) take or permit any action that would cause any of the changes, events or conditions described in Section 3.08 to occur.

Section 5.02 Access to Information.

From the date hereof until the Closing, the Company shall use commercially reasonable efforts to (a) afford Purchaser and its Representatives full and free access to and the right to inspect all of the properties, assets, premises, books and records, Contracts and other documents and data related to the Company; (b) furnish Purchaser and its Representatives with such financial, operating and other data and information related to the Company as Purchaser or any of its Representatives may reasonably request; and (c) instruct the Representatives of the Company to cooperate with Purchaser in its review of the Company. Any investigation pursuant to this Section 5.02 shall be conducted during normal business hours and in such manner as not to interfere unreasonably with the conduct of the Business. No investigation by Purchaser or other information received by Purchaser shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by the Company in this Agreement. Notwithstanding anything to the contrary in this Agreement, no Party shall be required to disclose any information to any other Party or its counsel, advisors or Representatives if doing so would in the written opinion of such Party's outside counsel (i) materially violate any Law or (ii) result in the waiver of any legal privilege or work product protection available to such Party (provided that in any such case, the Parties shall use commercially reasonable efforts, such as the execution of a joint defense or common interest agreement, to overcome such barriers).

Section 5.03 Notice of Certain Events.

(a) From the date hereof until the Closing, the Company shall use commercially reasonable efforts to promptly notify Purchaser in writing of:

(i) any fact, circumstance, event or action the existence, occurrence or taking of which the Company has Knowledge and which (A) has had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (B) has resulted in, or would reasonably be expected to result in, any representation or warranty made by the Company hereunder not being true and correct or (C) has resulted in, or would reasonably be expected to result in, the failure of any of the conditions set forth in Section 7.02 to be satisfied;

(ii) any notice or other communication from any Person to the Company Group alleging that the consent of such Person is or may be required in connection with the Transactions;

(iii) any notice or other communication from any Governmental Authority to the Company Group in connection with the Transactions; and

(iv) any Actions commenced or, to the Company's Knowledge, threatened against, relating to or involving or otherwise affecting the Company Group that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 3.19(a) or that relates to the consummation of the Transactions.

(b) Purchaser's receipt of information pursuant to this Section 5.03 shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by the Company in this Agreement (including Section 8.02 and Section 9.01(b)) and shall not be deemed to amend or supplement the Disclosure Letter.

Section 5.04 Generac Indebtedness. The entire $30 million principal amount of the Generac Indebtedness shall be funded to the Company no later than November 5, 2021 in accordance with (and subject to the terms and conditions set forth in) the Commitment Letter, dated as of September 13, 2021, by and between Parent and the Company. For the sake of clarity, Generac Indebtedness shall be included in Indebtedness in the calculation of the Arrangement Consideration, but Purchaser may elect that the Generac Indebtedness remain outstanding or be repaid using cash of the Company Group rather than being repaid by Purchaser at Closing, provided that in no instance shall the Generac Indebtedness be treated as a Company Security.

Section 5.05 No Solicitation of Other Bids.

(a) The Company shall not, and shall not authorize or permit any of its Affiliates or any of its or their Representatives to, directly or indirectly, (i) encourage, solicit, initiate, facilitate or continue inquiries regarding an Acquisition Proposal; (ii) enter into discussions or negotiations with, or provide any information to, any Person concerning a possible Acquisition Proposal; or (iii) enter into any agreement or other instruments (whether or not binding) regarding an Acquisition Proposal. The Company shall immediately cease and cause to be terminated, and shall cause its Affiliates and all of its and their Representatives to immediately cease and cause to be terminated, all existing discussions or negotiations with any Persons conducted heretofore with respect to, or that would reasonably be likely to lead to, an Acquisition Proposal. For purposes hereof, "**Acquisition Proposal**" shall mean any inquiry, proposal or offer (whether written or oral) from any Person or group of Persons (other than Parent, Purchaser or one or more of their Affiliates) concerning (i) a merger, consolidation, liquidation, recapitalization, share exchange or other business combination transaction involving the Company; (ii) the issuance or acquisition of voting or equity securities of the Company (including securities convertible into or exercisable or exchangeable for voting or equity securities); or (iii) the direct or indirect sale, lease, exchange, joint venture or other disposition (or any lease, long term supply agreement, license or other arrangement having the same economic effect as a sale) of any significant portion of the Company's or any of its subsidiaries' properties or assets (including any voting or equity securities of any of the Company's subsidiaries).

(b) In addition to the other obligations under this Section 5.05, the Company shall promptly (and in any event within three Business Days after receipt thereof by the Company or its Representatives) advise Purchaser of any Acquisition Proposal, any request for information with

respect to any Acquisition Proposal, or any inquiry with respect to or which would reasonably be expected to result in an Acquisition Proposal, the material terms and conditions of such request, Acquisition Proposal or inquiry, and the identity of the Person making the same.

(c) The Company agrees that the rights and remedies for noncompliance with this Section 5.05 shall include having such provision specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach shall cause irreparable injury to Purchaser and that money damages would not provide an adequate remedy to Purchaser.

Section 5.06 Actions to Closing. Subject to the terms and conditions of this Agreement, each party shall, and shall cause its respective Affiliates to, perform all obligations required to be performed by such party under this Agreement, cooperate with the other party in connection therewith, and use commercially reasonable efforts to do such other acts and things as may be necessary or desirable in order to complete the Transactions, including (without limiting the obligations of such party in ARTICLE 2) the following:

(a) The parties (other than the Securityholder Representative) shall forthwith carry out the terms of the Interim Order and Final Order and take all necessary actions to give effect to the Transactions.

(b) Each party shall use its commercially reasonable efforts to carry out all actions necessary to ensure the availability of the exemption from registration under Section 3(a)(10) of the U.S. Securities Act and applicable state securities laws.

(c) The Company shall deliver to Purchaser written resignations, effective as of the Effective Date, of all of the officers and directors (or similar positions) of the Company Group and the company secretary of the UKCo (unless otherwise requested by Purchaser) at least five Business Days prior to the Closing.

(d) Each party hereto (other than the Securityholder Representative) shall, as promptly as possible, use commercially reasonable efforts to (i) make, or cause or be made, any filings and submissions (including those under the HSR Act) required under any Law applicable to such party or any of its Affiliates; and (ii) obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement and the Ancillary Documents. Each party shall cooperate fully with the other party and its Affiliates in promptly seeking to obtain all such consents, authorizations, orders and approvals. The parties hereto shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals. Any filing fees required in connection with any such filings or submissions shall be split equally by the Company or the Company Securityholders, on the one hand, and Purchaser, on the other hand.

(e) Each party confirms that it (or its "ultimate parent entity") filed the requisite notification form required under the HSR Act on October 29, 2021.

(f) The Company and Purchaser shall use commercially reasonable efforts to give all notices to, and obtain all consents from, all third parties that are described in Section 3.03 of the

Disclosure Letter, provided, that neither Company nor Purchaser shall be required to make payment to a third party in connection therewith.

(g) Notwithstanding anything to the contrary, nothing in this Agreement or otherwise shall require, or be construed to require, Generac Holdings, Purchaser or any of their Affiliates to, or to agree to: (i) sell, hold, divest, discontinue or limit any assets, businesses or interests of Generac Holdings, Purchaser, the Company Group or any of their respective Affiliates; (ii) any conditions relating to, or changes or restrictions in, the operations of any such assets, businesses or interests which, in any case, would reasonably be expected to result in a Material Adverse Effect or materially and adversely impact the economic or business benefits to Purchaser of the Transactions; (iii) any material modification or waiver of the terms and conditions of this Agreement; or (iv) commence, prosecute, defend or settle any Action.

(h) The Company shall use reasonable best efforts to secure duly executed counterparts to the Support Agreement from each Company Securityholder as promptly as practicable following execution of this Agreement.

(i) From the date hereof until the Closing, each party hereto shall use commercially reasonable efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in ARTICLE 7 hereof.

Section 5.07 Directors' and Officers' Indemnification and Insurance.

(a) Purchaser agrees that all rights to indemnification, advancement of expenses and exculpation by the Company Group now existing in favor of each Person who is now, or has been at any time prior to the date hereof or who becomes prior to the Effective Time an officer or director of the Company (each an "**D&O Indemnified Party**") as provided in the Company Constating Documents, in each case as in effect on the date of this Agreement, or pursuant to any other Contracts in effect on the date hereof and disclosed in Section 5.07 of the Disclosure Letter, shall survive the Arrangement and shall remain in full force and effect in accordance with their terms, and each member of the Company Group shall cause its constating documents to contain terms with respect to indemnification, advancement of expenses and exculpation of the D&O Indemnified Parties in respect of claims arising from facts or events which occurred on or prior to the Effective Date not less favorable to a D&O Indemnified Party than such current terms until the later of (i) the six year anniversary of the Closing and (ii) the date that all applicable statute of limitation periods have expired for any claim or claims for which a D&O Indemnified Party may be entitled to indemnification thereunder.

(b) Prior to Closing, the Company shall use commercially reasonable efforts to procure customary "tail" or "run off" policies of directors' and officers' liability insurance and cyber and technology liability insurance providing protection no less favorable in the aggregate than the protection provided by the policies maintained by the Company Group as of the date hereof and providing protection in respect of claims arising from facts or events which occurred on or prior to the Effective Date (provided, that, as an alternative to a cyber and technology liability tail policy, the Company may procure consent of the insurer permitting such insurance to remain in place and insuring the entire Company Group notwithstanding the change of control in connection with the Transactions), the costs of which shall be Transaction Expenses.

(c) This covenant is intended to be for the benefit of, and shall be enforceable by, each D&O Indemnified Party and their respective heirs and legal representatives. The indemnification provided for herein shall not be deemed exclusive of any other rights to which a D&O Indemnified Party is entitled, whether pursuant to law, contract or otherwise.

Section 5.08 Public Announcements. Unless otherwise required by applicable Law (based upon the reasonable advice of counsel), no party to this Agreement shall make any public announcements, or otherwise communicate with any news media, in respect of this Agreement or the Transactions without the prior written consent of Generac Holdings (which consent shall not be unreasonably withheld or delayed), and the parties shall cooperate as to the timing and contents of any such announcement. Notwithstanding anything to the contrary, Generac Holdings shall be permitted to make any filing with the U.S. Securities and Exchange Commission or the New York Stock Exchange that it considers necessary to comply with its responsibilities as a public company (including, if applicable, filing a copy of this Agreement, provided that Generac Holdings shall not publicly disclose the Disclosure Letter unless otherwise required by applicable Law). Notwithstanding anything herein to the contrary, following Closing and after the public announcement of the Transactions, the Securityholder Representative shall be permitted to announce that it has been engaged to serve as the Securityholder Representative in connection herewith as long as such announcement does not disclose any of the other terms hereof.

Section 5.09 Further Assurances. At and after the Effective Time, the officers and directors of the Company shall be authorized to execute and deliver, in the name and behalf of the Company Group, any deeds, bills of sale, assignments or assurances and to take and do, in the name and on behalf of the Company Group, any other actions and things to vest, perfect or confirm of record or otherwise in the Company Group any and all right, title and interest in, to and under any of the rights, properties or assets of Purchaser or the Company Group acquired or to be acquired as a result of, or in connection with, the Arrangement.

Section 5.10 Amalgamation. The Purchaser agrees that it will not complete an amalgamation involving the Purchaser and the Company on the Effective Date.

Section 5.11 Data Room Copies. Promptly following execution of this Agreement, the Company shall provide Purchaser with three archival copies of the data room made available to Purchaser in connection with the Transactions, as it exists as of shortly prior to the execution of this Agreement. In connection with Closing, the Company shall provide copies of such data room, as it exists shortly prior to Closing, on a USB "flash" drive or other suitable tangible storage medium in such quantity as Purchaser may reasonably request.

Section 5.12 Pre-Closing Reorganization. Prior to the Closing and in connection with the Arrangement, the Company and the Shareholders shall cause the Pre-Closing Reorganization to be effected in accordance with Section 5.12 of the Disclosure Letter, and any Pre-Closing Reorganization Documents in connection therewith shall be in form and substance acceptable to Purchaser, acting reasonably. Purchaser acknowledges and agrees that the implementation of the Pre-Closing Reorganization and all actions taken in connection therewith (to the extent set out in Section 5.12 of the Disclosure Letter) shall not be considered to be a breach of any representation, warranty or covenant of the Company or the Company Securityholders under this Agreement.

Section 5.13 401(k) Plan Termination. If a member of the Company Group maintains a Benefit Plan which is intended as a defined contribution plan under Section 401(k) of the U.S. Tax Code (a "**Company 401(k) Plan**") then, unless otherwise directed in writing by Purchaser, at least one day prior to the Effective Date, the applicable Company Group member shall take all necessary actions to terminate its Company 401(k) Plan, effective as of the date immediately preceding the Effective Date and contingent upon the consummation of the Transactions. The Company Group member shall provide Purchaser with a copy of any resolutions or other corporate action (the form and substance of which shall be subject to review and approval by Purchaser, with such approval not to be unreasonably withheld or delayed) evidencing that the Company 401(k) Plan will be terminated effective as of the date immediately preceding the Effective Date, contingent upon the consummation of the Transactions. The Company Group member shall also take such other actions in further of terminating such Company 401(k) Plan as Purchaser may reasonably requires.

Section 5.14 NYSE Listing. As promptly as practicable following the date hereof, and in any event prior to the Closing, Generac Holdings shall effect the listing (subject to official notice of issuance) of the Closing Consideration Shares (if the Closing Consideration Shares are to be newly issued shares rather than treasury shares). Prior to the date on which Earnout Consideration Shares are to be issued hereunder, Generac Holdings shall effect the listing (subject to official notice of issuance) of the applicable amount of Earnout Consideration Shares (if the Earnout Consideration Shares are to be newly issued shares rather than treasury shares).

ARTICLE 6.
TAX MATTERS

Section 6.01 Tax Covenants.

(a) Except as otherwise contemplated herein, without the prior written consent of Purchaser (not to be unreasonably withheld, conditioned or delayed), prior to the Closing, the Company Group, its Representatives and the Shareholders shall not make, change or rescind any Tax election, amend any Tax Return or take position on any Tax Return, take any action, omit to take any action or enter into any other transaction or enter into any similar action, in each case outside the ordinary course of business or in a manner that is inconsistent with past practice, that would have the effect of increasing the Tax liability or reducing any Tax asset of Purchaser or the Surviving Corporation in respect of any Post-Closing Tax Period.

(b) All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the Ancillary Documents (including any real property transfer Tax and any other similar Tax) shall be paid by the party responsible under applicable Law for such payment but shall be borne 50% by the Company Securityholders (as Transaction Expenses or otherwise) and 50% by Purchaser. The person responsible under applicable Law shall timely file any Tax Return or other document with respect to such Taxes or fees (and Purchaser shall cooperate with respect thereto as necessary).

Section 6.02 Termination of Existing Tax Sharing Agreement. Any and all existing Tax sharing agreement with a Person other than a Company Group (other than an agreement (such

as a lease) the principal purpose of which is not the sharing or allocation of Tax) (whether written or not) binding upon the Company Group shall be terminated as of the Effective Date. After such date neither the Company Group nor any of its Representatives shall have any further rights or liabilities thereunder.

Section 6.03 Tax Returns.

(a) The Company and each other member of the Company Group shall prepare and timely file, or cause to be prepared and timely filed, all Tax Returns required to be filed by the Company Group that are due on or before the Effective Date (taking into account any extensions), and shall timely pay all Taxes that are due and payable on or before the Effective Date (taking into account any extensions), and shall timely pay all Taxes that are due and payable on or before the Effective Date. Unless otherwise required by applicable Law, neither the Purchaser nor the Company Group shall amend any Tax Return with respect to a Pre-Closing Tax Period without the Securityholder Representative's written consent, which shall not be unreasonably withheld, conditioned or delayed.

(b) Purchaser shall prepare and timely file, or cause to be prepared and timely filed, all Tax Returns required to be filed by the Company Group after the Effective Date with respect to a Pre-Closing Tax Period and for any Straddle Period. Any such Tax Return shall be prepared in a manner consistent with past practice (unless otherwise required by Law) and, if it is an income or other material Tax Return, Purchaser shall use commercially reasonable efforts to submit the same to Securityholder Representative (together with schedules, statements and, to the extent requested by Securityholder Representative, supporting documentation) at least 30 days prior to the due date (including extensions) of such Tax Return. The Securityholder Representative shall notify the Purchaser in writing within fifteen (15) days if it has any reasonable comments in respect of any such Tax Return and such reasonable comments shall be implemented. Notwithstanding any other provision hereof, the parties acknowledge that (a) the Company Group shall not make an election pursuant to subsection 256(9) of the Tax Act and (b) the Company shall make one or more designations under paragraph 111(4)(e) of the Tax Act in the amounts and in respect of the capital properties described in Section 5.12 of the Disclosure Letter and one or more election(s) under subsection 83(2) of the Tax Act as part of the Pre-Closing Reorganization. The Purchaser will ensure that each such designation is filed together with the Tax Returns for such taxation years in accordance with the Tax Act. The preparation and filing of any Tax Return of the Company that does not relate to a Pre-Closing Tax Period or Straddle Period shall be exclusively within the control of Purchaser.

(c) In the case of any Straddle Period, the amount of Taxes attributable to the Pre-Closing Tax Period shall be calculated as follows:

(i) In the case of Taxes imposed on a periodic basis (such as real or personal property Taxes), the amount of such Taxes for the entire period (or, in the case of such Taxes determined on an arrears basis, the amount of such Taxes for the immediately preceding period) multiplied by a fraction, the numerator of which is the number of calendar days in the Straddle Period up to but not including the Effective Date and the denominator of which is the number of calendar days in the entire relevant Straddle Period; and

(ii) In the case of Taxes not described in (i) above (such as Taxes that are based upon or related to income or receipts, or Taxes that are based upon occupancy or imposed in connection with any sale or other transfer or assignment of property), the amount of any such Taxes shall be determined as if such taxable period ended at the end of the day before the Effective Date.

(d) If it is determined that the Company has made an "excessive eligible dividend designation" (as defined in subsection 89(1) of the Tax Act) in respect of a Pre-Closing Tax Period, the Company Securityholders hereby concur in the making of an election under subsection 185.1(2) of the Tax Act in respect of such dividend, and such election shall be made by the Company in the manner and within the time prescribed by subsections 185.1(2) and 185.1(3) of the Tax Act.

(e) If it is determined that the Company has made an election under subsection 83(2) of the Tax Act in respect of the full amount of any dividend payable by it on shares of any class of its capital stock in respect of a Pre-Closing Tax Period or in the context of the Pre-Closing Reorganization, and the full amount of such dividend exceeded the amount of the "capital dividend account" (as defined in the Tax Act) of the Company immediately before the dividend became payable, the Company Securityholders hereby concur in the making of an election under subsection 184(3) of the Tax Act in respect of such dividend and such election shall, at the request of the Securityholder Representative, be made by the Company in the manner and within the time prescribed by subsection 184(3) of the Tax Act.

(f) All Tax Returns prepared pursuant to this Section 6.03 shall claim any and all Transaction Tax Deductions in a Pre-Closing Tax Period, to the extent Purchaser reasonably determines is permitted under applicable Law.

Section 6.04 Cooperation and Exchange of Information. The Securityholder Representative, the Company Group and Purchaser shall provide each other with such cooperation and information as either of them reasonably may request of the others in filing any Tax Return pursuant to this ARTICLE 6 or otherwise, and in connection with any audit or other proceeding in respect of Taxes, and shall cause their respective Representatives to reasonably cooperate. Such cooperation and information shall include reasonable retention and (upon the other party's reasonable request) providing copies of relevant Tax Returns or portions thereof, together with accompanying schedules, related work papers and documents relating to rulings or other determinations by tax authorities and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. If requested by a party hereto, the Company Group and the Purchaser will use their commercially reasonable efforts to obtain any certificate or other document from any governmental authority or any other Person as may be necessary to mitigate, reduce or eliminate any Tax that could be imposed in connection with respect to the Transactions contemplated hereby, and the Securityholder Representative shall cooperate with such efforts.

Section 6.05 FIRPTA Statement. On the Effective Date, the Company shall deliver to Purchaser a certificate, dated as of the Effective Date, certifying to the effect that no interest in USCo is a U.S. real property interest (such certificate in the form required by Treasury Regulation Section 1.897-2(h) and 1.1445-3(c)) (the "**FIRPTA Statement**"), together with a draft notice,

prepared in accordance with Treasury Regulation Section 1.897-2(h)(2), which shall be mailed by the Company promptly after Closing (together with copies of such FIRPTA Statement) to the IRS in accordance with Treasury Regulation Section 1.897-2(h)(2).

Section 6.06 Section 338 Election. Purchaser and its Affiliates shall have the right to make and file (or cause to be made and filed) an election pursuant to Section 338(g) of the U.S. Tax Code (and any comparable provision of state or local Law) in accordance with the Treasury Regulations promulgated thereunder, with respect to Purchaser's acquisition of the members of the Company Group (other than USCo) pursuant to the Transactions. If such election is made, the parties to the Agreement shall report the Transactions consistent with this Section 6.06 and shall not take any position, whether on a Tax Return or in a Tax proceeding, inconsistent with this Section 6.06, except as otherwise required by applicable Law.

Section 6.07 Tax Refunds. Other than such refunds of Taxes or overpayments taken into account in the Closing Working Capital or otherwise in the determination of Closing Arrangement Consideration or received or credited (in lieu of a cash refund) after the date on which Earnout Consideration has been finally determined in accordance with this Agreement (which refunds and overpayments shall be solely for the benefit of the post-Closing Company Group, provided that the Company Group did not intentionally delay such receipt or credit after such date), all Tax refunds and overpayments of Tax of the Company Group relating to a Pre-Closing Tax Period of the Company Group (in each case, net of any Losses relating to obtaining such refunds or overpayments, including Taxes payable on such amounts) that are not reflected in the settlement of Closing Working Capital, and that are actually received in cash or applied to reduce a cash Tax liability of the Company Group in a subsequent Taxable period, shall be solely for the benefit of the Company Securityholders. The Company Group and Purchaser shall cause such Tax refunds (or overpayments), net of Tax payable on such amounts and other costs and expenses to Purchaser or its Affiliates (including the Company Group) related to or arising in respect of such refund or overpayment and subject to Section 8.05(c), to be paid or added to the next distribution or payment that is otherwise to be made to the Company Securityholders pursuant to this Agreement or the Escrow Agreement and allocated among them by their Pro Rata Shares. If no such distribution or payment is made within twelve months of an amount coming due hereunder or if the aggregate amount due exceeds $1,000,000, the Purchaser shall promptly cause such amount to be paid to the Exchange Agent or as otherwise directed by the Securityholder Representative. For Tax purposes, any such payment to the Company Securityholders shall be treated as an adjustment to the purchase price to the extent permitted by Law. The Company Securityholders agree to repay to Purchaser the amount paid to them pursuant to this Section 6.07 (plus any interest, penalties or other charges imposed by the relevant taxing authority in respect of such amount) in the event that Purchaser or its Affiliates (including the Company Group) is required to repay such refund to such taxing authority. Notwithstanding the foregoing, any such refunds of Taxes shall be for the account of Purchaser to the extent such refunds of Taxes are attributable to the carryback from a Post-Closing Tax Period of items of loss, deduction or credit, or other Tax items, of the Company Group (or any of their respective Affiliates, including Purchaser). The amount of any refunds of Taxes of Company Group for any Post-Closing Tax Period shall be for the account of Purchaser.

Section 6.08 Tax Contest. If the Purchaser or Company Group receives notice of a claim by a Tax authority in respect of Taxes of any Company Group for a Pre-Closing Tax Period which may give rise to a liability of a Company Securityholder under this Agreement, then the Purchaser

shall promptly give written notice to the Securityholder Representative; provided, however, the failure to give such notice shall not affect the indemnification provided hereunder except to the extent the indemnifying party has been materially prejudiced as a result of such failure. After the Effective Date, except as set forth in the next sentence, the Company Group shall control the conduct, through counsel of its own choosing, of any audit or other proceeding involving any asserted Tax liability or refund with respect to any Company Group (a "**Tax Contest**"); provided that to the extent a Company Securityholder could have any material liability under this Agreement with respect to such Tax Contest, the Securityholder Representative shall have the right to participate in such Tax Contest at the Company Securityholders' expense, and the Company Group shall not settle, compromise and/or concede any such portion of such Tax Contest without the written consent of the Securityholder Representative, which shall not be unreasonably withheld, conditioned or delayed. In the case of a Tax Contest after the Effective Date that relates to the Pre-Closing Reorganization or solely to taxable period ending before the Effective Date, the Securityholder Representative, at the expense of the Company Securityholders, shall control the conduct of such Tax Contest, using counsel reasonably satisfactory to the Company Group provided, however, that the Securityholder Representative's right to control the conduct of such Tax Consent shall be conditioned on Company Securityholders first depositing the amount of any outstanding Tax Liability at issue in such Tax Contest and the Securityholder Representative must first consult, in good faith with Purchaser before taking any material action with respect to the conduct of such Tax Claim. The Company Group shall have the right to participate in such Tax Contest at its own expense, and Securityholder Representative shall not settle, compromise and/or concede any portion of such Tax Contest without the written consent of the Company Group, which shall not be unreasonably withheld, conditioned or delayed.**Survival.** Notwithstanding anything in this Agreement to the contrary, the provisions of Section 3.25 and this ARTICLE 6 shall survive for three (3) years from the Effective Time (except any Tax Claim or Tax Contest pending at the end of such survival period shall survive until resolved to the extent such Tax Claim or Tax Contest was duly notified to the Securityholder Representative before the expiry of the survival period).

ARTICLE 7.
CONDITIONS TO CLOSING

Section 7.01 Conditions to Obligations of All Parties. The obligations of each party to consummate the Transactions shall be subject to the fulfillment, at or prior to the Closing, of the following conditions:

(a) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Governmental Order which is in effect and has the effect of making the Transactions illegal, otherwise restraining or prohibiting consummation of such Transactions or causing any of the Transactions to be rescinded following completion thereof.

(b) The waiting period under the HSR Act shall have expired or been terminated.

(c) The Arrangement Resolution shall have been duly adopted by the Requisite Company Vote.

(d) Each of the Interim Order and Final Order shall have been obtained, and remain in effect, in form and substance reasonably satisfactory to each of the Company and Purchaser.

(e) The Consideration Shares shall be exempt from the registration requirements of the U.S. Securities Act pursuant to Section 3(a)(10) thereof.

Section 7.02 Conditions to Obligations of Purchaser. The obligations of Purchaser to consummate the Transactions shall be subject to the fulfillment or Purchaser's waiver, of each of the following conditions:

(a) Other than the representations and warranties of the Company contained in Section 3.01 (*Organization and Qualification of the Company*), Section 3.02(a) (*Authority, Board Approval*), Section 3.04(a) and (c)–(e) (*Capitalization*), Section 3.05(a) (*Subsidiaries*) and Section 3.29 (*Brokers or Finders*), the representations and warranties of the Company contained in this Agreement, the Ancillary Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty already qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and on and as of the Effective Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of the Company contained in Section 3.01 (*Organization and Qualification of the Company*), Section 3.02(a) (*Authority, Board Approval*), Section 3.05(a) (*Subsidiaries*) and Section 3.29 (*Brokers or Finders*) shall be true and correct in all respects on and as of the date hereof and on and as of the Effective Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of the Company contained in Section 3.04(a) and (c)–(e) (*Capitalization*) shall be true and correct in all respects on and as of the date hereof and on and as of the Effective Date with the same effect as though made at and as of such date, in each case other than de minimis errors, changes contemplated by Schedule 5.12, changes to reflect the exercise or forfeiture of Company Derivatives disclosed on Section 3.04(b) of the Disclosure Letter, and grants of Company Options expressly contemplated by Section 5.01(b) (provided that all such changes shall be properly set forth in the Consideration Spreadsheet).

(b) The Company shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the Ancillary Documents to be performed or complied with by it prior to or on the Effective Date; ***provided*** that, with respect to agreements, covenants and conditions that are already qualified by materiality, the Company shall have performed such agreement, covenants and conditions, as so qualified, in all respects.

(c) No Action shall have been commenced against Purchaser or the Company Group, which would prevent the Closing. No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any Transaction.

(d) There shall not have occurred any Material Adverse Effect.

(e) The Company shall have delivered each of the closing deliverables set forth in Section 2.03(a).

(f) Company Securityholders holding less than 2.5% of the Fully Diluted Share Number shall have exercised, or purported to exercise, dissenters' or appraisal rights with respect to any Company Securities.

(g) The Company's Shareholders who are also Key Employees shall have executed Support Agreement and shall not have repudiated, challenged or materially violated the restrictive covenants set forth therein.

Section 7.03 Conditions to Obligations of the Company. The obligations of the Company to consummate the Transactions shall be subject to the fulfillment or the Company's waiver, of each of the following conditions:

(a) Other than the Fundamental Representations of Purchaser, the representations and warranties of Purchaser contained in this Agreement, the Ancillary Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty already qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and on and as of the Effective Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The Fundamental Representations of Purchaser shall be true and correct in all respects on and as of the date hereof and on and as of the Effective Date with the same effect as though made at and as of such date.

(b) Purchaser shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the Ancillary Documents to be performed or complied with by them prior to or on the Effective Date; *provided* that, with respect to agreements, covenants and conditions that are already qualified by materiality, Purchaser shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(c) No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any material transaction contemplated hereby.

(d) Purchaser shall have delivered each of the closing deliverables set forth in Section 2.03(b).

(e) Purchaser shall have provided the Company with an executed copy of the Exchange Agent Agreement.

(f) There shall not have occurred an Generac Material Adverse Change.

ARTICLE 8.
INDEMNIFICATION

Section 8.01 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and shall remain in full force and effect until the date that is 12 months from the Effective Date; *provided* that the Fundamental Representations shall survive until three (3) years from the Effective Time. No claim for Losses pursuant to Section 8.02(g) shall be made subsequent to three (3) years from the Effective Date. All covenants and agreements of the parties contained herein to be performed subsequent to the Closing shall survive the Closing in accordance with their terms or for the period explicitly specified herein (which, in the case of Article 6 and Section 8.02(e), is three (3) years from the Effective Time and, in the case of claims with respect to Section 2.09(d), is the end of the Review Period applicable to the related Earnout Consideration), and none of the covenants and agreements of the parties contained herein to be performed prior to the Closing shall survive the Closing. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the Indemnified Party to the Indemnifying Party in accordance with Section 8.08 prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved.

Section 8.02 Indemnification of Purchaser and Affiliates. Subject to the other terms and conditions of this ARTICLE 8, each Company Securityholder shall severally, but not jointly, indemnify and hold the Purchaser and its Affiliates (including the Company Group) (collectively, the "**Purchaser Indemnitees**") harmless from such Company Securityholder's Pro Rata Share of any and all Losses (it being understood that any portion of the funds in the Escrow Funds that are distributed to a Purchaser Indemnitee pursuant to this Article 8 shall be deemed to have been "severally" recovered from each of the Company Securityholders based on such Company Securityholder's Pro Rata Share applicable to such Loss) incurred or sustained by, or imposed upon, the Purchaser Indemnitees based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of the Company contained in this Agreement or in any certificate or instrument delivered by or on behalf of the Company pursuant to this Agreement as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Effective Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date), but excluding any Loss included under Section 8.02(f);

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by the Company prior to the Closing pursuant to this Agreement;

(c) (i) any amounts paid to the holders of Company Securities who have exercised or purported to exercise dissenters' or appraisal rights, including any interest required to be paid thereon, that are in excess of what such holders would have received hereunder had such holders not exercised or purported to exercise such rights, and any other Losses relating to such exercise or purported exercise (including the reasonable costs of any Action related thereto) and (ii) any claim made by any past, present or purported Company Securityholder relating to such Person's

rights with respect to Company Securities or the Arrangement Consideration (other than a claim asserted in accordance with this Agreement for the payment of Arrangement Consideration in accordance with the terms hereof), or with respect to the calculations and determinations set forth on the Pre-Closing Certificate (including the Consideration Spreadsheet and updated version thereof), or challenging this Agreement or the Transactions;

(d) any Transaction Expenses or Indebtedness of the Company Group outstanding as of the Closing to the extent not paid or satisfied by or on behalf of the Company Group prior to the Closing, and such amount is not deducted in the determination of Closing Arrangement Consideration;

(e) all Taxes of the Company Group (i) for all Pre-Closing Tax Periods, (ii) in respect of the transactions in respect of the Company Securities pursuant to this Agreement or the Plan of Arrangement, (iii) in respect of the Transaction Expenses and (iv) in respect of the repayment of the Convertible Notes, in each case other than (x) Taxes that are individually reflected as accrued Tax liabilities in the Closing Working Capital or otherwise taken into account as a reduction in the calculation of Closing Arrangement Consideration or as contemplated by Section 6.01(b), and (y) any Loss included under Section 8.02(f);

(f) any out-of-pocket expense, third-party claim or Taxes incurred by the Company Group in connection with, or as a direct or indirect result of, the Pre-Closing Reorganization, and any Tax liability of the Purchaser, its Affiliates or the Company Group that is incurred in a Post-Closing Tax Period resulting from the Company claiming SRED Credits in a Pre-Closing Tax Period, if applicable, in each case other than Taxes that are reflected as accrued Tax liabilities in the Closing Working Capital or otherwise taken into account as a reduction in the calculation of Closing Arrangement Consideration; or

(g) the matters set forth on Schedule 8.02(g).

Section 8.03 Indemnification of Company Securityholders. Subject to the other terms and conditions of this ARTICLE 8, Purchaser shall indemnify and defend each of the Company Securityholders and their Affiliates (collectively, the "**Securityholder Indemnitees**") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Securityholder Indemnitees based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of Purchaser contained in this Agreement or in any certificate or instrument delivered by or on behalf of Purchaser pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Effective Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date); or

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Purchaser or its Affiliates (including, subsequent to the Effective Time, the Company Group) pursuant to this Agreement.

Section 8.04 Certain Limitations. The indemnification provided for in Section 8.02 and Section 8.03 shall be subject to the following limitations:

(a) Insurance Proceeds. The amount of any insurance proceeds (including under the R&W Insurance Policy) and other third-party recoveries actually received by an Indemnified Party or their respective Affiliates (including, subsequent to the Effective Time, the Company Group) with respect to a covered Loss, net of any Losses incurred in seeking or obtaining the same (including increased premiums), to the extent in excess of any deductibles or other Losses borne by the Indemnified Party, shall reduce the amount of any Losses recoverable therefor hereunder. If an indemnification payment is received by an Indemnified Party, and such Indemnified Party or its Affiliates (including, subsequent to the Effective Time, the Company Group) later receives insurance proceeds or other third party recoveries in respect of the related Losses that were not deducted in accordance with this Section 8.04(a), such Indemnified Party shall promptly pay to the Indemnifying Party a sum equal to the lesser of (a) the actual net amount of such excess insurance proceeds and other third-party recoveries or (b) the actual amount of the indemnification payment previously paid with respect to such Losses. An Indemnified Party shall use commercially reasonable efforts to recover under insurance policies for any amounts subject to indemnification under this Agreement. This Section 8.04(a) shall not apply with respect to the R&W Insurance Policy in the case of intentional common law fraud by an Indemnifying Party.

(b) Tax Benefit. In determining the amount of any Losses for which an Indemnified Party is entitled to assert a claim for indemnification hereunder, the amount of any such Losses shall be determined after (i) deducting therefrom the amount of any Tax Benefit actually realized in the taxable year such Loss is realized and the succeeding Taxable year by the Indemnified Party and its Affiliates as a result of such Losses and (ii) adding thereto any Tax cost actually incurred by the Indemnified Party arising from the receipt of indemnity payments hereunder in the taxable year such Loss is realized and the succeeding Taxable year. As used herein, "**Tax Benefit**" shall mean any reduction of Taxes payable by or on behalf of the Indemnified Party or any of its Affiliates directly as a result of a Loss in the Tax period in which such Loss is incurred or the Tax period immediately following the Tax period in which the Loss was incurred. If an indemnification payment is received by an Indemnified Party, and such Indemnified Party or its Affiliates (including, subsequent to the Effective Time, the Company Group) later receives Tax Benefits in respect of the related Losses that were not deducted in accordance with this Section 8.04(b) or incurs Tax costs that were not added in accordance with this Section 8.04(b), if the Tax Benefits exceed the Tax costs, the Indemnified Party shall immediately pay to the Indemnifying Party a sum equal to the lesser of (a) the actual amount of such Tax Benefits less such Tax costs or (b) the actual amount of the indemnification payment previously paid with respect to such Losses, and if the Tax costs exceed the Tax Benefits, the Indemnifying Party shall pay to the Indemnified Party such excess.

(c) Limitations on Purchaser Indemnitee Claims. The right of any Purchaser Indemnitee to make claims pursuant to ARTICLE 8 shall be subject to the following additional limitations and conditions:

(i) No claim shall be made with respect to any single Loss (or series of related or similar Losses) of less than $10,000 (excluding from such amount any legal, accounting or other expenses of investigation or assertion of claims).

(ii) Except in the case of Fundamental Representations or intentional common law fraud, the Company Securityholders shall not be liable under Section 8.02(a) until the aggregate amount of all Losses thereunder exceeds $1,625,000 (the "**Deductible**"), at which time each Company Securityholder shall be liable its applicable Pro Rata Share of Losses only in excess of the Deductible and only up to the remaining balance of the General Indemnification Escrow Fund.

(iii) Any Loss for a particular matter shall be calculated after taking into account any liability for such particular matter specifically included as a reduction of the Closing Arrangement Consideration and not otherwise applied.

(iv) Any Loss in connection with, or as a direct or indirect result of, the Pre-Closing Reorganization shall be subject to a claim solely pursuant to Section 8.02(f).

(v) No Company Securityholder shall be liable for any Loss under ARTICLE 8 in excess of such Company Securityholder's applicable Pro Rata Share of each such Loss.

(vi) There shall be no subrogation against the Company Securityholders for any claims made under the R&W Insurance Policy other than as expressly set forth with respect to fraud in the form of R&W Insurance Policy included in the related binder agreement dated as of the date hereof, as previously provided to the Company.

(vii) Notwithstanding anything in this Agreement, in no event shall the Purchaser Indemnitees be entitled to recover from any Company Securityholder under this Agreement and the Ancillary Documents in an aggregate amount (in the aggregate for all claims under this Agreement) greater than the amount actually paid to such Company Securityholder hereunder in respect of such Company Securityholder's Company Securities.

(viii) The Company Securityholders shall not be responsible for any Losses arising out of any change in Law or GAAP that takes place after the Closing.

(ix) Prior to recovering any amount from any Company Securityholder or from any Escrow Fund with respect to any Losses that are reasonably recoverable under the R&W Insurance Policy, the Purchaser Indemnitees shall use commercially reasonable efforts to recover such Losses against the R&W Insurance Policy, until the earliest of (A) the date that is 6 months after the date on which the Purchaser Indemnitee initially made a claim against the R&W Insurance Policy with respect to such Losses, (B) the date on which the insurer notified the Purchaser Indemnitees of formal and final determination that it will not pay such Losses, or (C) the date on which such Losses are determined by competent tribunal to not be recoverable under the R&W Insurance Policy. However, an amount sufficient to cover any claimed Losses being sought under the R&W Insurance Policy shall be withheld from any distribution of any Escrow Fund or Arrangement Consideration that would otherwise be available for such Losses until the final determination of the applicable claim. For the avoidance of doubt, the foregoing provision shall not prevent or delay Purchaser from asserting a claim hereunder or recovering any Losses that would be excluded by the R&W Insurance Policy due to the application of the retention, the policy limit, any policy exclusions, or other limitations.

(d) Limitations on Securityholder Indemnitee Claims. The right of any Securityholder Indemnitee to make claims pursuant to ARTICLE 8 shall be subject to the following additional limitations and conditions:

(i) Except in the case of Fundamental Representations or intentional common law fraud, Parent and the Purchaser shall not be liable under Section 8.03(a) for more than $4,875,000.

(ii) Parent and Purchaser shall not be responsible for any Losses arising out of any change in Law or GAAP that takes place after the Closing.

(iii) Any claims under Section 8.03 that relate to matter affecting Company Securityholders (or any class of Company Securityholders) generally shall be brought solely by the Securityholder Representative. For purposes of this Section 8.03, if the Company Securityholders, collectively, comprise the Indemnified Person or Indemnifying Person, then in each such case all references to such Indemnified Person or Indemnifying Person, as the case may be (except for provisions relating to an obligation to make or a right to receive any payments), shall be deemed to refer to the Securityholder Representative acting on behalf of such Indemnified Person or Indemnifying Person, as applicable.

(e) Materiality Scrape. For purposes of this ARTICLE 8, any inaccuracy in or breach of any representation or warranty, including the calculation of any Losses arising therefrom shall be determined without regard to any materiality, Material Adverse Effect or other similar qualification contained in or otherwise applicable to such representation or warranty, other than with respect to Section 3.08(a) and the terms Material Company IP Agreement, Material Contract, Material Customer and Material Supplier.

Section 8.05 Payments; Sources of Recovery.

(a) Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this ARTICLE 8, the Indemnifying Party shall satisfy its obligations within ten Business Days of such final, non-appealable adjudication by wire transfer of immediately available funds. The parties hereto agree that should an Indemnifying Party not make full payment of any such obligations within such ten Business Day period, any amount payable shall accrue interest from and including the date of agreement of the Indemnifying Party or final, non-appealable adjudication to but excluding including the date such payment has been made at a rate per annum equal to 10% per annum. Such interest shall be calculated daily on the basis of a 365 day year and the actual number of days elapsed.

(b) Except in the case of Fundamental Representations or intentional common law fraud, any Losses payable to a Purchaser Indemnitee pursuant to Section 8.02(a) shall be satisfied solely from: (i) the General Indemnification Escrow Fund; and (ii) the R&W Insurance Policy. Except in the case of intentional common law fraud, any Losses payable to a Purchaser Indemnitee pursuant to Section 8.02(g) shall be satisfied solely from the Special Indemnification Escrow Fund. For the avoidance of doubt, the foregoing shall not limit recovery with respect to any other provision of Section 8.02; provided, that prior to otherwise seeking recovery from a Company

Securityholder, the Purchaser Indemnitee shall first seek recovery from the Escrow Funds and/or by recovery by offset of amounts otherwise payable by Purchaser or Parent pursuant to this Agreement (the order of recovery from such sources being as determined by the Purchaser Indemnitee); and, only subsequent to exhaustion of each of the Escrow Funds and there being no further amounts payable pursuant to this Agreement, may the Purchaser Indemnitee then otherwise collect any recovery from a Company Securityholder.

(c) Purchaser and Generac Holdings shall be entitled to set-off, deduct, and withhold from any Additional Arrangement Consideration any amounts due to any Purchaser Indemnitee under this Agreement (taking into account the limitations herein). To the extent any Purchaser Indemnitee has asserted an Indemnification Claim in good faith that remains outstanding at the time of any payment of Additional Arrangement Consideration hereunder and for which indemnification may be sought hereunder (taking into account the limitations herein), Purchaser may withhold from the aggregate payment of Additional Arrangement Consideration the amount then in dispute. Upon final resolution of such pending Indemnification Claim, any remaining portion of such withheld amount (not used to satisfy such Indemnification Claim) shall be promptly paid to the Company Securityholders. Each Company Securityholder is entitled to receive its Pro Rata Share of such previously withheld amounts, and in determining the Pro Rata Share of such funds allocable to each Company Securityholder, the Securityholder Representative shall make such adjustments as are reasonably necessary to ensure that such distributions take into account each such Company Securityholder's Pro Rata Share of any claim pursuant to this Article 8.

Section 8.06 Tax Treatment of Indemnification Payments. All indemnification payments made under this Agreement shall be treated by the parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

Section 8.07 R&W Insurance. Notwithstanding anything to the contrary contained herein, no limitations (including any survival limitations and other limitations and caps set forth in this ARTICLE 8), qualifications or procedures in this Agreement are intended to limit or modify the ability of Purchaser to make claims under or recover under the R&W Insurance Policy; it being understood that any matter for which there is coverage available under the R&W Insurance Policy shall be subject to the terms, conditions and limitations, if any, set forth in the R&W Insurance Policy. No Purchaser Indemnitee shall amend, modify or waive any provision of the R&W Insurance Policy in a manner adverse to the Company Securityholders without the prior written consent of the Securityholder Representative (not to be unreasonably withheld, conditioned or delayed).

Section 8.08 Indemnification Procedures.

(a) Any party hereto entitled to make a claim for indemnification under this ARTICLE 8 (an "**Indemnification Claim**") shall promptly notify the Indemnifying Party of the claim in writing, describing the claim and related facts in reasonable detail, and the amount thereof (if known or, if unknown, a reasonable estimate thereof). The failure to timely give such notice shall not relieve the Indemnifying Party of its indemnification obligations hereunder, except to the extent that the Indemnifying Party is materially prejudiced thereby. The party from whom indemnification is sought shall respond to each such claim within 30 days of receipt of such notice

(the "**Response Period**"). No action against the Indemnifying Party shall be taken pursuant to the provisions of this Agreement or otherwise by the party seeking indemnification (unless reasonably necessary to protect the rights of the party seeking indemnification) until the expiration of the Response Period.

(b) In the event of the assertion on or after the Effective Date of any third-party claim for which, by the terms hereof, the Company Securityholders are obligated to indemnify a Purchaser Indemnitee, notice thereof shall promptly be given to the Securityholder Representative and the Securityholder Representative will have the right, at the Company Securityholders' expense, to assume the defense of same (so long as the reasonably anticipated amount of Losses from such Indemnification Claim are less than the then-available amount pursuant to the Indemnification Escrow Funds available therefor) including the appointment and selection of counsel on behalf of the Purchaser Indemnitee so long as such counsel is reasonably acceptable to the Purchaser Indemnitee; provided, however, (i) to the extent that an object of such third-party Indemnification Claim is to obtain a material injunction, restraining order, declaratory relief or other non-monetary relief against the Purchaser Indemnitee, (ii) to the extent that the third-party Indemnification Claim relates to the ongoing business, operations, assets, or financial condition of the Purchaser Indemnitee (which shall include the Company Group after Closing), (iii) if the named parties to any such action or proceeding (including any impleaded parties) include both the Purchaser Indemnitees and a member of the Company Group and the former shall have been advised in writing by counsel (with a copy to the Securityholders' Representative) that there are one or more legal or equitable defenses available to them that are different from or additional to those available to a member of the Company Group, (iv) if the funds remaining in the Indemnification Escrow Fund are not sufficient to provide indemnification with respect to such claim, (v) if the Purchaser Indemnitee demonstrates there is a reasonable probability that the claim would adversely affect it or its Affiliates other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, or (vi) such third-party Indemnification Claim seeks a finding or admission of a violation of Law or violation of the rights of any Person by the Purchaser Indemnitee or any of its Affiliates, the Securityholder Representative shall not have the right to assume the defense of same, but rather the Purchaser Indemnitee shall control the defense. In all cases, where the Purchaser Indemnitee controls the defense, the Securityholder Representative will have reasonable information and consultation rights in connection therewith and the Purchaser Indemnitee shall not settle such Indemnification Claim in a manner that would require the Company Securityholders to make indemnity payments hereunder, including by means of payment from the Indemnification Escrow Funds or otherwise, without the Securityholder Representative's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed. If the Securityholder Representative elects to assume the defense of any such third-party Indemnification Claim, it shall reasonably promptly and in any event within 30 days notify the Purchaser Indemnitee in writing of its intent to do so. The Purchaser Indemnitee will be entitled, at its own cost, to participate with the Securityholder Representative in the defense of any such Indemnification Claim. If the Securityholder Representative assumes the defense of any such third-party Indemnification Claim but fails to diligently prosecute such Indemnification Claim, or if the Securityholder Representative does not assume the defense of any such Indemnification Claim, the Purchaser Indemnitee may assume control of such defense and in the event it is finally determined that the Indemnification Claim was a matter for which the Company Securityholders are required to provide indemnification under the terms of this ARTICLE 8, the Company Securityholders will bear the reasonable costs and expenses of such defense (including reasonable

attorneys' fees and expenses). In the event of the assertion of any Indemnification Claim for which, by the terms hereof, Parent or Purchaser is obligated to indemnify a Securityholder Indemnitee, notice thereof shall promptly be given to Parent and Parent will have the right, at Parent's expense, to assume the defense of same. The Party in charge of the defense shall keep the other party reasonably apprised at all times as to the status of the defense or any settlement negotiations with respect thereto.

(c) Notwithstanding anything to the contrary in this Agreement, the Securityholder Representative will not be permitted to settle, compromise, take any corrective or remedial action or enter into an agreed judgment or consent decree without the prior written consent of Purchaser, which consent shall not be unreasonably withheld, conditioned or delayed, it being understood that Purchaser may reasonably withhold, condition or delay consent with respect to any such settlement, compromise, action, judgment or decree (i) that does not unconditionally release the Purchaser Indemnitees from all liabilities and obligations with respect to such Indemnification Claim (other than to the extent such Purchaser Indemnitee is actually indemnified therefor hereunder), (ii) that imposes injunctive or other equitable relief against the Purchaser Indemnitee, or (iii) under which the Purchaser Indemnitee would be required to pay any portion of any monetary damages arising as a result of the claim (other than to the extent the Purchaser Indemnitee is actually indemnified therefor hereunder).

(d) The Indemnified Party and Indemnifying Party shall reasonably cooperate in the defense of a third-party claim, including by promptly providing reasonable access to information in their control for the purposes of defending such claim against such third party, including using commercially reasonable efforts at the expense of the Indemnifying Party to (i) assist in the collection and preparation of discovery materials, (ii) meet to prepare for and/or appear as witnesses at depositions, court proceedings, and/or trial, (iii) providing reasonable access to information under their control that is necessary for the defense of such claim, and (iv) promptly providing copies of notices and documents (including court papers) relating to such third-party claim.

(e) Notwithstanding anything to the contrary, this Section 8.08 shall not apply with respect to Tax Contest which shall be solely governed by Section 6.08.

Section 8.09 Subrogation. If (a) the Securityholder Representative authorizes any indemnification payment hereunder, and (b) the Purchaser or its Affiliates (including the Company Group subsequent to the Effective Time) has or may have a claim under the R&W Insurance Policy in respect of the related Losses, the Securityholder Representative, on behalf of the Company Securityholders, shall be subrogated to the rights and claims of the Purchaser and its Affiliates (including the Company Group subsequent to the Effective Time), as the case may be, with respect thereto under the R&W Insurance Policy. The Securityholder Representative (on behalf of the Company Securityholders) shall not, however, have the right to collect aggregate payments from such third party or third parties in excess of the actual amount of the indemnification payment previously paid with respect to such Losses. The Purchaser and the Company will, and will cause their respective Affiliates to, execute and deliver to the Securityholder Representative such documents and take such other actions as may reasonably be requested in order to give effect to this Section.

Section 8.10 Remedies Exclusive. All representations and warranties set forth in this Agreement or in any certificate or instrument delivered by or on behalf of the Company pursuant to this Agreement are contractual in nature only and subject to the sole and exclusive remedies set forth herein. The remedies provided in this ARTICLE 8 shall be the sole and exclusive remedies of the Purchaser Indemnitees and the Securityholder Indemnitees and their heirs, successors and permitted assigns after the Closing with respect to this Agreement and the Transactions including any breach or inaccuracy of any representation or warranty or violation of any covenant or agreement contained herein or in any certificate or instrument delivered pursuant to this Agreement. Following the Closing, no Purchaser Indemnitee or Securityholder Indemnitee shall bring any claim with respect to this Agreement, any certificate or instrument delivered hereunder, or the Transactions, whether in contract, tort or otherwise, other than (a) as part of the process contemplated by Section 2.08, (b) as part of the process contemplated by Section 2.09, (c) a claim made by Purchaser on behalf of the Purchaser Indemnitees in accordance with Section 8.02, or (d) a claim made by Securityholder Representative on behalf of the Securityholder Indemnitees in accordance with Section 8.03; *provided*, that any party may seek equitable relief, including the remedies of specific performance and injunction in accordance with Section 10.12. The provisions of this ARTICLE 8 constitute an integral part of the consideration given to the Company Securityholders pursuant to this Agreement and were specifically bargained for and reflected in the total amount of the Purchase Price payable in connection with the Transactions. The Purchaser Indemnitees acknowledge and agree that the foregoing provisions of this ARTICLE 8 have full force and effect, notwithstanding that the Purchaser Indemnitees, or anyone else to whom the R&W Insurance Policy extends protection are, or may be, unable for any reason to pursue or obtain a recovery under the R&W Insurance Policy.

Section 8.11 No Other Representations and Warranties.

(a) The parties to this Agreement acknowledge and agree that (i) except for the representations and warranties contained in ARTICLE 3, none of the Company Securityholders, the Company Group or any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of Company Securityholder or the Company Group, including any representation or warranty as to the accuracy or completeness of any information regarding any of the Company Group made available to the Purchaser and its representatives (including, without limitation, any information, documents or material made available to the Purchaser in the Data Room and management presentations or in any other form in expectation of the Transactions contemplated hereby) or as to the future revenue, profitability or success of the Company Group, or any representation or warranty arising from any Law and (ii) except for the representations and warranties contained in ARTICLE 4, none of Parent, Purchaser or any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of Parent or Purchaser, including any representation or warranty as to the accuracy or completeness of any information regarding Parent or Purchaser made available to the Company Group and its representatives or as to the future revenue, profitability or success of the Company Group, or any representation or warranty arising from any Law.

(b) The representations and warranties expressly set forth in this Agreement and the Ancillary Documents (the "**Express Representations**") are and shall constitute the sole and exclusive representations and warranties to the Purchaser in connection with this Agreement and the Transactions and except for the Express Representations, none of the Company

Securityholders, the Company Group or any other Person has made or is making any express or implied representation or warranty, statutory or otherwise, of any nature, including with respect to any express or implied representation or warranty as to the merchantability, quality, quantity, suitability or fitness for any particular purpose of the business or the assets of the Company Group. Purchaser and Parent further acknowledges that notwithstanding anything to the contrary contained in this Agreement or otherwise, except for the Express Representations, all other warranties, express or implied, statutory or otherwise, of any nature, including with respect to any express or implied representation or warranty as to the merchantability, quality, quantity, suitability or fitness for any particular purpose of the business or the assets of the Company Group, are hereby expressly disclaimed. The Purchaser and Parent each represents, warrants, covenants and agrees, on behalf of itself and its Affiliates, that in determining to enter into and consummate this Agreement and the Transactions, it is not relying upon any representation or warranty made or purportedly made by or on behalf of any person, other than the Express Representations, as applicable and to the extent material to the Purchaser's and Parent's decision to acquire the Company, and that the Purchaser (and indirectly Parent) shall acquire the purchased securities without any representation or warranty (other than the Express Representations) as to merchantability or fitness for any particular purpose, in an "as is" condition and on a "where is" basis and "with all faults".

(c) Without limiting the generality of the immediately preceding paragraph, it is understood and agreed by the Purchaser, on behalf of itself and its Affiliates, that any cost estimate, projection or other prediction, any data, any other information or any memoranda or offering materials or presentations, including any memoranda and materials provided or made available on the Data Room by the Company, the Company Securityholders, its or their respective Affiliates or its or their respective representatives, are not and shall not be deemed to be or to include representations or warranties, except to the extent, if any, explicitly set forth in ARTICLE 3 as a representation and warranty by (and only by) the Company or any Company Securityholder, as the case may be.

(d) The Express Representations made by Parent and Purchaser are and shall constitute the sole and exclusive representations and warranties to the Company Group, Company Securityholders and Securityholder Representative in connection with this Agreement and the Transactions and except for the Express Representations, none of the Generac Holdings, Parent, Purchaser or any other Person has made or is making any express or implied representation or warranty, statutory or otherwise, of any nature. Notwithstanding anything to the contrary contained in this Agreement or otherwise, except for the Express Representations, all other warranties, express or implied, statutory or otherwise, of any nature are hereby expressly disclaimed. The Company Group represents, warrants, covenants and agrees, on behalf of itself and its Affiliates and the Company Securityholders, that in determining to enter into and consummate this Agreement and the Transactions, they are not relying upon any representation or warranty made or purportedly made by or on behalf of any person, other than the Express Representations, as applicable and to the extent material to the Transactions, and that the Company Securityholders shall acquire the Arrangement Consideration without any representation or warranty (other than the Express Representations) as to merchantability or fitness for any particular purpose, in an "as is" condition and on a "where is" basis and "with all faults".

Section 8.12 Investigation; Non-Reliance. Each of the parties hereto acknowledges, covenants and agrees, on behalf of itself and its Affiliates that (a) it is a sophisticated party and understands the merits and risks of consummating the Transactions and has completed to its satisfaction its own due diligence investigation and, based thereon, formed its own independent judgment with respect to Parent, Purchaser, the Company Group and their businesses, as applicable, (b) it has been furnished with or given full access to such documents and information about the other parties hereto and their businesses and operations as such party and its representatives have deemed necessary to enable it to make an informed decision with respect to the execution, delivery and performance of this Agreement and the Transactions, (c) in entering into this Agreement, it has relied solely upon its own investigation and analysis and the representations and warranties expressly contained in this Agreement, and (d) (i) except for the Express Representations, no representation, warranty or statement has been or is being made by any party hereto or any other Person as to the accuracy or completeness of any of the information provided or made available to the parties hereto, their respective Affiliates or any of their respective Representatives and (ii) there are uncertainties inherent in attempting to make estimates, projections, forecasts, plans, budgets and similar materials and information, such party is familiar with such uncertainties, such party is taking full responsibility for making its own evaluations of the adequacy and accuracy of any and all estimates, projections, forecasts, plans, budgets and other materials or information that may have been delivered or made available to such party, its Affiliates or any of their respective Representatives, neither such party nor its Affiliates has relied and shall not rely on such information. Notwithstanding anything to the contrary, nothing in this Agreement (including this Section 8.12) shall be used as a defense against, or otherwise limit any claims or remedies for, intentional common law fraud.

Section 8.13 OCGC. Notwithstanding anything in this Agreement to the contrary, OCGC shall not be bound by this ARTICLE 8, Section 10.01 or any other contingent liabilities contained herein as a Company Securityholder unless and until it has obtained the consent of the Ministry of Finance of the Province of Ontario under s. 28 of the *Financial Administration Act* (Ontario) ("**MOF Consent**"); provided that OCGC (a) shall (i) use all commercially reasonable efforts to obtain the MOF Consent as soon as practicable, (ii) keep Purchaser fully informed of the process by which it is seeking the MOF Consent, (iii) promptly advise Purchaser in writing as soon as it has obtained the MOF Consent and provide Purchaser with an officer's certificate of OCGC certifying receipt of the MOF Consent, and (b) agrees that it shall not be entitled to receive any of the Arrangement Consideration to which it is entitled, and shall not submit a Letter of Transmittal in respect thereof, unless and until it has received the MOF Consent.

ARTICLE 9.
TERMINATION

Section 9.01 Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of the Company and Purchaser;

(b) by Purchaser by written notice to the Company if:

(i) Purchaser is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by the Company pursuant to this Agreement that would give rise to the failure of any of the conditions specified in ARTICLE 7 and such breach, inaccuracy or failure has not been cured by the Company within thirty (30) days of the Company's receipt of written notice of such breach from Purchaser; or

(ii) any of the conditions set forth in Section 7.01 or Section 7.02 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by April 1, 2022, unless such failure shall be due to the failure of Purchaser to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing;

(c) by the Company by written notice to Purchaser if:

(i) the Company is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Purchaser pursuant to this Agreement that would give rise to the failure of any of the conditions specified in ARTICLE 7 and such breach, inaccuracy or failure has not been cured by Purchaser within thirty (30) days of Purchaser's receipt of written notice of such breach from the Company; or

(ii) any of the conditions set forth in Section 7.01 or Section 7.03 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by April 1, 2022, unless such failure shall be due to the failure of the Company to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing; or

(d) by Purchaser or the Company if there shall be any Law that makes consummation of the Transactions illegal or otherwise prohibited or any Governmental Authority shall have issued a Governmental Order restraining or enjoining the Transactions, and such Governmental Order shall have become final and non-appealable.

Section 9.02 Effect of Termination. In the event of the termination of this Agreement in accordance with this ARTICLE 9, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto except:

(a) as set forth in this ARTICLE 9 and ARTICLE 10 hereof; and

(b) that nothing herein shall relieve any party hereto from liability for any willful breach of any provision hereof.

ARTICLE 10.
MISCELLANEOUS

Section 10.01 Securityholder Representative.

(a) By approving this Agreement and the Transactions or by executing and delivering a Support Agreement or a Letter of Transmittal, and by receiving the benefits thereof, including any consideration payable hereunder, each Company Securityholder shall have irrevocably authorized and appointed Securityholder Representative as such Person's representative, agent and attorney-in-fact to act on behalf of such Person as of the Closing with respect to this Agreement, the Escrow Agreement and any related agreements, and to take any and all actions and make any decisions required or permitted to be taken by Securityholder Representative in connection with this Agreement, the Escrow Agreement or any related agreement, including the exercise of the power to:

(i) give and receive notices and communications;

(ii) authorize delivery to Purchaser of cash from the Purchase Price Adjustment Escrow Fund (or, if necessary, the Indemnification Escrow Fund) in satisfaction of any amounts owed to Purchaser pursuant to Section 2.08 or from the Indemnification Escrow Fund in satisfaction of claims for indemnification made by Purchaser pursuant to ARTICLE 6 or ARTICLE 8, or otherwise authorize payments pursuant to the Escrow Agreement or with respect to the Securityholder Representative Fund;

(iii) agree to, negotiate, enter into settlements and compromises of, and comply with orders or otherwise handle any other matters described in Section 2.08 or Section 2.09;

(iv) agree to, negotiate, enter into settlements and compromises of, and comply with orders of courts with respect to claims for indemnification made by Purchaser pursuant to ARTICLE 6 and ARTICLE 8;

(v) litigate, arbitrate, resolve, settle or compromise any claim for indemnification pursuant to ARTICLE 6 and ARTICLE 8;

(vi) execute and deliver all documents necessary or desirable to carry out the intent of this Agreement and any Ancillary Document (including the Escrow Agreement);

(vii) make all elections or decisions contemplated by this Agreement and any Ancillary Document (including the Escrow Agreement);

(viii) engage, employ or appoint any agents or representatives (including attorneys, accountants and consultants) to assist Securityholder Representative in complying with its duties and obligations; and

(ix) take all actions necessary or appropriate in the good faith judgment of Securityholder Representative for the accomplishment of the foregoing.

Purchaser and its Affiliates shall be entitled to deal exclusively with Securityholder Representative on all matters relating to this Agreement (including ARTICLE 8) and shall be entitled to rely conclusively (without further evidence of any kind whatsoever) on any document executed or purported to be executed on behalf of any Company Securityholder by Securityholder Representative, and on any other action taken or purported to be taken on behalf of any Company Securityholder by Securityholder Representative, as being fully binding upon such Person. Notices or communications to or from Securityholder Representative after the Closing shall constitute notice to or from each of the Company Securityholders. Any decision or action by Securityholder Representative hereunder, including any Agreement between Securityholder Representative and Purchaser relating to the defense, payment or settlement of any claims for indemnification hereunder, shall constitute a decision or action of all Company Securityholders and shall be final, binding and conclusive upon each such Person. No Company Securityholder shall have the right to object to, dissent from, protest or otherwise contest the same. The provisions of this Section 10.01, including the power of attorney granted hereby, are independent and severable, are irrevocable and coupled with an interest and shall not be terminated by any act of any one or more Company Securityholders, or by operation of Law, whether by death or other event.

Notwithstanding any provision to the contrary contained herein, the Securityholder Representative shall not have the power or authority to execute any amendment, waiver, document or other instrument that would adversely affect in any material respect the rights, obligations or liability of a specific Company Securityholder (as opposed to Company Securityholders generally) without the prior written consent of such Company Securityholder.

Prior to OCGC having given written notice to the Securityholder Representative that the MOF Consent has been received, the Securityholder Representative shall not have any liability or obligation to OCGC.

(b) The Securityholder Representative may resign at any time, and may be removed for any reason or no reason by the unanimous vote or written consent of the Advisory Committee, provided that at least five Business Days' notice of such removal and replacement shall be given to the removed Securityholders' Representative and Parent. In the event of the death, incapacity, resignation or removal of Securityholder Representative, a new Securityholder Representative reasonably acceptable to Purchaser shall be appointed by the unanimous vote or written consent of the Advisory Committee. Notice of such vote or a copy of the written consent appointing such new Securityholder Representative shall be sent to Purchaser, such appointment to be effective upon the later of the date indicated in such consent or the date such notice is received by Purchaser; *provided* that until such notice is received, Purchaser and its Affiliates (including the Company Group after Closing) shall be entitled to rely on the decisions and actions of the prior Securityholder Representative as described in Section 10.01(a) above.

(c) The Securityholders Representative shall act in the manner Securityholder Representative believes to be in the best interest of the Company Securityholders and consistent with the obligations under this Agreement and the Escrow Agreement and any related agreements. Certain Company Securityholders have entered into an engagement agreement (the "**Securityholder Representative Engagement Agreement**") with the Securityholder Representative to provide direction to the Securityholder Representative in connection with its services under this Agreement, the Escrow Agreement, the Securityholder Representative

Engagement Agreement and any related agreements (such Company Securityholders, including their individual representatives, collectively hereinafter referred to as the "**Advisory Committee**"). Neither the Securityholder Representative nor any member of the Advisory Committee, solely in such Advisory Committee members' capacity as such, is or shall be personally liable for any of the obligations of the Company Securityholders hereunder, and the Purchaser Indemnitees agree that they will not look to the underlying assets of the Securityholder Representative or the members of the Advisory Committee for the satisfaction of any obligations of the Company Securityholders. Neither the Securityholder Representative nor any member of the Advisory Committee shall be liable to the Company Securityholders for actions taken or omitted by the Securityholder Representative or the Advisory Committee, respectively, in connection with this Agreement, the Escrow Agreement or any related agreement, except to the extent such actions shall have been determined by a court of competent jurisdiction to have constituted, in the case of the Securityholder Representative, the Securityholder Representative's gross negligence or involved intentional common law fraud, intentional misconduct or bad faith, or in the case of the Advisory Committee, such Advisory Committee member's gross negligence or involved intentional common law fraud, intentional misconduct or bad faith (it being understood that any act done or omitted pursuant to the advice of counsel, accountants and other professionals and experts retained by Securityholder Representative or the Advisory Committee shall be conclusive evidence of good faith). The Company Securityholders shall severally and not jointly (in accordance with their Pro Rata Shares), indemnify and hold harmless Securityholder Representative and each member of the Advisory Committee from and against, compensate it for, reimburse it for and pay any and all losses, liabilities, claims, Actions, damages and expenses, including reasonable attorneys' fees and disbursements, arising out of or in connection with its activities as Securityholder Representative or as a member of the Advisory Committee under this Agreement, the Escrow Agreement, the Securityholder Representative Engagement Agreement or any related agreement (the "**Representative Losses**"), in each case as such Representative Loss is suffered or incurred; *provided* that in the event it is finally adjudicated that a Representative Loss or any portion thereof was primarily caused by, in the case of the Securityholder Representative, the Securityholder Representative's gross negligence, intentional common law fraud, intentional misconduct or bad faith of the Securityholder Representative or, in the case of a member of the Advisory Committee, such Advisory Committee member's gross negligence or involved intentional common law fraud, intentional misconduct or bad faith, the Securityholder Representative or such Advisory Committee member, as applicable, shall reimburse the Company Securityholders the amount of such indemnified Representative Loss attributable to such gross negligence, intentional common law fraud, intentional misconduct or bad faith. Representative Losses may be recovered by the Securityholder Representative or an Advisory Committee member from (i) the funds in the Securityholder Representative Fund and (ii) any other funds that become payable to the Company Securityholders under this Agreement at such time as such amounts would otherwise be distributable to the Company Securityholders; provided, that while the Securityholder Representative or Advisory Committee member may be paid from the aforementioned sources of funds, this does not relieve the Company Securityholders from their obligation to promptly pay such Representative Losses as they are suffered or incurred. In no event will the Securityholder Representative or any member of the Advisory Committee be required to advance its own funds on behalf of the Company Securityholders or otherwise. Notwithstanding anything in this Agreement to the contrary, any restrictions or limitations on liability or indemnification obligations of, or provisions limiting the recourse against non-parties otherwise applicable to, the Company

Securityholders set forth elsewhere in this Agreement are not intended to be applicable to the indemnities provided to the Securityholder Representative and members of the Advisory Committee hereunder. The foregoing indemnities will survive the Closing, the resignation or removal of the Securityholder Representative or an Advisory Committee member or the termination of this Agreement.

Section 10.02 Expenses. Except as otherwise expressly provided herein, all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the Transactions shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred; and the Company shall pay all amounts payable to Bank of America as a result of the execution of this Agreement or the consummation by the Company Group of any of the Transactions, including the Arrangement pursuant to the Plan of Arrangement

Section 10.03 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 10.03):

If to the Company:	ecobee Inc. 25 Dockside Drive, Suite 700 Toronto, Ontario Canada M5A 0B5 E-mail: stuart@ecobee.com Attention: Stuart Lombard
with a copy to:	Bennett Jones LLP 3400 One First Canadian Place Toronto, Ontario Canada M5X 1A4 E-mail: solwayg@bennettjones.com Attention: Gary Solway
And a further copy to:	Choate, Hall & Stewart LLP Two International Place Boston, Massachusetts 02110 E-mail: jpitfield@choate.com Attention: John Pitfield

If to Purchaser:	Generac Power Systems, Inc. S45 W29290 Hwy. 59 Waukesha, Wisconsin 53189 E-mail: Kyle.Flanagan@generac.com Lisa.Brown@generac.com Attention: Kyle Flanagan Lisa Brown
with a copy to:	Faegre Drinker Biddle & Reath LLP 2200 Wells Fargo Center 90 South Seventh Street Minneapolis, Minnesota 55402 E-mail: brandon.mason@faegredrinker.com andrea.scheder@faegredrinker.com Attention: Brandon C. Mason Andrea Scheder
If to Securityholder Representative:	Shareholder Representative Services LLC 950 17th Street, Suite 1400 Denver, Colorado 80202 E-mail: deals@srsacquiom.com Attention: Managing Director
with a copy to:	Choate, Hall & Stewart LLP Two International Place Boston, Massachusetts 02110 E-mail: jpitfield@choate.com Attention: John Pitfield

Section 10.04 Interpretation. For purposes of this Agreement, (a) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "to the extent" means degree (and only the degree) to which a subject or other matter extends and does not simply mean "if"; (d) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole; (e) "ordinary course of business" means the ordinary course of business of a Person, consistent with past practice. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Letter and Exhibits mean the Articles and Sections of, and Disclosure Letter and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations or guidance promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Letter and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein. If the date on which any action is required or permitted to be taken hereunder

by a Person is not a Business Day, such action shall be required or permitted to be taken on the next succeeding day which is a Business Day.

Section 10.05 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 10.06 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the Transactions be consummated as originally contemplated to the greatest extent possible.

Section 10.07 Entire Agreement; Disclosure Letter. This Agreement, the Ancillary Documents and, other than with respect to the Securityholder Representative, the Confidentiality Agreement entered into between the Parent and the Company dated March 23, 2021 and the Ancillary Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the Ancillary Documents, the Exhibits, the Disclosure Letter and the supplemental letter contemplated hereby (other than an exception expressly set forth as such in the Disclosure Letter or the supplement letter contemplated hereby), the statements in the body of this Agreement will control. Information set forth on any Section of the Disclosure Letter or supplemental letter contemplated hereby shall be deemed to qualify each Section of this Agreement to which such information is applicable (regardless of whether or not such Section is qualified by reference to a Section of the Disclosure Letter or supplement letter contemplated hereby, as applicable), so long as application to such Section is reasonably apparent from the reading of such disclosure. The inclusion of an item on any Section of the Disclosure Letter or supplemental letter contemplated hereby is not evidence of the materiality of such item for purposes of this Agreement or otherwise, or that such item is a disclosure required under the Agreement. No disclosure in any Section of the Disclosure Letter or supplemental letter contemplated hereby relating to any possible breach or violation of any agreement, Permit or Law shall be construed as an admission or indication that any such breach or violation exists or has actually occurred, or shall constitute an admission of liability to any third party.

Section 10.08 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 10.09 No Third-party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and, other than as expressly provided herein (including Sections 4.09 and 5.07), nothing herein is intended to or shall confer

upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 10.10 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by Purchaser and either (x) the Company at any time prior to the Effective Time or (y) the Securityholder Representative at any time from and after the Effective Time, in each case without further approval of any Company Securityholders except to the extent such further approval is required by Law. Any failure of Purchaser, on the one hand, or the Company, on the other hand, to comply with any obligation, covenant, agreement or condition herein may be waived by the Company (with respect to any failure by Purchaser) or by Purchaser (with respect to any failure by the Company), respectively, only by a written instrument signed by the party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

Section 10.11 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) This Agreement shall be governed by and construed in accordance with the laws of the Provinces of Ontario and the federal laws of Canada applicable therein without giving effect to any choice or conflict of Law provision or rule (whether of such jurisdiction or any other jurisdiction).

(b) Any legal suit, action or proceeding arising out of or based upon this Agreement, the Ancillary Documents or the Transactions may be instituted in the Province of Ontario, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or any proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

(c) EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER OR RELATE TO THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ANY OF THE AGREEMENTS DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

Section 10.12 Specific Performance. The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that, in addition to any and all other remedies that may be available hereunder in the event of any breach of this Agreement, the parties shall be entitled to specific performance of the terms hereof and to such other injunctive or other equitable relief as may be granted by a court of

competent jurisdiction, without bond or other security being required, in addition to any other remedy to which they are entitled at Law or in equity. Each party agrees that the rights of the other parties to consummate the Transactions are special, unique and of extraordinary character. In no event shall the exercise of the right to seek specific performance pursuant to this Section 10.12 reduce, restrict or otherwise limit the right of the Company or the Purchaser to terminate this Agreement. Each party agrees that it shall not oppose the granting of an injunction, specific performance or other equitable relief on the basis that (i) another party has an adequate remedy at law or (ii) an award of specific performance is not an appropriate remedy for an actual, material breach for any reason at law or in equity. Each of the parties hereby waives (i) any defense that a remedy at law would be adequate and (ii) any requirement under applicable Law to post a bond or other security as a prerequisite to obtaining equitable relief.

Section 10.13 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 10.14 Non-Recourse. Subject to the terms of ARTICLE 8 hereof and any rights against a party to an Ancillary Document against a party thereto under the terms thereof, this Agreement may only be enforced against, and any claims or causes of action that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement or the Transactions, may only be made against, the Persons that are expressly identified herein, and no other Person shall have any liability for any obligations or liabilities of the parties or for any claim (whether in tort, contract or otherwise) based on, in respect of, or by reason of, the Transactions or in respect of any representations, warranties or statements made or alleged to be made in connection herewith. Without limiting the rights of any party against the other parties, in no event shall any party or any of its Affiliates seek to enforce this Agreement against, make any claims for breach of this Agreement against, or seek to recover monetary damages from, any Person not specified herein, in each case, subject to the terms of ARTICLE 8 hereof and the terms of any applicable Ancillary Document executed by such Person; provided, that this Section 10.14 shall not apply to Section 10.01, which shall be enforceable by the Securityholder Representative in its entirety against the Company Securityholders.

Section 10.15 Guarantee. To induce the Company to enter into this Agreement and the Company Securityholders to vote in favor of the Agreement, Parent hereby irrevocably and unconditionally guarantees the due and timely payment, observance, performance and discharge of all obligations of Purchaser pursuant to this Agreement (the "**Guaranteed Obligations**"). This guarantee is a guarantee of payment and not of collection. Parent expressly waives any requirement that the Company, the Company Securityholders or the Securityholder Representative exhaust any right, remedy or power to proceed against Purchaser under this Agreement or against any other Person under any other guarantee of, or security for, any of the Guaranteed Obligations. The guarantee hereunder is a continuing guarantee and applies to all Guaranteed Obligations whenever arising. None of the Company, the Company Securityholders or the Securityholder Representative shall be obligated to file any claim relating to the Guaranteed Obligations in the event that Purchaser becomes subject to a bankruptcy, reorganization or similar proceeding, and the failure of any such party to so file shall not affect Parent's obligations hereunder.

Section 10.16 Retention of Counsel. In any dispute or proceeding arising under or in connection with this Agreement following the Closing, the Securityholder Representative and any of the Company Securityholders shall have the right, at their election, to retain Choate, Hall & Stewart LLP and/or Bennett Jones LLP (each, a "**Designated Firm**") to represent them in such matter, even if such representation shall be adverse to Purchaser and/or the Company Group, notwithstanding the fact that the Company Group has been a client of the Designated Firms prior to the Closing. The Purchaser, the Company Group, for themselves and for their respective Affiliates, successors and assigns, hereby irrevocably waive any conflict to any such representation in any such matter arising by virtue of any Designated Firm's representation of the Company Group prior to the Closing. The Purchaser, the Company Group, for themselves and for their respective Affiliates, successors and assigns, hereby irrevocably waive any actual or potential conflict arising from any such pre-Closing representation in the event of (a) any adversity between the interests of the Securityholder Representative and the Company Securityholders on the one hand and the Purchaser, the Company Group on the other hand, in any such matter; and/or (b) any communication between the Designated Firm and the Company Group or any of their Affiliates or employees, whether privileged or not, or any other information known to such counsel, by reason of such counsel's representation of any of the Company or any of its Subsidiaries prior to Closing. Effective upon the Closing, the Company Group shall cease to be clients of each Designated Firm.

Section 10.17 Protected Communications. The parties agree that, immediately prior to the Closing, without the need for any further action (a) all right, title and interest of the Company Group in and to all Protected Communications shall thereupon transfer to and be vested solely in the Securityholder Representative, and its successors in interest, on behalf of the Company Securityholders and (b) any and all protections from disclosure, including attorney client privileges and work product protections, associated with or arising from any Protected Communications that would have been exercisable by the Company Group shall thereupon be vested exclusively in the Securityholder Representative and its successors in interest and shall be exercised or waived solely as directed by the Securityholder Representative or its successors in interest. None of the Company Group, the Purchaser or any Person acting on any of their behalf shall, without the prior written consent of the Securityholder Representative or its successors in interest, intentionally waive or attempt to waive any such protection against disclosure, including, the attorney-client privilege or work product protection, or to obtain, use or disclose or attempt to obtain, use or disclose any Protected Communications in any manner, including in connection with the events and negotiations leading to this Agreement, any of the Transactions or any disputes in connection therewith. The Securityholder Representative and its successors in interest shall have the right at any time prior to the Closing to remove, erase, delete, disable, copy or otherwise deal with any Protected Communications in whatever way they desire that does not disrupt the operations, business or assets of the Company Group. As used herein, "**Protected Communications**" means, at any time, any and all privileged communications in whatever form, whether written, oral, video, electronic or otherwise, that shall have occurred between any Designated Firm, on the one hand, and any of the Company Group, the Company Securityholders or any of their respective Affiliates, equity or holders, directors, officers, employees, agents, advisors or attorneys, on the other hand, to the extent relating to this Agreement, the events and negotiations leading to this Agreement, the Transactions or any other potential sale, merger or transfer of control transaction involving the Company or any of its Subsidiaries. The Securityholder Representative shall not intentionally waive or attempt to waive any privilege with respect to the Protected Communications unless reasonably required in connection with the exercise of the rights of the Securityholder

Representative or the Company Securityholders hereunder and the Company Group may assert privilege against any third party to prevent disclosure of the Protected Communications.

Section 10.18 No Waiver of Privilege; Protection from Disclosure or Use. The parties hereto understand and agree that nothing in this Agreement, including the foregoing provisions regarding the assertions of protection from disclosure and use, privilege and conflicts of interest, shall be deemed to be a waiver of any applicable attorney-client privilege vis a vis third parties or other protection from disclosure or use. Each of the parties understands and agrees that it has undertaken commercially reasonable efforts to prevent the disclosure of Protected Communications. Notwithstanding those efforts, the parties understand and agree that the consummation of the Transactions could result in the inadvertent disclosure of Protected Communications. The parties further understand and agree that any disclosure of Protected Communications will not constitute a waiver of or otherwise prejudice any claim of confidentiality, privilege, or protection from disclosure with respect to any third party, including, but not limited to, with respect to information involving or concerning the same subject matter as the disclosed information.

[*Remainder of Page Intentionally Blank*]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

ecobee Inc.

DocuSigned by:

By Stuart Lombard
4955FE8B7D15494...

Name: Stuart Lombard
Title: Chief Executive Officer

13462234 Canada Inc.

By _____
Name: Steve Goran
Title: President

Generac Power Systems, Inc.

By _____
Name: Steve Goran
Title: Chief Strategy Officer

Shareholder Representative Services LLC, solely in its capacity as Securityholder Representative

By 
Name: Sam Riffe
Title: Managing Director

EXHIBIT B
TO THE ARRANGEMENT AGREEMENT

[FORM OF]
ARRANGEMENT RESOLUTION

1. The arrangement (the "**Arrangement**") under section 192 of the *Canada Business Corporations Act* (the "**CBCA**") involving ecobee Inc. (the "**Company**"), pursuant to the arrangement agreement between the Compan**y,** 13462234 Canada Inc., Generac Power Systems, Inc. and Shareholder Representative Services LLC dated November 1, 2021, as it may be modified, supplemented or amended from time to time in accordance with its terms (the "**Arrangement Agreement**"), and all transactions contemplated thereby, are hereby authorized, approved and adopted.

2. The plan of arrangement of the Company, as it has been or may be modified, supplemented or amended in accordance with the Arrangement Agreement and its terms (the "**Plan of Arrangement**"), the full text of which is set out as Exhibit D to the Arrangement Agreement, is hereby authorized, approved and adopted.

3. The: (i) Arrangement Agreement and all the transactions contemplated therein; (ii) actions of the directors of the Company in approving the Arrangement and the Arrangement Agreement; and (iii) actions of the directors and officers of the Company in executing and delivering the Arrangement Agreement and any modifications, supplements or amendments thereto, and causing the performance by the Company of its obligations thereunder, are hereby ratified and approved.

4. Notwithstanding that this resolution has been approved (and the Arrangement adopted) by the holders of all of the issued and outstanding shares in the capital of the Company (the "**Company Shareholders**") or that the Arrangement has been approved by the Ontario Superior Court of Justice (Commercial List) (the "**Court**"), the directors of the Company are hereby authorized and empowered, without further notice to or approval of the Company Shareholders: (i) to amend, modify or supplement the Arrangement Agreement or the Plan of Arrangement to the extent permitted by their terms; and (ii) subject to the terms of the Arrangement Agreement, not to proceed with the Arrangement and any related transactions.

5. Any one director or officer of the Company be and is hereby authorized and directed for and on behalf of the Company to make an application to the Court for an order approving the Arrangement, to execute, under the corporate seal of the Company or otherwise, and to deliver to the Director under the CBCA for filing articles of arrangement and such other documents as are necessary or desirable to give effect to the Arrangement and the Plan of Arrangement in accordance with the Arrangement Agreement.

6. Any officer or director of the Company is hereby authorized and directed, for and on behalf of the Company, to execute or cause to be executed and to deliver or cause to be delivered, all such other documents and instruments and to perform or cause to be

performed all such other acts and things as, in such person's opinion, may be necessary or desirable to give full force and effect to the foregoing resolutions and the matters authorized thereby, such determination to be conclusively evidenced by the execution and delivery of any such other document or instrument or the doing of any such other act or thing.

EXHIBIT C
TO THE ARRANGEMENT AGREEMENT

[Form of]
ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this "Agreement") is entered into as of **[●]**, by and among Generac Power Systems, Inc., a Wisconsin corporation ("**Generac**"), and Shareholder Representative Services LLC, a Colorado limited liability company, solely in its capacity as the representative, agent and attorney-in-fact of the Company Securityholders ("**Securityholder Representative**", and together with Generac, sometimes referred to individually as a "**Party**" and collectively as the "**Parties**"), and JPMorgan Chase Bank, N.A. ("**Escrow Agent**").

RECITALS

WHEREAS, Generac, 13462234 Canada Inc., a Canadian federal corporation and wholly owned subsidiary of Generac ("**Purchaser**"), ecobee Inc., a Canadian federal corporation (the "**Company**") and Securityholder Representative have entered into an Arrangement Agreement dated effective as of **[**November 1**]**, 2021 (the "**Arrangement Agreement**"), pursuant to which Purchaser will acquire all of the issued and outstanding equity interests in the Company through the arrangement of the Company. Capitalized terms in this Agreement that are not otherwise defined shall have their meanings set forth in the Arrangement Agreement, although the Escrow Agent shall not have any obligation to understand or ascertain the meaning of any defined terms not entirely defined in this Agreement;

WHEREAS, Generac has entered into an Exchange Agent Agreement (the "**Exchange Agreement**") with Computershare Trust Company, N.A. (as exchange agent, the "**Exchange Agent**") pursuant to which the Exchange Agent will disburse funds to the Company Securityholders in connection with the transactions contemplated by the Arrangement Agreement;

WHEREAS, pursuant to the Arrangement Agreement, the Parties have agreed to deposit in escrow certain funds and wish such deposit to be subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

AGREEMENT

1. **Appointment**. The Parties hereby appoint Escrow Agent as their escrow agent for the purposes set forth herein, and Escrow Agent hereby accepts such appointment under the terms and conditions set forth herein.

2. **Fund; Investment.** (a) Pursuant to the Arrangement Agreement, Generac will cause Purchaser to deposit with Escrow Agent the sum of $3,250,000.00 (the "**General Indemnification Escrow Deposit**"), $3,000,000.00 (the "**Purchase Price Adjustment Escrow Deposit**") and $10,000,000.00 (the "**Special Indemnification Escrow Deposit**" and along with the General Indemnification Escrow Deposit and the Purchase Price Adjustment Escrow Deposit, each an "**Escrow Deposit**" and collectively, the "**Escrow Deposits**"). Escrow Agent shall hold each Escrow Deposit and remaining balances (the "Fund") in one or more separate non-interest bearing demand deposit accounts. No investment of the Escrow Deposits will be permitted during the term of this Agreement. For purposes of clarity, the Escrow Agent shall designate and separate from each other (i) the account holding the General Indemnification Escrow Deposit, **(**ii) the account holding the Special Indemnification Escrow Deposit and (iii) the account holding the Purchase Price Adjustment Escrow Deposit.

The Escrow Agent shall not have any tax withholding or information reporting responsibility.

3. **Disposition and Termination.** Escrow Agent shall disburse the Fund only pursuant to and in accordance with the following procedures and as otherwise described in this Agreement:

(a) Within three Business days following the final determination of the Post-Closing Adjustment, pursuant to the terms of the Arrangement Agreement, Generac and Securityholder Representative shall deliver to the Escrow Agent a joint written authorization signed by an Authorized Representative of Generac and Securityholder Representative, in the form of Exhibit A-1 attached hereto (a "**Joint Instruction**"), instructing the Escrow Agent to

release the full amount of the Fund comprising the Purchase Price Adjustment Deposit and all remaining proceeds thereof (the "**Purchase Price Adjustment Fund**") in accordance with such determination, as directed in the Joint Instruction by wire transfer of immediately available funds to the parties identified in such Joint Instruction in accordance with the applicable Party's wire instructions listed in this Section 3, or to an account designated in writing by an Authorized Representative of the applicable Party pursuant to this Section 3. The Escrow Agent shall release the applicable portion of the Purchase Price Adjustment Fund within two Business Days following the receipt of, and in accordance with, such Joint Instruction.

(b) (i) Generac may at any time, but no later than [●][*NTD: First business day on or after first anniversary of the Effective Date*] (the "**Final Escrow Release Date**"), simultaneously give written notice (which shall be executed by an Authorized Representative of Generac) to Securityholder Representative and Escrow Agent that a Purchaser Indemnitee (as defined in the Arrangement Agreement) is asserting one or more claims (each a "**Claim**") against the Fund comprising the General Indemnification Escrow Deposit and all remaining proceeds thereof (collectively, the "**General Indemnification Fund**"), for amounts payable therefrom pursuant to the Arrangement Agreement (a "**Claim Notice**"). The Claim Notice shall include a description of the claim, which shall include a reasonable description of the facts relating thereto so that Securityholder Representative may reasonably evaluate such claim, and the claim amount. Upon receipt of a Claim Notice, Escrow Agent shall reserve an amount of the General Indemnification Fund equal to the claim amount specified in such Claim Notice. Within five (5) Business Days of a final resolution among the Parties of any claims in a Claim Notice, the Parties agree to give a Joint Instruction instructing the Escrow Agent to release the General Indemnification Fund or portion thereof with respect to such claims in accordance with such agreement.

(ii) On the first Business Day following the Final Escrow Release Date, Generac and Securityholder Representative shall deliver a Joint Instruction to the Escrow Agent instructing the Escrow Agent to release the remaining amount in the General Indemnification Fund at such date less the aggregate amount of any unresolved Claims against the General Indemnification Fund for which a Joint Instruction or Final Decision (as defined in Section 3(d)(i) below) has not yet been rendered (or any Claims for which a Joint Instruction or Final Decision has been rendered but Generac has not received funds) (each a "**General Indemnification Pending Claim**") as of such date, to the Exchange Agent (for further distribution to the Company Securityholders), and the Escrow Agent shall, within two (2) Business Days after receipt of such Joint Instructions, pay to the Exchange Agent (for further distribution to the Company Securityholders) such amount from the General Indemnification Fund. In the event Generac and Securityholders Representative have failed to deliver the Joint Instructions within three (3) Business Days of the Final Escrow Release Date and either (x) there are no General Indemnification Pending Claims as of the Final Escrow Release Date or (y) the aggregate amount of any unresolved General Indemnification Pending Claims is less than the then-existing amount of the General Indemnification Fund, then the Escrow Agent shall, promptly thereafter, distribute to the Exchange Agent (in accordance with Standing Instructions or the payment instructions otherwise provided by Securityholders Representative to the Escrow Agent) (for further distribution to the Company Securityholders) the entire amount of the General Indemnification Fund less the aggregate amount of any unresolved General Indemnification Pending Claims against the General Indemnification Fund as provided in this Section 3(b)(ii).

(c) (i) Generac may at any time, but no later than [●][NTD: First business day on or after third anniversary of the Effective Date] (the "**Special Indemnification Escrow Final Release Date**"), simultaneously give written notice (which shall be executed by an Authorized Representative of Generac) to Securityholder Representative and Escrow Agent that a Purchaser Indemnitee is asserting one or more Claims against the Fund comprising the Special Indemnification Escrow Deposit and all remaining proceeds thereof (collectively, the "**Special Indemnification Fund**"), for amounts payable therefrom pursuant to the Arrangement Agreement by furnishing a Claim Notice that includes a description of the claim, which shall include a reasonable description of the facts relating thereto so that Securityholder Representative may reasonably evaluate such claim, and the claim amount. Within five (5) Business Days of a final resolution among the Parties of any claims in a Claim Notice related to the Special Indemnification Fund, the Parties agree to give a Joint Instruction instructing the Escrow Agent to release the Special Indemnification Fund or portion thereof with respect to such claims in accordance with such Joint Instruction and this Agreement.

(ii) On the first Business Day following the Special Indemnification Escrow Final Release Date, or as soon as practicably possible thereafter, Generac and Securityholder Representative shall deliver a Joint Instruction to the Escrow Agent instructing the Escrow Agent to release the remaining amount in the Special Indemnification Fund at such date less the aggregate amount of any unresolved Claims against the General

Indemnification Fund for which a Joint Instruction or Final Decision (as defined in Section 3(d)(i) below) has not yet been rendered (or any Claims for which a Joint Instruction or Final Decision has been rendered but Generac has not received funds) (each a "**Special Indemnification Pending Claim**") as of such date, to the Exchange Agent (for further distribution to the Company Securityholders), and the Escrow Agent shall, within two (2) Business Days after receipt of such Joint Instructions, pay to the Exchange Agent (for further distribution to the Company Securityholders) such amount from the Special Indemnification Fund. In the event Generac and Securityholders Representative have failed to deliver the Joint Instructions within three (3) Business Days of the Final Release Date and either (x) there are no Special Indemnification Pending Claims as of the Special Indemnification Escrow Final Release Date or (y) the aggregate amount of any Special Indemnification Pending Claims is less than the then-existing amount of the Special Indemnification Fund, then the Escrow Agent shall, promptly thereafter, distribute to the Exchange Agent (in accordance with Standing Instructions or the payment instructions otherwise provided by Securityholders Representative to the Escrow Agent) (for further distribution to the Company Securityholders) the entire amount of the Special Indemnification Fund less the aggregate amount of any unresolved Special Indemnification Pending Claims against the Special Indemnification Fund as provided in this Section 3(c)(ii).

(d) (i) The Escrow Agent shall release the General Indemnification Fund, the Special Indemnification Fund and the Purchase Price Adjustment Fund or portions thereof, in accordance with: (i) a Joint Instruction, which shall set forth the amount of the General Indemnification Fund, the Special Indemnification Fund or the Purchase Price Adjustment Fund, as applicable, to be distributed to Generac and/or the Exchange Agent, (ii) a copy of a final and non-appealable judgment or court order of a court of competent jurisdiction (a "**Final Decision**"), or (iii) in accordance with Section 3(b)(ii) above or Section 3(c)(ii) above. Any Final Decision delivered to Escrow Agent shall be accompanied by a written certification from counsel for the prevailing Party attesting that such Final Decision is final and not subject to further proceedings or appeal and a written instruction from an Authorized Representative of Generac or Securityholder Representative, as the case may be, given to effectuate such Final Decision and, for the avoidance of doubt, Escrow Agent shall be entitled to rely conclusively upon any such certification and instruction and shall have no responsibility to review the Final Decision to which such certification and instruction refers or to make any determination as to whether such Final Decision is final.

(ii) Any distribution of the General Indemnification Fund, the Special Indemnification Fund or the Purchase Price Adjustment Fund to Generac or the Exchange Agent in accordance with this Section 3 shall be paid by wire transfer of immediately available funds in accordance with the applicable party's wire instructions listed in Section 3(e) below, or to an account designated in writing by an Authorized Representative of the applicable Party pursuant to Section 3(f) below. Notwithstanding anything to the contrary contained in this Section 3, Escrow Agent may assume that any Claim Notice or other notice of any kind required to be delivered to Escrow Agent and any other Party or person has been received by such other Party or person on the date it has been received by Escrow Agent, but Escrow Agent need not inquire or verify such receipt.

(e) Notwithstanding anything to the contrary set forth in Section 8, any instructions setting forth, claiming, containing, objecting to, or in any way related to the transfer or distribution of the Fund must be in writing and executed by the appropriate Party or Parties as evidenced by the signatures of the person or persons signing this Agreement or one of the designated persons as set forth on the Designation of Authorized Representatives attached hereto as Schedule 1-A and 1-B (each an "**Authorized Representative**"), and delivered to Escrow Agent only by confirmed facsimile or as a Portable Document Format ("**PDF**") attached to an email only at the fax number or email address set forth in Section 8 below. Each Designation of Authorized Representatives shall be signed by a Secretary, any Assistant Secretary or other duly authorized person of the named Party. No instruction for or related to the transfer or distribution of the Fund shall be deemed delivered and effective unless Escrow Agent actually shall have received it by facsimile or as a PDF attached to an email only at the fax number or email address set forth in Section 8 and in the case of a facsimile, as evidenced by a confirmed transmittal to the Party's or Parties' transmitting fax number. Escrow Agent shall not be liable to any Party or other person for refraining from acting upon any instruction for or related to the transfer or distribution of the Fund if delivered to any other fax number or email address, including but not limited to a valid email address of any employee of Escrow Agent. Notwithstanding anything to the contrary, the Parties acknowledge and agree that Escrow Agent (i) shall have no obligation to take any action in connection with this Agreement on a non-Business Day and any action Escrow Agent may otherwise be required to perform on a non-Business Day may be performed by Escrow Agent on the following Business Day and (ii) may not transfer or distribute the Fund until Escrow Agent has completed its security procedures.

Each Party authorizes Escrow Agent to use the funds transfer instructions ("**Initial Standing Instructions**") specified for it below to disburse any funds due to such Party, without a verifying call-back or email confirmation as set forth below:

Generac:	Generac Power Systems, Inc.	Exchange Agent:	Computershare Trust Company N.A.
Bank Name:	[●]		[●]
Bank Address:	[●]		[●]
ABA number:	[●]		[●]
Credit A/C Name:	[●]		[●]
Credit A/C #	[●]		[●]
If Applicable:			
FFC A/C Name:			
FFC A/C #:			
FFC A/C Address:			

(f) In the event any funds transfer instructions other than the Initial Standing Instructions are set forth in a permitted instruction from a Party or the Parties in accordance with this Agreement (any such additional funds transfer instructions, "**Additional Standing Instructions**" and, together with the Initial Standing Instructions, the "**Standing Instructions**"), Escrow Agent will confirm such Additional Standing Instructions by a telephone call-back or email confirmation to an Authorized Representative of such Party or Parties, and Escrow Agent may rely and act upon the confirmation of anyone purporting to be that Authorized Representative. No funds will be disbursed until such confirmation occurs. Each Party agrees that after such confirmation, Escrow Agent may continue to rely solely upon such Additional Standing Instructions and all identifying information set forth therein for such beneficiary without an additional telephone call-back or email confirmation. Further, it is understood and agreed that if multiple disbursements are provided for under this Agreement pursuant to any Standing Instructions, only the date, amount and/or description of payments may change without requiring a telephone call-back or email confirmation.

(g) The persons designated as Authorized Representatives and telephone numbers for same may be changed only in a writing executed by an Authorized Representative or other duly authorized person of the applicable Party setting forth such changes and actually received by Escrow Agent via facsimile or as a PDF attached to an email. Escrow Agent will confirm any such change in Authorized Representatives by a telephone call-back or email confirmation to an Authorized Representative and Escrow Agent may rely and act upon the confirmation of anyone purporting to be that Authorized Representative.

(h) Escrow Agent, any intermediary bank and the beneficiary's bank in any funds transfer may rely upon the identifying number of the beneficiary's bank or any intermediary bank included in a funds transfer instruction provided by a Party or the Parties and, if applicable, confirmed in accordance with this Agreement. Further, the beneficiary's bank in the funds transfer instructions may make payment on the basis of the account number provided in such Party's or the Parties' instruction and, if applicable, confirmed in accordance with this Agreement even though it identifies a person different from the named beneficiary.

(i) As used in this Section 3, "**Business Day**" shall mean any day other than a Saturday, Sunday or any other day on which Escrow Agent located at the notice address set forth below is authorized or required by law or executive order to remain closed. The Parties acknowledge that the security procedures set forth in this Section 3 are commercially reasonable. Upon delivery of the Fund in full by Escrow Agent pursuant to this Section 3, this Agreement shall terminate, and all the related account(s) shall be closed, subject to the provisions of Section 6 and 7.

(j) Notwithstanding anything to the contrary contained in this Agreement, in the event that an electronic signature is affixed to an instruction issued hereunder to disburse or transfer funds, such instruction may be confirmed by a verifying call-back (or email confirmation) to an Authorized Representative.

4. **Escrow Agent**. Escrow Agent shall have only those duties as are specifically and expressly provided herein, which shall be deemed purely ministerial in nature, and no other duties, including but not limited to any fiduciary duty, shall be implied. Notwithstanding anything to the contrary, Escrow Agent has no knowledge of, nor any obligation to comply with, the terms and conditions of any other agreement, Escrow Agent shall not be responsible for determining the meaning of any capitalized term not entirely defined herein, nor shall Escrow Agent be required to determine if any Party has complied with any other agreement. Notwithstanding the terms of any other agreement,

the terms and conditions of this Agreement shall control the actions of Escrow Agent. Escrow Agent may conclusively rely upon any written notice, document, instruction or request delivered by the Parties believed by it to be genuine and to have been signed by an Authorized Representative(s), as applicable, without inquiry and without requiring substantiating evidence of any kind (provided Escrow Agent shall follow the security procedures in Section 3) and Escrow Agent shall be under no additional duty to inquire into or investigate the validity, accuracy or content of any such document, notice, instruction or request. Any notice, document, instruction or request delivered by a Party but not required under this Agreement may be disregarded by Escrow Agent. Escrow Agent shall not be liable for any action taken, suffered or omitted to be taken by it in good faith except to the extent that Escrow Agent's fraud, gross negligence, willful misconduct or bad faith was the cause of any direct loss to either Party. Escrow Agent may execute any of its powers and perform any of its duties hereunder directly or through affiliates or agents. In the event Escrow Agent shall be uncertain, or believes there is some ambiguity, as to its duties or rights hereunder or receives instructions, claims or demands from any Party hereto which in Escrow Agent's judgment conflict with the provisions of this Agreement, or if Escrow Agent receives conflicting instructions from the Parties, Escrow Agent shall be entitled either to: (a) refrain from taking any action until it shall be given (i) a joint written direction executed by an Authorized Representative of each of the Parties which eliminates such ambiguity or conflict or (ii) a court order issued by a court of competent jurisdiction (it being understood that Escrow Agent shall be entitled conclusively to rely and act upon any such court order and shall have no obligation to determine whether any such court order is final); or (b) file an action in interpleader. Escrow Agent shall have no duty to solicit any payments which may be due it or the Fund, including, without limitation, any Escrow Deposit nor shall Escrow Agent have any duty or obligation to confirm or verify the accuracy or correctness of any amounts deposited with it hereunder. The Parties grant the Escrow Agent the right to set off and deduct from the Fund any fees, expenses and indemnification rights owed to the Escrow Agent that remain unpaid, unreimbursed and/or unsatisfied after notice to Generac and Securityholder Representative of such set off. Anything in this Agreement to the contrary notwithstanding, except to the extent caused by fraud, willful misconduct or bad faith by the Escrow Agent, in no event shall Escrow Agent be liable for special, incidental, punitive, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if Escrow Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.

5. **Succession.** Escrow Agent may resign and be discharged from its duties or obligations hereunder by giving no less than sixty (60) days advance notice in writing of such resignation to the Parties or may be removed, with or without cause, by the Parties at any time after giving not less than sixty (60) days advance joint written notice to Escrow Agent. Escrow Agent's sole responsibility after such sixty (60) day notice period expires shall be to hold the Fund (without any obligation to reinvest the same) and to deliver the same to a designated substitute escrow agent (which shall be a recognized bank or trust company), if any, appointed by the Parties, or such other person designated by the Parties, or in accordance with the directions of a final court order, at which time of delivery, Escrow Agent's obligations hereunder shall cease and terminate. If prior to the effective resignation or removal date, the Parties have failed to appoint a successor escrow agent, or to instruct Escrow Agent to deliver the Fund to another person as provided above, or if such delivery is contrary to applicable law, at any time on or after the effective resignation date, Escrow Agent may either (a) interplead the Fund with a court located in the State of Delaware and the costs, expenses and reasonable attorney's fees which are incurred in connection with such proceeding may be charged against and withdrawn from the Fund; or (b) appoint a successor escrow agent of its own choice. Solely as between Generac and Securityholder Representative, each of Generac, on the one hand, and Securityholder Representative, on the other hand, agrees between them that it will pay 50% of all amounts payable under this Section 5, if any, and each of Generac, on the one hand, and Securityholder Representative, on the other hand, shall fully indemnify the other from all expenses incurred by the indemnified Party in the event that it pays the other such Party's portion of such expenses. Any appointment of a successor escrow agent shall be binding upon the Parties and no appointed successor escrow agent shall be deemed to be an agent of Escrow Agent. Escrow Agent shall deliver the Fund to any appointed successor escrow agent, at which time Escrow Agent's obligations under this Agreement shall cease and terminate. Any entity into which Escrow Agent may be merged or converted or with which it may be consolidated, or any entity to which all or substantially all the escrow business may be transferred, shall be Escrow Agent under this Agreement without further act.

6. **Compensation; Acknowledgment.** (a) The Parties agree to pay or cause to be paid to Escrow Agent upon execution of this Agreement, and from time to time thereafter reasonable compensation for the services to be rendered hereunder, which unless otherwise agreed in writing, shall be as described in Schedule 2. As between the Parties, Securityholder Representative (solely on behalf of the Company Securityholders) shall be responsible for such compensation not paid on the closing date.

(b) Each of the Parties further agrees to the disclosures and agreements set forth in Schedule 2.

7. **Indemnification and Reimbursement.** The Parties agree jointly and severally to indemnify, defend, hold harmless, pay or reimburse Escrow Agent and its affiliates and their respective successors, assigns, directors, agents and employees (collectively with the Escrow Agent, the "**Indemnitees**") from and against any and all losses, damages, claims, liabilities, costs or expenses (including reasonable attorney's fees) (collectively "**Losses**"), resulting directly or indirectly from (a) Escrow Agent's performance of this Agreement, except to the extent that such Losses are determined by a court of competent jurisdiction to have been caused by the gross negligence, willful misconduct, or bad faith of such Indemnitee; and (b) Escrow Agent's following, accepting or acting upon any instructions or directions, whether joint or singular, from the Parties received in accordance with this Agreement. For the avoidance of doubt, it is understood and agreed that the intent of the clause "in its capacity as the representative, agent and attorney-in-fact of the Company Securityholders" and other similar clauses in this Agreement are to clarify that affiliates of Generac and Company Securityholders are the parties with economic interests under the Arrangement Agreement, and the Company Securityholders shall ultimately be responsible to the Securityholder Representative for any indemnification obligations or liabilities that the Securityholder Representative has to Escrow Agent hereunder. Accordingly, such clauses clarify the Securityholder Representative's recourse to the Company Securityholders and are not meant to limit the Securityholder Representative's capacity or liability as between itself and Escrow Agent under this Agreement. The obligations set forth in this Section 7 shall survive the resignation, replacement or removal of Escrow Agent or the termination of this Agreement.

8. **Notices.** Except as otherwise provided in Section 3, all communications hereunder shall be in writing or set forth in a PDF attached to an email, and shall be delivered by facsimile, email or overnight courier only to the appropriate fax number, email address, or notice address set forth for each party as follows:

If to Generac:

Generac Power Systems, Inc.
S45 W29290 Hwy. 59
Waukesha, Wisconsin 53189
Attention: Raj Kanuru, General Counsel
Tel No.: (262) 544-4811
Email Address: Raj.Kanuru@generac.com

Account statements and billing: Same as above

With copies (which shall not constitute notice) to:

Faegre Drinker Biddle & Reath LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
Attention: Brandon C. Mason
Andrea Scheder
Email Address: brandon.mason@faegredrinker.com
andrea.scheder@faegredrinker.com

If to Securityholder Representative:

Shareholder Representative Services LLC
950 17th Street, Suite 1400
Denver, Colorado 80202

Attention: Managing Director
Email Address: deals@srsacquiom.com
Telephone: (303) 648-4085

Account statements and billing: Same as above

With copies (which shall not constitute notice) to:

Bennett Jones LLP
3400 One First Canadian Place
Toronto, Ontario
M5X 1A4
Attention: Gary Solway
Email Address: solwayg@bennettjones.com

Choate, Hall & Stewart LLP
Two International Place
Boston, Massachusetts 02110
Attention: John R. Pitfield
Email Address: jpitfield@choate.com

If to Escrow Agent: JPMorgan Chase Bank, N.A.
Escrow Services
10 South Dearborn, Mail Code IL1-0113
Chicago, IL 60603
Attention: Cindy Reis
Fax No.: (312) 954-0430
Email Address: mw.escrow@jpmorgan.com

9. **Compliance with Directives.** In the event that (i) a court of competent jurisdiction issues a legal garnishment, attachment, levy, restraining notice or court order, or (ii) the issuance of a valid governmental order (a "**Directive**") is served with respect to any of the Fund, or the delivery thereof shall be stayed or enjoined by a Directive, Escrow Agent is hereby expressly authorized, in its sole discretion, to obey and comply with all such Directives so entered or issued, and in the event that Escrow Agent obeys or complies with any such Directive it shall not be liable to any of the Parties hereto or to any other person by reason of such compliance notwithstanding such Directive be subsequently reversed, modified, annulled, set aside or vacated.

10. **Miscellaneous**. (a) The provisions of this Agreement may be waived, altered, amended or supplemented only by a writing signed by Escrow Agent and the Parties. Neither this Agreement nor any right or interest hereunder may be assigned by any Party or Escrow Agent (except as set forth in, and subject to, Section 5 of this Agreement) without the prior consent of Escrow Agent and the other Party and any assignment in violation of this Agreement shall be ineffective and void. This Agreement shall be governed by and construed under the laws of the State of Delaware, exclusive of rules and principles of conflicts of law. Each Party and Escrow Agent irrevocably waives any objection on the grounds of venue, forum non-conveniens or any similar grounds and irrevocably consents to service of process by mail or in any other manner permitted by applicable law and consents to the jurisdiction of the courts located in the State of Delaware. To the extent that in any jurisdiction either Party may now or hereafter be entitled to claim for itself or its assets, immunity from suit, execution, attachment (before or after judgment) or other legal process or immunity from liability, such Party shall not claim, and hereby irrevocably waives, such immunity. Escrow Agent and the Parties further hereby waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising or relating to this Agreement.

(b) No party to this Agreement will be liable to any other party for losses due to, or if it is unable to perform its obligations under the terms of this Agreement because of, acts of God, fire, war, terrorism, floods, strikes, electrical outages, equipment or transmission failure, or other causes reasonably beyond its control. This Agreement and any joint instructions from the Parties may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument or instruction, as applicable. This Agreement may be executed and transmitted as a PDF attached to an email and each such execution shall be of the same legal effect, validity and enforceability as a manually executed original, wet-inked signature. All signatures of the parties to this Agreement may be transmitted as a PDF attached to an email, and such PDF will, for all purposes, be deemed to be the original signature of such party whose signature it reproduces, and will be binding upon such party. If any provision of this Agreement is determined to be prohibited or unenforceable by reason of any applicable law of a jurisdiction, then such provision shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof, and any such prohibition or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction. The Parties each represent, warrant and covenant as to themselves that (i) each document, notice, instruction or request provided

by such Party to the Escrow Agent shall comply with applicable laws and regulations; (ii) such Party has full power and authority (in the case of Securityholder Representative, limited liability company and power) to enter into this Agreement and to perform all of the duties and obligations to be performed by it hereunder (in the case of Securityholder Representative, subject to the laws of agency); and (iii) the person(s) executing this Agreement on such Party's behalf and such Party's certifying Authorized Representatives in the applicable Schedule 1 has been duly and properly authorized to do so, and each Authorized Representative of such Party has been duly and properly authorized to take actions specified for such person in the applicable Schedule 1. Escrow Agent represents, warrants and covenants that (i) it has full power and authority to enter into this Agreement and to perform all of the duties and obligations to be performed by it hereunder; and (ii) the person executing this Agreement on Escrow Agent's behalf has been duly and properly authorized to do so. Except as expressly provided in Section 7 above, nothing in this Agreement, whether express or implied, shall be construed to give to any person or entity other than Escrow Agent and the Parties any legal or equitable right, remedy, interest or claim under or in respect of the Fund or this Agreement.

[Remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

GENERAC:

GENERAC POWER SYSTEMS, INC.

By: _____
Name:
Title:

ESCROW AGENT:

JPMORGAN CHASE BANK, N.A.

By: _____
Name:
Title:

SECURITYHOLDER REPRESENTATIVE:

SHAREHOLDER REPRESENTATIVE SERVICES LLC, solely in its capacity as the Securityholder Representative

By: _____
Name:
Title:

EXHIBIT A

Form of Escrow Release Notice – Joint Instructions

JPMorgan Chase Bank, N.A., Escrow Services
Escrow Services
10 South Dearborn, Mail Code IL1-0113
Chicago, IL 60603
mw.escrow@jpmorgan.com
Fax No.: (312) 954-0430
Attention: _____

Date:

Re: Generac Power Systems, Inc. and Shareholder Representative Services LLC – Escrow Agreement dated – [_____], 20[_]

Escrow Account no. _____

Dear Sir/Madam:

We refer to an escrow agreement dated **[_____]**, 20[__] among Generac Power Systems, Inc., a Wisconsin corporation, Shareholder Representative Services LLC, a Colorado limited liability company and JPMorgan Chase Bank, N.A., as Escrow Agent (the "**Escrow Agreement**").

Capitalized terms in this letter that are not otherwise defined shall have the same meaning given to them in the Escrow Agreement.

The Parties instruct Escrow Agent to release the [Purchase Price Adjustment Fund, the General Indemnification Fund, the Special Indemnification Fund], or the portion specified below, to the specified party as instructed below.

Amount
(In writing)
Beneficiary
City
Country

US Instructions:
Bank
Bank address
ABA Number:
Credit A/C Name:
Credit A/C #:
Credit A/C Address:
If Applicable:
FFC A/C Name:
FFC A/C #:
FFC A/C Address:

International Instructions:
Bank Name:
Bank Address
SWIFT Code:
US Pay Through ABA:
Credit A/C Name:
Credit A/C # (IBAN #):

Credit A/C Address:
If Applicable:
FFC A/C Name:
FFC A/C # (IBAN #):
FFC A/C Address:

GENERAC:

GENERAC POWER SYSTEM, INC.

By: _____
Name:
Title:
Date:

SECURITYHOLDER REPRESENTATIVE:

SHAREHOLDER REPRESENTATIVE SERVICES LLC, solely in its capacity as the Securityholder Representative

By: _____
Name:
Title:
Date:

Schedule 1-A

GENERAC POWER SYSTEMS, INC.

DESIGNATION OF AUTHORIZED REPRESENTATIVES

The undersigned, [NAME], being the duly elected, qualified and acting [TITLE] of Generac Power Systems, Inc., a Wisconsin corporation ("**Generac**"), does hereby certify:

1. That each of the following representatives is at the date hereof an Authorized Representative, as such term is defined in the Escrow Agreement, dated **[_____]**, 20[__], by and among Generac, Securityholder Representative and Escrow Agent (the "**Escrow Agreement**"), that the signature appearing opposite each Authorized Representative's name is the true and genuine signature of such Authorized Representative, and that each Authorized Representative's contact information is current and up-to-date at the date hereof. Each of the Authorized Representatives is authorized to issue instructions, confirm funds transfer instructions by callback or email confirmation and effect changes in Authorized Representatives, all in accordance with the terms of the Escrow Agreement. Callbacks or emails confirming an instruction shall be made to an Authorized Representative other than the Authorized Representative who issued the instruction unless (a) only a single Authorized Representative is designated below, (b) the information set forth below changes and is not updated by Generac such that only the Authorized Representative who issued the instruction is available to receive a callback or email confirmation, or (c) Generac is an individual. Generac acknowledges that pursuant to this Schedule, Escrow Agent is offering an option for callback or email confirmation to a different Authorized Representative, and if Generac nevertheless names only a single Authorized Representative or fails to update Authorized Representative information, Generac agrees to be bound by any instruction, whether or not authorized, confirmed by callback or email confirmation to the issuer of the instruction.

[Insert names and contact information of individuals who can be readily available to provide instructions and/or confirm disbursements on the telephone, as needed.]

NAME	SIGNATURE	TELEPHONE, CELL NUMBER and EMAIL ADDRESS
Joe Kavalary	_____	(ph): (262) 544-2321 (cell): (262) 347-8787 (email): joe.kavalary@generac.com
York Ragen	_____	(ph): (262) 544-2788 (cell): (262) 349-5332 (email): york.ragen@generac.com
Bill Kolbe	_____	(ph): (262) 544-3123 (cell): (847) 477-1691 (email): bill.kolbe@generac.com

_____

2. Email confirmation is only permitted to a corporate email address for purposes of this Schedule. Any personal email addresses provided will not be used for email confirmation.

3. This Schedule may be signed in counterparts and the undersigned certifies that any signature set forth on an attachment to this Schedule is the true and genuine signature of an Authorized Representative and that each such Authorized Representative's contact information is current and up-to-date at the date hereof.

4. That pursuant to Generac's governing documents, as amended, the undersigned has the power and authority to execute this Designation on behalf of Generac, and that the undersigned has so executed this Designation this __ day of _____, 20___.

5. Notwithstanding the above, if Generac is an individual, no signature will be required below.

Signature: _____

Name: [NAME]

Title: [TITLE]

FOR YOUR SECURITY, PLEASE CROSS OUT ALL UNUSED SIGNATURE LINES ON THIS SCHEDULE 1-A

All instructions, including but not limited to funds transfer instructions, whether transmitted by facsimile or set forth in a PDF attached to an email, must include the signature (or electronic signature subject to the conditions set forth in the Escrow Agreement) of the Authorized Representative authorizing said funds transfer on behalf of such Party.

[Signature Page to Schedule 1-A]

Schedule 1-B

SECURITYHOLDER REPRESENTATIVE

DESIGNATION OF AUTHORIZED REPRESENTATIVES

The undersigned, Sam Riffe, being the duly elected, qualified and acting Managing Director of Shareholder Representative Services LLC, a Colorado limited liability company ("**Securityholder Representative**"), does hereby certify:

1. That each of the following representatives is at the date hereof an Authorized Representative of Securityholder Representative, as such term is defined in the Escrow Agreement, dated **[_____]**, 20[__], by and among Generac, Securityholder Representative and Escrow Agent (the "**Escrow Agreement**"), that the signature appearing opposite each Authorized Representative's name is the true and genuine signature of such Authorized Representative, and that each Authorized Representative's contact information is current and up-to-date at the date hereof. Each of the Authorized Representatives is authorized to issue instructions, confirm funds transfer instructions by callback or email confirmation and effect changes in Authorized Representatives, all in accordance with the terms of the Escrow Agreement. Callbacks or emails confirming an instruction shall be made to an Authorized Representative other than the Authorized Representative who issued the instruction unless (a) only a single Authorized Representative is designated below, (b) the information set forth below changes and is not updated by Securityholder Representative such that only the Authorized Representative who issued the instruction is available to receive a callback or email confirmation, or (c) Securityholder Representative is an individual. Securityholder Representative acknowledges that pursuant to this Schedule, Escrow Agent is offering an option for callback or email confirmation to a different Authorized Representative, and if Securityholder Representative nevertheless names only a single Authorized Representative or fails to update Authorized Representative information, Securityholder Representative agrees to be bound by any instruction, whether or not authorized, confirmed by callback or email confirmation to the issuer of the instruction.

[Insert names and contact information of individuals who can be readily available to provide instructions and/or confirm disbursements on the telephone, as needed.]

NAME	SIGNATURE	TELEPHONE and EMAIL ADDRESS
Casey McTigue	_____	(ph): (415) 363-6081 (email): cmctigue@srsacquiom.com
Michelle Kirkpatrick	_____	(ph): (720) 799-8614 (email): mkirkpatrick@srsacquiom.com
Lon LeClair	_____	(ph): (303) 222-2078 (email): lleclair@srsacquiom.com
Paul Koenig	_____	(ph): (303) 957-2850 (email): pkoenig@srsacquiom.com

2. Email confirmation is only permitted to a corporate email address for purposes of this Schedule. Any personal email addresses provided will not be used for email confirmation.

3. This Schedule may be signed in counterparts and the undersigned certifies that any signature set forth on an attachment to this Schedule is the true and genuine signature of an Authorized Representative and that each such Authorized Representative's contact information is current and up-to-date at the date hereof.

4. The undersigned has the power and authority to execute this Designation on behalf of Securityholder Representative as the representative of Securityholder Representative, and that the undersigned has so executed this Designation this ___ day of _____, 2___.

5. Notwithstanding the above, if Securityholder Representative is an individual, no signature will be required below.

Signature: _____

Name: _____

Title: Managing Director

FOR YOUR SECURITY, PLEASE CROSS OUT ALL UNUSED SIGNATURE LINES ON THIS SCHEDULE 1-B

All instructions, including but not limited to funds transfer instructions, whether transmitted by facsimile or set forth in a PDF attached to an email, must include the signature (or electronic signature subject to the conditions set forth in the Escrow Agreement) of the Authorized Representative authorizing said funds transfer on behalf of such Party.

[Signature Page to Schedule 1-B]

SCHEDULE 2

J.P.Morgan

Schedule of Fees and Disclosures for Escrow Agent Services

Account Acceptance Fee . . . . . **…...WAIVED**
Encompassing review, negotiation and execution of governing documentation, opening of the account, and completion of all due diligence documentation. Payable upon closing.

One - Time Administration Fee **$2,500**
The Administration Fee covers our usual and customary ministerial duties, including record keeping, distributions, document compliance and such other duties and responsibilities expressly set forth in the governing documents for each transaction. Payable upon closing, without pro-ration for partial years.

Extraordinary Services and Out-of-Pocket Expenses: Escrow Agent or any of its affiliates may receive compensation with respect to any investment directed hereunder including without limitation charging any applicable agency fee or trade execution fee in connection with each transaction. Any additional services beyond our standard services as specified above, and all reasonable out-of-pocket expenses including attorney's or accountant's fees and expenses will be considered extraordinary services for which related costs, transaction charges, and additional fees will be billed at Escrow Agent's then standard rate. Escrow Agent may impose, charge, pass-through and modify fees and/or charges for any account established and services provided by Escrow Agent, including but not limited to, transaction, maintenance, balance-deficiency, and service fees, agency or trade execution fees, and other charges, including those levied by any governmental authority.

Fee Disclosure & Assumptions: Escrow Agent reserves the right to revise, modify, change and supplement the fees quoted herein if the assumptions underlying the activity in the account, level of balances, market volatility or other factors change from those used to set the fees described herein. Payment of the invoice is due upon receipt.

Disclosures and Agreements:

Taxes. The Parties shall duly complete such tax documentation or other procedural formalities necessary for Escrow Agent to complete required tax reporting and for the relevant Party to receive interest or other income without withholding or deduction of tax in any jurisdiction. Should any information supplied in such tax documentation change, the Parties shall promptly notify Escrow Agent. Escrow Agent shall withhold any taxes it deems appropriate in the absence of proper tax documentation or as required by law, including without limitation, the Foreign Account Tax Compliance Act ("FATCA"), and shall remit such taxes to the appropriate authorities.

Representations Relating to Section 15B of the Securities Exchange Act of 1934 (Rule 15Ba1-1 et seq.) (the "Municipal Advisor Rule"). **Generac represents and warrants to Escrow Agent that for purposes of the Municipal Advisor Rules, none of the funds (if any) that it causes to be deposited in money market funds, commercial paper or treasury bills under this Agreement constitute or contain (i) proceeds of municipal securities (including investment income therefrom and monies pledged or otherwise legally dedicated to serve as collateral or a source or repayment for such securities) or (ii) municipal escrow investments (as each such term is defined in the Municipal Advisor Rule). Generac also represents and warrants to Escrow Agent that the person providing this certification has access to the appropriate information or has direct knowledge of the source of the funds to be invested to enable the forgoing representation to be made. Further, Generac acknowledges that Escrow Agent will rely on this representation until notified in writing otherwise.**

Know Your Customer. To assist in the prevention of the funding of terrorism and money laundering activities, applicable law may require financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means for the Parties: when the Parties open an account, Escrow Agent may ask for each Party's name, address, date of birth (for natural persons), and/or other information and documents that will allow Escrow Agent to identify such Party. Escrow Agent may also request and obtain certain information from third party vendors regarding any Party. To fulfill Escrow Agent's "know your customer" responsibilities and in connection with its performance of this Agreement, Escrow Agent may request information and/or documentation from each Party from time to time, including, without limitation, regarding such Party's organization, business and, to the extent applicable, beneficial owner(s) of such Party, including relevant natural or legal persons, and such Party shall procure and furnish the same to Escrow Agent in a timely manner. Any information and/or documentation furnished by any Party is the sole responsibility of such Party and Escrow Agent is entitled to rely on the information and/or documentation without making any verification whatsoever (except for the authentication under the security procedures, as applicable). Each Party represents and warrants that all such information and/or documentation is true, correct and not misleading and shall advise Escrow Agent promptly of any changes and, except as prohibited by applicable law, such Party agrees to provide complete responses to Escrow Agent's requests within the timeframes specified. If any Party fails to provide or consent to the provision of any information required by this paragraph, Escrow Agent may suspend or discontinue providing any service hereunder and resign pursuant to this Agreement.

OFAC Disclosure. Escrow Agent is required to act in accordance with the laws and regulations of various jurisdictions relating to the prevention of money laundering and the implementation of sanctions, including but not limited to regulations issued by the U.S. Office of Foreign Assets Control. Escrow Agent is not obligated to execute payment orders or effect any other transaction where the beneficiary or other payee is a person or entity with whom Escrow Agent is prohibited from doing business by any law or regulation applicable to Escrow Agent, or in any case where compliance would, in Escrow Agent's opinion, conflict with applicable law or banking practice or its own policies and procedures. Where Escrow Agent does not execute a payment order or effect a transaction for such reasons, Escrow Agent may take any action required by any law or regulation applicable to Escrow Agent including, without limitation, freezing or blocking funds. Transaction screening may result in delays in the posting of transactions.

Abandoned Property. Escrow Agent is required to act in accordance with the laws and regulations of various states relating to abandoned property, escheatment or similar law and, accordingly, shall be entitled to remit dormant funds to any state as abandoned property in accordance with such laws and regulations. Without limitation of the foregoing, notwithstanding any instruction to the contrary, Escrow Agent shall not be liable to any Party for any amount disbursed from an account maintained under this Agreement to a governmental entity or public official in compliance with any applicable abandoned property, escheatment or similar law.

Information. The Parties authorize Escrow Agent to disclose information with respect to this Agreement and the account(s) established hereunder, the Parties, or any transaction hereunder if such disclosure is: (i) necessary in Escrow Agent's good faith opinion, for the purpose of allowing Escrow Agent to perform its duties and to exercise its powers and rights hereunder or for operational or risk management purposes or compliance with legal, tax and regulatory requirements, including, without limitation, FATCA; (ii) to a proposed assignee of the rights of Escrow Agent; (iii) to a branch, affiliate, subsidiary, employee or agent of Escrow Agent or to their auditors, regulators or legal advisers or to any competent court; (iv) to the auditors of any of the Parties; or (v) required by applicable law, regardless of whether the disclosure is made in the country in which each Party resides, in which the Escrow Account is maintained, or in which the transaction is conducted. The Parties agree that such disclosures by Escrow Agent and its affiliates may be transmitted across national boundaries and through networks, including those owned by third parties.

Foreign Exchange. If Escrow Agent accepts a funds transfer instruction under this Agreement for payment in a currency (the "Non-Account Currency") other than the currency of the account (the "Account Currency"), Escrow Agent is authorized to enter into a foreign exchange transaction to sell to the Party or Parties the amount of Non-Account Currency required to complete the funds transfer and debit the account for the purchase price of the Non-Account Currency. If Escrow Agent receives a payment to the account in a Non-Account Currency, Escrow Agent is authorized to purchase the Non-Account Currency from the Party or Parties, and to credit the purchase price to the account in lieu of the Non-Account Currency. The applicable foreign exchange rate and spread for any of the foregoing transactions shall be determined by Escrow Agent in its sole discretion and may differ from foreign exchange rates and spreads at which comparable transactions are entered into with other customers or the range of foreign exchange rates or spreads at which Escrow Agent otherwise enters into foreign exchange transactions on the relevant date. Escrow Agent may generate additional profit or loss in connection with Escrow Agent's execution of a foreign exchange transaction or management of its risk related thereto in addition to the applicable spread. Further, (i) Escrow Agent has full discretion to execute such foreign exchange transactions in such manner as Escrow Agent determines in its sole discretion and (ii) Escrow Agent may manage the associated risks of Escrow Agent's own position in the market in a manner it deems appropriate without regard to the impact of such activities on the Parties. Any such foreign exchange transaction will be between Escrow Agent and a Party or Parties as principals, and Escrow Agent will not be acting as agent or fiduciary for the Parties.

Acknowledgment of Compensation and Multiple Roles. Escrow Agent is authorized to act under this Agreement notwithstanding that Escrow Agent or any of its subsidiaries or affiliates (such subsidiaries and affiliates hereafter individually called an "Affiliate" and collectively called "Affiliates") may (A) receive fees or derive earnings (float) as a result of providing an investment product or account on the books of Escrow Agent pursuant to this Agreement or for providing services or referrals with respect to investment products, or (B) (i) act in the same transaction in multiple capacities, (ii) engage in other transactions or relationships with the same entities to which Escrow Agent may be providing escrow or other services under this Agreement, (iii) refer clients to an Affiliate for services or (iv) enter into agreements under which referrals of escrow or related transactions are provided to Escrow Agent. JPMorgan Chase Bank, N.A. may earn compensation from any of these activities in addition to the fees charged for services under this Agreement.

FDIC Disclosure. In the event Escrow Agent becomes insolvent or enters into receivership, Escrow Agent may provide to the Federal Deposit Insurance Corporation ("FDIC") account balance information for any account governed by this Agreement, as reflected on Escrow Agent's end-of-day ledger balance, and the customer name and tax identification number associated with such accounts for the purposes of determining the appropriate deposit insurance coverage. Funds held in such accounts will be insured by the FDIC under its applicable rules and limits.

THE FOLLOWING DISCLOSURES ARE REQUIRED TO BE PROVIDED UNDER APPLICABLE U.S. REGULATIONS, INCLUDING, BUT NOT LIMITED TO, FEDERAL RESERVE REGULATION D. WHERE SPECIFIC INVESTMENTS ARE NOTED BELOW, THE DISCLOSURES APPLY ONLY TO THOSE INVESTMENTS AND NOT TO ANY OTHER INVESTMENT.

Demand Deposit Account Disclosure. Escrow Agent is authorized, for regulatory reporting and internal accounting purposes, to divide an escrow demand deposit account maintained in the U.S. in which the Fund is held into a non-interest bearing demand deposit internal account and a non-interest bearing savings internal account, and to transfer funds on a daily basis between these internal accounts on Escrow Agent's general ledger in accordance with U.S. law at no cost to the Parties. Escrow Agent will record the internal

accounts and any transfers between them on Escrow Agent's books and records only. The internal accounts and any transfers between them will not affect the Fund, any investment or disposition of the Fund, use of the escrow demand deposit account or any other activities under this Agreement, except as described herein. Escrow Agent will establish a target balance for the demand deposit internal account, which may change at any time. To the extent funds in the demand deposit internal account exceed the target balance, the excess will be transferred to the savings internal account, unless the maximum number of transfers from the savings internal account for that calendar month or statement cycle has already occurred. If withdrawals from the demand deposit internal account exceeds the available balance in the demand deposit internal account, funds from the savings internal account will be transferred to the demand deposit internal account up to the entire balance of available funds in the savings internal account to cover the shortfall and to replenish any target balance that Escrow Agent has established for the demand deposit internal account. If a sixth transfer is needed during a calendar month or statement cycle, it will be for the entire balance in the savings internal account, and such funds will remain in the demand deposit internal account for the remainder of the calendar month or statement cycle.

MMDA Disclosure and Agreement. If MMDA is the investment for the escrow deposit as set forth above or anytime in the future, the Parties acknowledge and agree that U.S. law limits the number of pre-authorized or automatic transfers or withdrawals or telephonic/electronic instructions that can be made from an MMDA to a total of six (6) per calendar month or statement cycle or similar period. Escrow Agent is required by U.S. law to reserve the right to require at least seven (7) days' notice prior to a withdrawal from a money market deposit account.

Unlawful Internet Gambling. The use of any account to conduct transactions (including, without limitation, the acceptance or receipt of funds through an electronic funds transfer, or by check, draft or similar instrument, or the proceeds of any of the foregoing) that are related, directly or indirectly, to unlawful Internet gambling is strictly prohibited.

Recordings. Each Party and Escrow Agent consent to the other party or parties making and retaining recordings of telephone conversations between any Party or Parties on one hand and Escrow Agent on the other hand in connection with Escrow Agent's security procedures.

Use of Electronic Records and Signatures. As used in this Agreement, the terms "writing" and "written" include electronic records, and the terms "execute", "signed" and "signature" include the use of electronic signatures. Notwithstanding any other provision of this Agreement or the attached Exhibits and Schedules, any electronic signature that is presented as the signature of the purported signer, regardless of the appearance or form of such electronic signature, may be deemed genuine by Escrow Agent in Escrow Agent's sole discretion, and such electronic signature shall be of the same legal effect, validity and enforceability as a manually executed, original, wet-inked signature. Any electronically signed agreement shall be an "electronic record" established in the ordinary course of business and any copy shall constitute an original for all purposes. The terms "electronic signature" and "electronic record" shall have the meanings ascribed to them in 15 USC § 7006. This Agreement and any instruction or other document furnished hereunder may be transmitted by facsimile or as a PDF file attached to an email.

EXHIBIT D
TO THE ARRANGEMENT AGREEMENT

PLAN OF ARRANGEMENT

PLAN OF ARRANGEMENT UNDER SECTION 192 OF THE *CANADA BUSINESS CORPORATIONS ACT*

ARTICLE 1
INTERPRETATION

1.1 Definitions

Unless indicated otherwise, where used in this Plan of Arrangement, capitalized terms used but not defined shall have the meanings ascribed thereto in the Arrangement Agreement and the following terms shall have the following meanings (and grammatical variations of such terms shall have corresponding meanings):

"**Additional Arrangement Consideration**" means those portions (if any) of the Escrow Funds, the Post-Closing Adjustment, the Earnout Consideration, and the Securityholder Representative Fund that the Company Securityholders actually become entitled to receive pursuant to the terms of the Arrangement Agreement and the Escrow Agreement.

"**Additional Per Share Arrangement Consideration**" has the meaning ascribed thereto in the Arrangement Agreement.

"**Ancillary Documents**" has the meaning ascribed thereto in the Arrangement Agreement.

"**Arrangement**" means the arrangement under section 192 of the CBCA on the terms and subject to the conditions set out in this Plan of Arrangement, subject to any amendments or variations thereto made in accordance with the terms of the Arrangement Agreement or Section 5.1 of this Plan of Arrangement or made at the direction of the Court in the Final Order with the prior written consent of the Purchaser, the Parent, the Company and the Securityholder Representative, each acting reasonably.

"**Arrangement Agreement**" means the Arrangement Agreement made as of November 1, 2021 among the Purchaser, the Parent, the Company and the Securityholder Representative (including the Schedules thereto) as the same may be amended, modified or supplemented from time to time in accordance with the terms thereof.

"**Arrangement Consideration**" means the Closing Arrangement Consideration and the Additional Arrangement Consideration.

"**Arrangement Resolution**" means the special resolution, in the form of Exhibit B to the Arrangement Agreement, to be considered and, if thought fit, passed by the requisite majority of the Company Shareholders, either unanimously in writing or at the Company Meeting to approve the Arrangement, in accordance with the Interim Order.

"**Articles of Arrangement**" means the articles of arrangement of the Company in respect of the Arrangement, required by the CBCA to be sent to the Director after the Final Order is made, which shall include this Plan of Arrangement and otherwise be in a form satisfactory to the Company and the Purchaser, each acting reasonably.

“**Business Day**” means any day except Saturday, Sunday or any other day on which commercial banks located in Waukesha, Wisconsin, USA or Toronto, Ontario, Canada are authorized or required by Law to be closed for business.

"**CanCo**" means Axcendo Innovation Corporation, an Ontario corporation and a direct wholly owned subsidiary of the Company.

"**CBCA**" means the *Canada Business Corporations Act*.

"**Certificate of Arrangement**" means the certificate of arrangement to be issued by the Director pursuant to subsection 192(7) of the CBCA in respect of the Articles of Arrangement.

“**Class B Common Shares**” means Class B Common Shares in the capital of the Company, to be created pursuant to step (2) of Section 3.3.

“**Class Y Preferred Shares**” means Class Y Preferred Shares in the capital of the Company, to be created pursuant to step (2) of Section 3.3.

“**Closing Arrangement Consideration**” has the meaning ascribed thereto in the Arrangement Agreement.

“**Closing Consideration Shares**” means the Generac Common Stock to be issued on the Effective Date pursuant to the Arrangement.

“**Closing Per Share Arrangement Consideration**” has the meaning ascribed thereto in the Arrangement Agreement.

“**Company**” means ecobee Inc., a Canadian federal corporation.

“**Company Circular**” means the notice of the Company Meeting and accompanying management proxy circular, including all schedules, appendices and exhibits to, and information incorporated by reference in, such management proxy circular, to be sent to, among others, the Company Shareholders in connection with the Company Meeting, as amended, supplemented or otherwise modified from time to time in accordance with the Arrangement Agreement.

“**Company Common Shares**” means all classes of Common Shares in the capital of the Company, including, for greater certainty, any Existing Company Common Shares and Class B Common Shares.

“**Company Derivatives**” means any securities exchangeable, convertible or exercisable for or otherwise carrying the right or obligation to acquire Company Shares, including convertible debt, Company Options, and any other rights, options or warrants to acquire Company Shares, but excluding the Company Common Shares and Company Preferred Shares.

“**Company Group**” means the Company and its subsidiaries (CanCo, USCo and UKCo), individually and collectively.

“**Company Meeting**” means the special meeting of Company Shareholders, including any adjournment or postponement of such special meeting in accordance with the terms of the Arrangement Agreement, called and held in accordance with the Interim Order to consider the

Arrangement Resolution and for any other purpose as may be set out in the Company Circular and agreed to in writing by the Purchaser.

"**Company Options**" means the options granted under the Company Stock Option Plan, including any grants made under the UK Sub-Plan of the Company Stock Option Plan.

"**Company Preferred Shares**" means, collectively, the Class A Preferred Shares, the Class B Preferred Shares and the Class C Preferred Shares, in each case in the capital of the Company.

"**Company Securities**" means, collectively, the Company Shares, the Company Options, and the Company Derivatives.

"**Company Securityholder**" means a holder of Company Securities.

"**Company Shareholder**" means a holder of Company Shares.

"**Company Shareholders' Agreement**" means the Seventh Amended and Restated Unanimous Shareholders' Agreement dated as of April 24, 2018 between the Company and the shareholders of the Company party thereto.

"**Company Shares**" means, collectively, the Company Common Shares and Company Preferred Shares.

"**Company Stock Option Plan**" means the Company's Amended and Restated Stock Option Plan for Employees and Key Persons, as amended to October 4, 2018.

"**Company Warrants**" means, collectively, the EIP Warrants and the Thomvest Warrants.

"**Consideration Shares**" means, collectively, the Closing Consideration Shares and the Earnout Consideration Shares.

"**Consideration Spreadsheet**" has the meaning ascribed thereto in the Arrangement Agreement.

"**Convertible Note Loan**" means a non-interest bearing loan advanced by Purchaser to the Company having a principal amount equal to two times (2x) the aggregate outstanding principal amount of the Convertible Notes, plus one times (1x) the unpaid interest that has accrued in respect thereof up to the Effective Date.

"**Convertible Notes**" means those certain promissory notes issued pursuant to that certain Note Purchase Agreement, dated as of May 5, 2020, by and between the Company and the persons set forth on the signature pages thereto.

"**Court**" means the Superior Court of Justice of the Province of Ontario.

"**Director**" means the Director appointed pursuant to Section 260 of the CBCA.

"**Dollars**" or "**$**" means the lawful currency of the United States, unless the context otherwise expressly provides.

“**Earnout Consideration**” has the meaning ascribed thereto in the Arrangement Agreement.

“**Earnout Consideration Shares**” means the Generac Common Stock to be issued as part of the Earnout Consideration.

“**Effective Date**” means the date shown on the Certificate of Arrangement giving effect to the Arrangement.

“**Effective Time**” means 12:01 a.m. (Toronto time) on the Effective Date, or such other time as may be specified in writing by the Company and the Purchaser before the Effective Date.

“**EIP Warrants**” has the meaning ascribed thereto in the Arrangement Agreement.

“**Encumbrance**” means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, hypothecations, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership, other than generally applicable restrictions on transfers under applicable securities laws.

“**Escrow Agent**” means JP Morgan Chase Bank, N.A.

“**Escrow Agreement**” means the Escrow Agreement to be made as of the Effective Date among the Purchaser, the Securityholder Representative and the Escrow Agent.

“**Escrow Funds**” has the meaning ascribed thereto in the Arrangement Agreement.

“**Exchange Agent**” means Computershare Trust Company, N.A., or another institutional exchange agent reasonably acceptable to the Company, as exchange agent to facilitate the payment of the Arrangement Consideration to the Company Securityholders.

“**Exercise Cut-Off Time**” means 5:00 p.m. (Toronto Time) on the day that is five Business Days prior to the Effective Date.

“**Existing Company Common Shares**” means the shares designated as "Common Shares" in the capital of the Company, which, for greater certainty, shall not include the Class B Common Shares.

“**Final Order**” means the final order of the Court approving the Arrangement under section 192 of the CBCA, in a form acceptable to the Company and the Purchaser, each acting reasonably, after a hearing upon the procedural and substantive fairness of the terms and conditions of the Arrangement, as such order may be affirmed, amended, modified, supplemented or varied by the Court (with the consent of both the Company and the Purchaser, each acting reasonably) at any time prior to the Effective Date or, if appealed and stayed pending appeal, then, unless such appeal is withdrawn or denied, as affirmed or amended (provided that any such amendment, modification, supplement or variation is acceptable to both the Company and the Purchaser, each acting reasonably) on appeal.

“**Generac Common Stock**” means the common stock, par value $0.01 per share, of Generac Holdings.

“**Generac Holdings**” means Generac Holdings Inc., a Delaware corporation and the ultimate parent company of Purchaser.

“**Generac Share Value**” has the meaning ascribed thereto in the Arrangement Agreement.

“**General Indemnification Escrow Amount**” has the meaning ascribed thereto in the Arrangement Agreement.

“**Governmental Authority**” means any federal, provincial, state, territorial, regional, municipal, local, foreign, international or supranational government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any administrative body, commission, authority, self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

“**Interim Order**” means the interim order of the Court made pursuant to section 192 of the CBCA after being informed of the intention to rely upon the exemption from registration under Section 3(a)(10) of the U.S. Securities Act with respect to the Consideration Shares issued pursuant to the Arrangement, in a form acceptable to the Company and the Purchaser, each acting reasonably, providing for, among other things, the calling and holding of the Company Meeting, as such order may be amended by the Court with the consent of the Company and the Purchaser, each acting reasonably.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority, including the terms of any Permits.

“**Letter of Transmittal**” means the letter of transmittal sent to Company Securityholders for use in connection with the Arrangement.

“**Non-Exercising Optionholder**” has the meaning ascribed thereto in step (11) of Section 3.3.

“**Non-Exercising Warrantholder**” has the meaning ascribed thereto in step (13) of Section 3.3.

“**Option Loans**” means the non-interest bearing loans made by the Purchaser to Non-Exercising Optionholders in connection with the exercise of the Company Options by such Non-Exercising Optionholders pursuant to Section 3.3 of this Plan of Arrangement, in an amount equal to the aggregate exercise price in respect of such Company Options as of the Effective Date and in accordance with the Consideration Spreadsheet.

“**Parent**” means Generac Power Systems, Inc., a Wisconsin corporation.

“**Permits**” means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

“**Person**” includes an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

“**Plan of Arrangement**” means this plan of arrangement proposed under section 192 of the CBCA, and any amendments or variations thereto made in accordance with the Arrangement Agreement or Section 5.1 of this Plan of Arrangement or made at the direction of the Court in the Final Order with the prior written consent of the Company and the Purchaser, each acting reasonably.

“**Post-Closing Adjustment**” has the meaning ascribed thereto in the Arrangement Agreement.

“**Pre-Closing Reorganization**” has the meaning ascribed thereto in the Arrangement Agreement.

“**Purchase Price Adjustment Escrow Amount**” has the meaning ascribed thereto in the Arrangement Agreement.

“**Purchaser**” means 13462234 Canada Inc., a Canadian federal corporation.

“**Reorganization Participant**” means a Company Shareholder who is a resident of Canada for purposes of the Tax Act and who has submitted a declaration of interest to the Company in writing prior to the date that is five (5) Business Days prior to the Effective Date stating that such Company Shareholder wishes to receive a capital dividend from and make a capital contribution to the Company as part of the Pre-Closing Reorganization, as described in Steps (6), (7) and (8) of Section 3.3.

“**Reorganization Shares**” means the Company Shares held by all Reorganization Participants.

“**Securityholder Representative**” means Shareholder Representative Services LLC, a Colorado limited liability company, solely in its capacity as representative, agent and attorney-in-fact of the Company Securityholders.

“**Securityholder Representative Fund**” has the meaning ascribed thereto in the Arrangement Agreement.

“**Special Indemnification Escrow Amount**” has the meaning ascribed thereto in the Arrangement Agreement.

“**Tax Act**” means the *Income Tax Act* (Canada).

“**Thomvest Warrants**” has the meaning ascribed thereto in the Arrangement Agreement.

"**UKCo**" means Cocoon Labs Ltd, a U.K. private company limited by shares (company number 09045251) whose registered office address is at 46 The Calls, Leeds, LS2 7EY and which is a direct wholly-owned subsidiary of the Company.

"**USCo**" means ecobee Ltd., a Nevada corporation and direct wholly owned subsidiary of the Company.

“**Warrant Loans**” means the non-interest bearing loans made by the Purchaser to Non-Exercising Warrantholders in connection with the exercise of Company Warrants by such Non-Exercising Warrantholders pursuant to Section 3.3 of this Plan of Arrangement, in an amount

equal to the aggregate exercise price in respect of such Company Warrants as of the Effective Date and in accordance with the Consideration Spreadsheet.

1.2 Interpretation

In this Plan of Arrangement, unless the context otherwise requires, (a) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "to the extent" means degree (and only the degree) to which a subject or other matter extends and does not simply mean "if"; and (d) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Plan of Arrangement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections and Exhibits mean the Articles and Sections of, and Exhibits attached to, this Plan of Arrangement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations or guidance promulgated thereunder.

1.3 Headings

The division of this Plan of Arrangement into Articles, sections, and other portions and the insertion of headings are for reference only and shall not affect the interpretation hereof.

1.4 Date for Any Action

If the date on which any action is required or permitted to be taken hereunder by a Person is not a Business Day, such action shall be required or permitted to be taken on the next succeeding day which is a Business Day.

1.5 References

In this Plan of Arrangement, references from or through any date mean, unless otherwise specified, from and including that date and/or through and including that date, respectively. Any reference in this Agreement to a Person includes its heirs, administrators, executors, legal personal representatives, predecessors, successors and permitted assigns. References to any contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with its terms.

1.6 Time

Time shall be of the essence in every matter or action contemplated hereunder. All times expressed herein are local time (Toronto, Ontario) unless otherwise stipulated herein.

1.7 Exchange Rate

In this Plan of Arrangement, determinations of amounts payable to the Company Securityholders with respect to Company Securities denominated in Canadian dollars or with respect to which the exercise price is denominated in Canadian dollars, shall be determined by notionally converting the Canadian dollar amount to U.S. dollars at the daily average exchange

rate published by the Bank of Canada with respect to the date that is five (5) Business Days prior to the Effective Date.

ARTICLE 2
SECURITYHOLDER REPRESENTATIVE

2.1 Securityholder Representative

In order to efficiently administer the determination of certain matters under the Arrangement Agreement and this Plan of Arrangement, Securityholder Representative, by virtue of the approval of this Plan of Arrangement, is irrevocably constituted and appointed the exclusive and lawful agent and attorney-in-fact for the Company Securityholders with respect to all matters under the Arrangement Agreement, this Plan of Arrangement and the Escrow Agreement, and is authorized to take any and all actions and make any decisions required or permitted to be taken by the Securityholder Representative pursuant to the Arrangement Agreement, this Plan of Arrangement and the Escrow Agreement, including those matters referred to in Section 10.01 of the Arrangement Agreement.

ARTICLE 3
THE ARRANGEMENT

3.1 Arrangement Agreement

This Plan of Arrangement is made pursuant to the Arrangement Agreement.

3.2 Binding Effect

(a) This Plan of Arrangement and the Arrangement, upon the filing of the Articles of Arrangement and the issuance of the Certificate of Arrangement, will become effective, and be binding on the Purchaser, the Parent, Generac Holdings, the Company, the Securityholder Representative, all registered and beneficial Company Securityholders, the Escrow Agent, the Exchange Agent and all other Persons, at and after, the Effective Time without any further act or formality required on the part of any Person, except as expressly provided herein.

(b) Except as provided in any written agreement between the Purchaser and a Company Securityholder, each Company Securityholder shall be deemed to be and to have always been a party to the Support Agreement effective on the earlier of the date of adoption of the Arrangement Resolution and the date such Company Securityholder executed or otherwise joined the Support Agreement, and shall be bound by and subject to all the terms and conditions contained therein applicable to a Supporting Securityholder (as defined in the Support Agreement), including, without limitation, Article 3 of the Support Agreement, and by extension, the indemnification obligations under Article 8 of the Arrangement Agreement. For the avoidance of doubt, (i) the aggregate liability of each Company Securityholder under the Arrangement Agreement, including liability for a breach of representation, warranty or covenant or for a claim under an indemnity, shall be several (except to the extent of any escrow, holdback or set-off rights) and not joint and several, and shall not, under any circumstances, exceed the lesser of its Pro Rata Share and the amount actually paid to such

Company Securityholder in respect of such Company Securityholder's Company Securities; and (ii) the Supporting Securityholder shall be fully responsible for the inaccuracy of any representation or warranty set forth in Article 2 of the Support Agreement made by, or breach of covenant set forth in the Support Agreement by, itself but shall not be liable for the inaccuracy of any representation or warranty made by, or breach of covenant by, any other Company Securityholder; and (iii) in no case shall the aggregate liability of a Supporting Securityholder pursuant to the Arrangement Agreement and the Ancillary Documents exceed the amount actually paid to such Supporting Securityholder pursuant to the Arrangement Agreement in respect of such Supporting Securityholder's Company Securities.

3.3 Effective Time

Commencing at the Effective Time, each of the following events or transactions shall occur and shall be deemed to occur in the following sequence, effective as at five minute intervals, without any further authorization, act or formality, in each case, unless stated otherwise:

(1) The Company Shareholders' Agreement shall be terminated and all rights and obligations of the Company, the Company Securityholders and any other former or present parties thereto before or at the Effective Time shall be forever released, discharged and terminated.

(2) The articles of incorporation of the Company shall be amended to alter the terms and conditions of the Existing Company Common Shares and provide for the creation of a new class of Class B Common Shares, an unlimited number of which shall be authorized, and a new class of Class Y Preferred Shares, an unlimited number of which shall be authorized, which Existing Company Common Shares, Class B Common Shares and Class Y Preferred Shares shall have the terms and conditions attached thereto as set forth in Exhibit A to this Plan of Arrangement.

(3) Each Existing Company Common Share that is not a Reorganization Share shall, without any further authorization, act or formality, including by or on behalf of the holders of such Existing Company Common Shares, be exchanged for one Class Y Preferred Share, and all such Existing Company Common Shares so exchanged shall be cancelled.

(4) Each Company Preferred Share that is not a Reorganization Share shall, without any further authorization, act or formality, including by or on behalf of the holders of such Company Preferred Shares, be exchanged for that number of Class Y Preferred Shares equal to the number of Existing Company Common Shares that would be issuable upon conversion of such Company Preferred Share in accordance with the terms of such Company Preferred Share, and all such Company Preferred Shares so exchanged shall be cancelled.

(5) Each Company Preferred Share that is a Reorganization Share shall, without any further authorization, act or formality, including by or on behalf of the Reorganization Participants, be converted into that number of Existing Company

Common Shares required by the terms of such Company Preferred Share, and all such Company Preferred Shares so converted shall be cancelled.

(6) The Company shall declare, out of its "capital dividend account" (within the meaning of the Tax Act), a dividend in the aggregate amount set out in Exhibit B (the "**Capital Dividend**") on the Existing Company Common Shares outstanding as of the effective time of this Step (6) (which, for greater certainty, shall include Existing Company Common Shares issued to Reorganization Participants under Step (5) of this Section 3.3 and shall not include any Existing Company Common Shares exchanged for Class Y Preferred Shares under Step (3) of this Section 3.3), and shall make an election under subsection 83(2) of the Tax Act in respect of the full amount of such Capital Dividend.

(7) The Company shall satisfy the Capital Dividend by the issuance to each Reorganization Participant of a non-interest bearing demand promissory note in an amount equal to the product obtained when (i) the aggregate amount of the Capital Dividend, is multiplied by (ii) such Reorganization Participant's pro rata share of the Existing Company Common Shares, which shall be calculated by dividing (A) the number of Existing Company Common Shares held by such Reorganization Participant at the effective time of Step (6) of this Section 3.3, by (B) the total number of Existing Company Common Shares outstanding at the effective time of Step (6) of this Section 3.3 (collectively, the "**CDA Notes**").

(8) Each Reorganization Participant shall, without any further authorization, act or formality, including by or on behalf of such Reorganization Participant, make a capital contribution to the Company on the Existing Company Common Shares held by such Reorganization Participant in an amount equal to the principal amount of such Reorganization Participant's respective CDA Note, and each such Reorganization Participant's obligation to make such capital contribution shall be satisfied in full by set-off against the principal amount of the CDA Note owing to such Reorganization Participant by the Company, which CDA Notes shall be repaid in full and cancelled, and the Company shall add an amount equal to the aggregate principal amount of the CDA Notes to the stated capital account in respect of the Existing Company Common Shares, and the fair market value of each Reorganization Participant's Existing Company Common Shares shall be increased by an amount equal to the principal amount of the respective CDA Note so contributed by the Reorganization Participant as a capital contribution.

(9) Each Class Y Preferred Share shall, without any further authorization, act or formality, including by or on behalf of the holders of such Class Y Preferred Share, be exchanged for one Class B Common Share, and all such Class Y Preferred Shares so exchanged shall be cancelled.

(10) Notwithstanding the terms of the Company Stock Option Plan or any vesting or exercise provisions to which a holder of a Company Option might otherwise be subject (whether by contract, the conditions of a grant, applicable Law, or otherwise), each Company Option issued and outstanding immediately prior to the Effective Time shall, without any further authorization, act or formality, including by or on behalf of the holders of such Company Options, be deemed to

be unconditionally vested and exercisable, and shall be amended to provide that upon exercise thereof, the holder thereof shall acquire one Class B Common Share in lieu of each Existing Company Common Share that would be issuable upon exercise of such Company Option in accordance with the terms of such Company Option immediately prior to the Effective Time.

(11) Purchaser will make an Option Loan to each holder of Company Options that has not exercised all of his, her or its Company Options prior to the Exercise Cut-Off Time (each, a "**Non-Exercising Optionholder**").

(12) Each Non-Exercising Optionholder shall, without any further authorization, act or formality, including by or on behalf of such holder, be deemed to have exercised all Company Options held by such holder, and in connection therewith, shall be deemed to direct the Purchaser to, and Purchaser shall be deemed to, pay the principal amount of the Option Loan in respect of such holder to the Company in satisfaction of the exercise price thereof and each holder of Company Options shall be deemed to have received, that number of Class B Common Shares equal to the number of Company Common Shares that would be issuable upon exercise of such Company Options in accordance with the terms of such Company Options immediately prior to the Effective Time.

(13) Purchaser will make a Warrant Loan to each holder of the Company Warrants that has not exercised all of his, her or its Company Warrants prior to the Exercise Cut-Off Time (each, a "**Non-Exercising Warrantholder**").

(14) Each Non-Exercising Warrantholder shall, without any further authorization, act or formality, including by or on behalf of such holder, be deemed to have exercised all Company Warrants held by such holder, and in connection therewith, shall be deemed to direct the Purchaser to, and Purchaser shall be deemed to, pay the principal amount of the Warrant Loan in respect of such holder to the Company in satisfaction of the exercise price thereof and each holder of Company Warrants shall be deemed to have received that number of Class B Common Shares equal to the number of Company Common Shares that would be issuable upon exercise of such Company Warrant in accordance with the terms of such Company Warrant.

(15) With respect to each Company Option and Company Warrant deemed to be exercised in accordance with steps (12) and (14), respectively, of this Section 3.3, the following shall be deemed to have occurred:

(i) each holder thereof shall cease to be a holder of such Company Option or Company Warrant and such holder's name shall be removed from each applicable register maintained by the Company;

(ii) all such Company Options, the Company Stock Option Plan, the Company Warrants and all agreements relating to the Company Options and Company Warrants shall be terminated and shall be of no further force and effect; and

(iii) each such holder shall thereafter have only the right to receive the consideration, if any, to which such holder is entitled pursuant to step (16) of this Section 3.3.

(16) Each Company Share outstanding immediately prior to this step (16) shall, without any further authorization, act or formality, including by or on behalf of the Company Securityholders, be deemed to be assigned and transferred by the holder thereof to the Purchaser free and clear of all Encumbrances in exchange for

(i) the Closing Per Share Arrangement Consideration for each such Company Share, provided that:

(A) the Closing Cash Consideration and Closing Consideration Shares (valued at the Generac Share Value of such Closing Consideration Shares) otherwise payable to each Non-Exercising Optionholder in respect of his or her Company Shares issued pursuant to step (12) of this Section 3.3, shall be proportionately reduced in an aggregate amount equal to the principal amount of such Non-Exercising Optionholder's Option Loan, and such amount shall be satisfied by way of set-off against such Option Loan as set forth under step (17)(iv) of this Section 3.3; and

(B) the Closing Cash Consideration and Closing Consideration Shares (valued at the Generac Share Value of such Closing Consideration Shares) otherwise payable to each Non-Exercising Warrantholder in respect of his, her or its Company Shares issued pursuant to step (14) of this Section 3.3, shall be proportionately reduced in an aggregate amount equal to the principal amount of such Non-Exercising Warrantholder's Warrant Loan, and such amount shall be satisfied by way of set-off against such Warrant Loan as set forth under step (17)(v) of this Section 3.3; and

(ii) the right to receive any Additional Per Share Arrangement Consideration that may become payable in respect of each such Company Share in the future as provided in the Arrangement Agreement and the Escrow Agreement, in each case, at the respective times and subject to the contingencies specified therein.

(17) With respect to each Company Share deemed to be assigned and transferred in accordance with step (16) of this Section 3.3, the following shall be deemed to have occurred:

(i) each such Company Shareholder shall cease to be the registered holder and beneficial owner of such Company Shares and to have any rights as a Company Shareholder other than the right to be paid the applicable Arrangement Consideration in accordance with this Plan of Arrangement;

(ii) each such Company Shareholder's name shall be removed from the registers of Company Shares maintained by or on behalf of the Company;

(iii) the Purchaser shall be deemed to be the transferee of all such Company Shares (free and clear of any Encumbrances) and shall be entered in the registers of Company Shares maintained by or on behalf of the Company;

(iv) each Non-Exercising Optionholder's Option Loan shall be fully paid and satisfied by set-off against the Closing Arrangement Consideration otherwise payable by the Purchaser in respect of the Company Shares issued pursuant to step (12) of this Section 3.3, to be effected on a pro rata basis based on the total value of Closing Cash Consideration and Closing Consideration Shares (valued using the Generac Share Value of such Closing Consideration Shares) that would otherwise be delivered by the Purchaser in respect of the Company Shares issued upon exercise of such Company Options; and

(v) each Non-Exercising Warrantholder's Warrant Loan shall be fully paid and satisfied by set-off against the Closing Arrangement Consideration otherwise payable by the Purchaser in respect of the Company Shares issued pursuant to step (14) of this Section 3.3, to be effected on a pro rata basis based on the total value of Closing Cash Consideration and Closing Consideration Shares (valued using the Generac Share Value of such Closing Consideration Shares) that would otherwise be delivered by the Purchaser in respect of the Company Shares issued upon exercise of such Company Warrant.

(18) The Purchaser shall advance the Convertible Note Loan to the Company and each Convertible Note outstanding immediately prior to the Effective Time, notwithstanding the terms of the Convertible Note, shall, without any further authorization, act or formality, including by or on behalf of the holder of such Convertible Note, be deemed to be assigned and transferred by such holder to the Company in exchange for a cash payment from the Company (subject to Section 4.5) equal to the sum of (i) two times (2x) the outstanding principal amount thereof, plus (ii) one times (1x) the accrued but unpaid interest thereunder.

(19) With respect to each Convertible Note deemed to be assigned and transferred in accordance with step (18) of this Section 3.3, the following shall be deemed to have occurred:

(i) each holder thereof shall cease to be a holder of such Convertible Note and such holder's name shall be removed from the register for Convertible Notes maintained by the Company;

(ii) all such Convertible Notes and all agreements relating to the Convertible Notes shall be terminated and shall be of no further force and effect; and

(iii) each such holder shall thereafter have only the right to receive the consideration to which such holder is entitled pursuant to step (18) of this Section 3.3.

(20) The directors and officers of the Company as of immediately prior to the Effective Time shall cease to be the directors and officers of the Company, and shall be replaced by the nominees designated by the Purchaser prior to the Effective Time, each to serve in accordance with the Company Constating Documents.

ARTICLE 4
CERTIFICATES AND PAYMENTS

4.1 Payment Mechanics

(a) Following the receipt of the Final Order and prior to the filing of the Articles of Arrangement, the Purchaser shall deposit, or arrange to be deposited:

(i) with the Escrow Agent, the General Indemnification Escrow Amount, the Special Indemnification Escrow Amount and the Purchase Price Adjustment Escrow Amount;

(ii) to an account designated in writing by the Securityholder Representative, the Securityholder Representative Fund; and

(iii) with the Exchange Agent and for the benefit of Company Securityholders, the cash (in U.S. Dollars) and shares of Generac Common Stock to which each such Company Securityholder is entitled to receive pursuant to Section 3.3, as applicable, upon the transfer of the Company Securities to the Purchaser or the Company, as applicable, plus sufficient funds to satisfy any aggregate cash payment in lieu of fractional shares of Generac Common Stock in accordance with Section 4.3, which cash and shares of Generac Common Stock shall be held by the Exchange Agent, following the Effective Time, as agent and nominee for such former Company Securityholder for distribution to such former holders in accordance with the provisions of this Article 4.

(b) Upon surrender by a Company Securityholder to the Exchange Agent for cancellation of a certificate which, immediately prior to the Effective Time, represented outstanding Company Securities that were transferred pursuant to Section 3.3, together with a duly completed and executed Letter of Transmittal and such additional documents and instruments as the Purchaser, Parent, Generac Holdings or the Exchange Agent may reasonably require, such holder of Company Securities represented by such surrendered certificate(s) shall be entitled to receive in exchange therefor, and the Exchange Agent shall use commercially reasonable efforts to deliver to such Company Securityholder, as soon as practicable after the Effective Time (but in any event prior to the later of (i) the Effective Date or (ii) the third Business Day after receipt of a duly completed Letter of Transmittal) the portion of the applicable Closing Arrangement Consideration which such holder has the right to receive under the Arrangement in respect of such Company Securities, less any amounts withheld pursuant to Section 4.5, and any certificate so surrendered shall forthwith be cancelled. For the avoidance of doubt, Arrangement Consideration shall not be payable to a Company Securityholder until such Letter of Transmittal and related documents are duly completed and received by the Exchange Agent.

(c) Purchaser (or the Exchange Agent acting pursuant to authority delegated by Purchaser) shall have authority to reasonably determine whether a Letter of Transmittal has been duly completed, and may in its sole discretion waive the requirement of a Letter of Transmittal or any irregularity therewith. Notwithstanding the foregoing, the Exchange Agent shall not be responsible for paying the portion of any Closing Arrangement Consideration that is to be paid through the Company's payroll.

(d) Until surrendered as contemplated by this Section 4.1, each certificate that immediately prior to the Effective Time represented Company Securities shall be deemed after the Effective Time to represent only the right to receive upon such surrender the portion of the applicable Closing Arrangement Consideration which such holder has the right to receive under the Arrangement in respect of such Company Securities, less any amounts withheld pursuant to Section 4.5.

(e) If any portion of the Arrangement Consideration is to be paid to a Person other than the Person in whose name the corresponding Company Security is registered, it shall be a condition to such payment that (i) such Company Security shall be properly endorsed or shall otherwise be in proper form for transfer, and (ii) the Person requesting such payment shall pay to Parent or the Exchange Agent any transfer or other Tax required as a result of such payment to a Person other than the registered holder of such certificate or establish to the reasonable satisfaction of Parent or the Exchange Agent that such Tax has been paid or is not payable.

(f) Any portion of the Closing Arrangement Consideration deposited with the Exchange Agent that remains unclaimed by any Company Securityholder one year after the Effective Time shall be returned to Purchaser upon demand, and any such Company Securityholder shall thereafter look only to Purchaser for payment of the Arrangement Consideration. Any portion of the Closing Arrangement Consideration remaining unclaimed by Company Securityholders six years after the Effective Date shall become, to the extent permitted by applicable Law, the property of Purchaser free and clear of any claims or interest of any Person previously entitled thereto.

4.2 Release of Funds

The Additional Arrangement Consideration shall be dealt with and paid out in accordance with the Arrangement Agreement and the Escrow Agreement, as applicable.

4.3 No Fractional Shares

Unless otherwise determined by Generac Holdings, no fractional shares of Generac Common Stock will be issued pursuant to this Plan of Arrangement, and notwithstanding anything to the contrary contained herein or in the Arrangement Agreement, any fractional shares of Generac Common Stock otherwise issuable will be rounded down to the nearest whole number and any holder of Company Shares that otherwise would be entitled to receive a fractional share of Generac Common Stock shall instead receive, together with the payment of the Closing Arrangement Consideration, a cash payment by the Purchaser equal to the product of (i) such fractional share number multiplied by (ii) the Generac Share Value.

4.4 Lost Certificates

In the event any certificate which immediately prior to the Effective Time represented one or more outstanding Company Securities that were transferred pursuant to step (16) in Section 3.3 shall have been lost, stolen or destroyed, then in lieu of delivery of such certificate the holder thereof may deliver an affidavit of that fact by the Person claiming such certificate to be lost, stolen or destroyed, together with, to the extent required by Purchaser or the Exchange Agent, such provision to indemnify the Purchaser and the Company in a manner satisfactory to the Purchaser and the Company, acting reasonably, against any claim that may be made against the Purchaser and the Company with respect to the certificate alleged to have been lost, stolen or destroyed.

4.5 Withholding Rights

Each of Purchaser, the Company, the Exchange Agent, the Escrow Agent, and any other applicable withholding agent or other Person that makes a payment hereunder (each, a "**Withholding Agent**") shall be entitled to deduct and withhold (or cause to be deducted and withheld) from the amounts otherwise payable to any Person pursuant to this Plan of Arrangement, the Arrangement Agreement, or the Ancillary Documents, such amounts as is required to be deducted and withheld with respect to the making of such payment (or in connection with the underlying transactions that lead to such payment, including the vesting or exercise of Company Derivatives and any loan made in connection therewith) under any provision of Law. A Withholding Agent may satisfy any such amounts by deducting and withholding a proportionate amount of the Closing Cash Consideration and Closing Consideration Shares (valued at the Generac Share Value of such Closing Consideration Shares) otherwise payable with respect to Company Securities of such Person. To the extent that amounts are so deducted and withheld and remitted to the applicable tax authority, such amounts shall be treated for all purposes hereof as having been paid to the Person in respect of which such deduction and withholding was made. Without limiting the generality of the foregoing, each UK based Company Securityholder with Company Options agrees to the deduction from payments due in respect of Company Securities of any income Tax and employee's and employer's National Insurance contributions which fall to be paid by HM Revenue & Customs by the Company Group under the PAYE system as it applies to income Tax under the Income Tax (Earnings and Pensions) Act 2003 and the PAYE regulations referred to in it or as modified for the purposes of national insurance contributions.

4.6 No Encumbrances

Any exchange or transfer of Company Securities pursuant to this Plan of Arrangement shall be free and clear of any and all Encumbrances of any kind whatsoever.

4.7 Paramountcy

From and after the Effective Time: (a) this Plan of Arrangement shall take precedence and priority over any and all securities of the Company issued and outstanding prior to the Effective Time, including any Company Securities; and (b) all actions, causes of action, claims or proceedings (actual or contingent and whether or not previously asserted) based on or in any way relating to any securities of the Company are deemed to have been settled, compromised, released and determined without liability except as set forth herein.

ARTICLE 5
AMENDMENTS

5.1 Amendments to Plan of Arrangement

(a) The Company and the Purchaser may amend, modify and/or supplement this Plan of Arrangement at any time and from time to time prior to the Effective Time, provided that each such amendment, modification and/or supplement must (i) be set out in writing, (ii) be approved by the Company and the Purchaser, each acting reasonably, (iii) filed with the Court and, if the Company Meeting is held and such amendment, modification and/or supplement is made following the Company Meeting, approved by the Court, unless such amendment, modification and/or supplement concerns a matter which, in the reasonable opinion of the Purchaser and the Company, is of an administrative nature, and (iv) communicated to Company Securityholders, if and as required by the Court.

(b) If the Company Meeting is held, any amendment, modification or supplement to this Plan of Arrangement may be proposed by the Company and the Purchaser at any time prior to the Company Meeting (provided that the Company and the Purchaser, each acting reasonably, as applicable, shall have consented thereto) with or without any other prior notice or communication, and if so proposed and accepted by the Persons voting at the Company Meeting (other than as may be required under the Interim Order), shall become part of this Plan of Arrangement for all purposes.

(c) Any amendment, modification or supplement to this Plan of Arrangement that is approved or directed by the Court shall be effective only if (i) it is consented to by each of the Company and the Purchaser (in each case, acting reasonably), and (ii) if required by the Court, it is consented to by Company Securityholders, voting in the manner directed by the Court.

(d) Any amendment, modification or supplement to this Plan of Arrangement may be made following the Effective Date unilaterally by the Purchaser, provided that it concerns a matter which, in the reasonable opinion of the Purchaser, is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement and is not adverse to the financial or economic interests of any former Company Securityholder.

ARTICLE 6
MISCELLANEOUS

6.1 Further Assurances

Notwithstanding that the transactions and events set out herein shall occur and shall be deemed to occur in the order set out in this Plan of Arrangement without any further act or formality, each of the parties to the Arrangement Agreement shall make, do and execute, or cause to be made, done and executed, all such further acts, deeds, agreements, transfers, assurances, instruments or documents as may reasonably be required by either of them in order further to document or evidence any of the transactions or events set out herein.

6.2 U.S. Securities Law Matters

Notwithstanding any provision herein to the contrary, this Plan of Arrangement will be carried out with the intention that all Consideration Shares to be issued to Company Securityholders in exchange for their Company Securities pursuant to this Plan of Arrangement, as applicable, will be issued and exchanged in reliance on the exemption from the registration requirements of the U.S. Securities Act as provided by section 3(a)(10) thereof, and pursuant to the terms, conditions and procedures set forth in the Arrangement Agreement.

Exhibit A
Amended Share Terms

SCHEDULE A
ARTICLES OF AMENDMENT ECOBEE INC.

The Articles of the Corporation are amended:

A. Authorized and Issued Capital

1. To create a class of shares to be designated as "Class B Common Shares" and to create a class of shares to be designated as "Class Y Preferred Shares".

2. After giving effect to the foregoing, the classes and maximum number of shares that the Corporation is authorized to issue shall be: (a) up to 38,056,396 Class A Preferred Shares; (b) up to 12,633,329 Class B Preferred Shares; (c) up to 19,859,001 Class C Preferred Shares; (d) an unlimited number of Common Shares; (e) an unlimited number of Class B Common Shares and (f) an unlimited number of Class Y Preferred Shares.

3. To provide that the rights, privileges, restrictions and conditions attaching to the Class A Preferred Shares, the Class B Preferred Shares, the Class C Preferred Shares (collectively, the "Existing Preferred Shares") and the Class Y Preferred Shares (collectively with the Existing Preferred Shares, the "**Preferred Shares**"), the Common Shares, and the Class B Common Shares of the Corporation, respectively, are set out in the attached Schedule I.

Schedule I

1. LIQUIDATION RIGHTS

1.1 **Liquidation Payments**. In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, or in the event of any Deemed Liquidation Event (as defined below) (any such liquidation, dissolution or winding up, or Deemed Liquidation Event, a "**Liquidation Event**"), unless the holders of at least sixty-six and two-thirds percent (66-2/3%) of the then outstanding Preferred Shares (which approval must include the approval of the Class B Investors Majority (as defined in the USA) and the Class C Investors Majority (as defined in the USA)) elect otherwise by written notice given to the Corporation on or prior to the effective date of the relevant event, the holders of each Preferred Share shall be entitled preferentially by class to be paid first out of the assets of the Corporation available for distribution to holders of shares in the capital of the Corporation, of all classes, as follows:

(a) first, prior and in preference to all other shares in the capital of the Corporation, to the holders of Class C Preferred Shares, an amount per outstanding Class C Preferred Share (such amount per outstanding Class C Preferred Share, the "**Class C Liquidation Price**") equal to the greater of:

(i) the Original Issue Price (as defined in Section 2.5(a)) of such Class C Preferred Share, together with (A) all dividends declared thereon and unpaid; and (B) all undeclared dividends that would be payable on such share immediately prior to such Liquidation Event pursuant to the cumulative dividend entitlement set out at Section 5.2;

(ii) such amount per Class C Preferred Share as would have been payable had all classes of Preferred Shares been converted to Common Shares or Class B Common Shares, as the case may be, pursuant to the provisions of Section 2 immediately prior to such Liquidation Event; provided, that the outstanding Class C Preferred Shares need not actually be converted in order to receive the payment described in this Section 1.1(a)(ii); and

If, upon the occurrence of any such event, the assets of the Corporation thus distributed among the holders of the outstanding Class C Preferred Shares shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the assets of the Corporation available for distribution shall be distributed ratably among the holders of the outstanding Class C Preferred Shares in proportion to the full preferential amount that each such holder is otherwise entitled to receive under this Section 1.1(a), were such preferential amount to be paid in full.

(b) second, after the payment of all preferential amounts required to be paid first to the holders of outstanding Class C Preferred Shares, but prior and in preference to the Class A Preferred Shares, the Class Y Preferred Shares, the Common Shares and the Class B Common Shares, to the holders of Class B Preferred Shares, an amount

per outstanding Class B Preferred Share (such amount per outstanding Class B Preferred Share, the "**Class B Liquidation Price**") equal to the greater of:

(i) the Original Issue Price of such Class B Preferred Share, together with (A) all dividends declared thereon and unpaid; and (B) all undeclared dividends that would be payable on such share immediately prior to such Liquidation Event pursuant to the cumulative dividend entitlement set out in Section 5.3;

(ii) such amount per Class B Preferred Share as would have been payable had all classes of Preferred Shares been converted to Common Shares or Class B Common Shares, as the case may be, (excluding the conversion of the Class C Preferred Shares if they are to be paid pursuant to Section 1.1(a)(i)) pursuant to the provisions of Section 2 immediately prior to such Liquidation Event; provided, that the outstanding Class B Preferred Shares need not actually be converted in order to receive the payment described in this Section 1.1(b)(ii); and

If, upon the occurrence of any such event, the assets of the Corporation thus distributed among the holders of the outstanding Class B Preferred Shares shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire remaining assets of the Corporation available for distribution (after payment in full in accordance with Section 1.1(a)) shall be distributed ratably among the holders of the outstanding Class B Preferred Shares in proportion to the full preferential amount that each such holder is otherwise entitled to receive under this Section 1.1(b), were such preferential amount to be paid in full.

(c) next, after the payment of all preferential amounts required to be paid first to the holders of outstanding Class C Preferred Shares and Class B Preferred Shares, but prior and in preference to the Class Y Preferred Shares, the Common Shares and the Class B Common Shares, to the holders of Class A Preferred Shares, an amount per outstanding Class A Preferred Share (such amount per outstanding Class A Preferred Share, the "**Class A Liquidation Price**") equal to the greater of:

(i) the Original Issue Price of such Class A Preferred Share, together with all dividends declared thereon and unpaid;

(ii) such amount per Class A Preferred Share as would have been payable had all classes of Preferred Shares been converted to Common Shares or Class B Common Shares, as the case may be, (excluding the conversion of the Class C Preferred Shares and/or Class B Preferred Shares if they are to be paid pursuant to Section 1.1(a)(i) and Section 1.1(b)(i), respectively) pursuant to the provisions of Section 2 immediately prior to such Liquidation Event; provided, that the outstanding Class A Preferred Shares need not actually be converted in order to receive the payment described in this Section 1.1(c)(ii); and

If, upon the occurrence of any such event, the assets of the Corporation thus distributed among the holders of the outstanding Class A Preferred Shares shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire remaining assets of the Corporation available for distribution (after payment in full in accordance with Sections 1.1(a) and 1.1(b)) shall be distributed ratably among the holders of the outstanding Class A Preferred Shares in proportion to the full preferential amount that each such holder is otherwise entitled to receive under this Section 1.1(c), were such preferential amount to be paid in full.

(d) next, after payment of all preferential amounts required to be paid first to the holders of the outstanding Class C Preferred Shares, the Class B Preferred Shares and the Class A Preferred Shares, but prior and in preference to the Common Shares and the Class B Common Shares, to the holders of Class Y Preferred Shares, an amount per outstanding Class Y Preferred Share equal to the Class Y Redemption Amount (as defined below). If, upon the occurrence of any such event, the assets of the Corporation thus distributed among the holders of the outstanding Class Y Preferred Shares shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire remaining assets of the Corporation available for distribution (after payment in full in accordance with Sections 1.1(a), 1.1(b) and 1.1(c)) shall be distributed ratably among the holders of the outstanding Class Y Preferred Shares in proportion to the full preferential amount that each such holder is otherwise entitled to receive under this Section 1.1(d), were such preferential amount to be paid in full.

The amounts payable with respect to Preferred Shares under this Section 1.1 are hereinafter referred to as the "**Preferred Share Liquidation Payments**".

1.2 **Distribution After Payment of Preferred Share Liquidation Payments**. After the full Preferred Share Liquidation Payments have been made to the holders of Preferred Shares, the entire remaining assets and funds of the Corporation legally available for distribution to shareholders shall be distributed ratably among the holders of the outstanding Common Shares and Class B Common Shares.

1.3 **Distribution Other than Cash**. Whenever the distributions provided for in this Section 1 shall be payable in property other than cash, the value of such distribution shall be the fair market value of such property as determined in good faith by the Board. Upon such determination, the Corporation shall promptly notify each holder of outstanding Preferred Shares of such determination, providing a reasonably detailed basis for the same (the "**FMV Statement**"), and such FMV Statement shall be binding on the Corporation and its shareholders unless, within fifteen (15) days after delivery of the FMV Statement, the holders of at least thirty-three percent (33%) of the then outstanding Class C Preferred Shares notify the Corporation in writing (a "**Dispute Notice**") that such holders dispute the determination of value set forth in the FMV Statement, specifying in reasonable detail the nature of the dispute and the basis therefor. In the event that the Dispute Notice is timely delivered as provided above, the Corporation and such disputing holders shall in good faith resolve any dispute and the FMV Statement, as amended to the extent necessary to reflect

the resolution of the dispute, shall be conclusive and binding on the Corporation and its shareholders. In the event the Corporation and the disputing holders of Class C Preferred Shares fail to agree on the value of the property, rights or securities to be distributed under this Section 1.3 within fifteen (15) days after delivery of the Dispute Notice, the matter shall be submitted to a mutually agreed third party valuation expert. The determination of such third party valuation expert of the value of the property, rights or securities to be distributed under this Section 1.3 shall be conclusive and binding on the Corporation and its shareholders. The costs for such third party valuation expert shall be borne and paid as to 50% by the holders of the Class C Preferred Shares (pro rata among them, based upon relative ownership of outstanding Class C Preferred Shares) and as to 50% by the Corporation.

1.4 **Sale of Assets as Liquidation, etc**. In addition to any approval required pursuant to the *Canada Business Corporations Act*, the approval of shareholders of the Corporation pursuant to Sections 5.11 or 7.5 of the USA, as applicable, shall be required to authorize and approve any liquidation, dissolution or winding up of the Corporation (whether voluntary or involuntary) or to authorize and approve any of the following transactions (each, a "**Deemed Liquidation Event**"): (a) any sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all of the assets and/or intellectual property of the Corporation and its subsidiaries taken as a whole (including by means of the sale of securities of, or merger, amalgamation, or consolidation of one or more subsidiaries of the Corporation); or (b) any share sale, merger, amalgamation, consolidation or other business combination following which the holders of the Corporation's voting shares as of immediately prior to such share sale, merger, amalgamation, consolidation or other business combination hold less than fifty percent (50%) of the voting shares as of immediately after such merger, amalgamation, consolidation or other business combination, but in any event, excluding (i) any share sale, merger, amalgamation, consolidation or other business combination effected exclusively for the purpose of changing the domicile of the Corporation and immediately following which the shareholders of the Corporation hold the outstanding share capital of the successor, acquiring or resulting entity in the same proportions (both in the aggregate and on a relative basis) as held in the Corporation as of immediately prior to such transaction, and (ii) the issuance by the Corporation of newly-issued shares in the capital of the Corporation to one or more investors for the primary purpose of raising capital for the Corporation in a transaction approved in accordance with and otherwise permitted by the USA. If a transaction under clause (a) of the definition of Deemed Liquidation Event is consummated (in whole or in part), all consideration received by the Corporation in such Deemed Liquidation Event less all costs and expenses related to such sale and any debt required to be paid as a result of such Deemed Liquidation Event together with all other available assets of the Corporation shall be distributed in accordance with Section 1.6 toward the amounts payable with respect to the Preferred Shares under Section 1.1.

For greater certainty, if a Deemed Liquidation Event does not result in the sale of all of the shares of the Corporation, or a sale of all or substantially all of the assets and/or intellectual property of the Corporation and its subsidiaries (taken as a whole), subsequent Deemed

Liquidation Events shall result in the reapplication of the relevant clauses in these share provisions.

1.5 **Allocation of Escrow and Contingent Consideration.** In the event of a Deemed Liquidation Event pursuant to Section 1.4, if any portion of the consideration payable to the shareholders of the Corporation is deferred or otherwise payable only upon satisfaction of contingencies (the "**Additional Consideration**"), the Transaction Agreement (as defined below) shall provide that: (a) the portion of such consideration that is not Additional Consideration (such portion, the "**Initial Consideration**") shall be allocated among the shareholders of the Corporation in accordance with Sections 1.1 and 1.2 as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event; and (b) any Additional Consideration which becomes payable to the shareholders of the Corporation shall be allocated among the shareholders of the Corporation in accordance with Sections 1.1 and 1.2 after taking into account the previous payment of the Initial Consideration as part of the same transaction. If the aggregate per share consideration paid to all holders of shares in connection with the Initial Consideration and the Additional Consideration (determined on a per share as-converted basis and without application of Section 1.1(a)(i), Section 1.1(b)(i) or Section 1.1(c)(i)) is greater than the aggregate per share consideration that a Preferred Share would have received under Section 1.1(a)(i), Section 1.1(b)(i) or Section 1.1(c)(i), as applicable, then such excess shall be distributed ratably among the holders of all Preferred Shares and Common Shares on an as-converted basis with the portion of such excess distributable in respect of the Class C Preferred Shares, Class B Preferred Shares and Class A Preferred Shares being reduced by the amount such shares received previously pursuant to payment of the Initial Consideration in accordance with Section 1.1. For the purposes of this Section 1.5, consideration payable to the shareholders of the Corporation in connection with such Deemed Liquidation Event that is (i) placed into escrow or retained as holdback to be available for satisfaction of indemnification or similar obligations, (ii) payable on a deferred basis, and/or (iii) subject to any conditions or contingencies (including any earn-out), shall be deemed Additional Consideration.

1.6 **Effecting a Deemed Liquidation Event**. The Corporation shall not have the power to effect a Deemed Liquidation Event unless the agreement of merger, amalgamation, or consolidation, or other sale or acquisition agreement(s), for such transaction (as the case may be, the "**Transaction Agreement**") provides that the consideration payable to the shareholders of the Corporation shall be allocated among the holders of shares in the capital of the Corporation in accordance with Sections 1.1 and 1.2. In the event of a transaction under clause (a) of the definition of Deemed Liquidation Event, if the Corporation does not effect a liquidation and dissolution of the Corporation under applicable law within ninety (90) days after the completion of such Deemed Liquidation Event, then (i) the Corporation shall deliver a written notice (the "**Redemption Notice**") to each holder of Preferred Shares no later than the ninetieth (90^{th}) day after the completion of such Deemed Liquidation Event, advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of this Section 1.6 to require the redemption of such Preferred Shares by the Corporation; and (ii) if either (A) the holders of at least sixty-six and two-thirds percent (66-2/3%) of the then outstanding Preferred Shares (which approval must include the approval of the Class B Investors Majority and the Class C Investors Majority)

(the "**Electing Preferred Holders**"), or (B) the holders of at least thirty-three percent (33%) of the then outstanding Class C Preferred Shares (the "**Electing Class C Preferred Holders**"), so request in a written instrument (in either case, the "**Election Notice**") delivered to the Corporation not later than one hundred twenty (120) days after the completion of such Deemed Liquidation Event, or (if later) thirty (30) days after receipt of the Redemption Notice from the Corporation, the Corporation shall use the consideration received by the Corporation from such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board, together with any other assets of the Corporation available for distribution to its shareholders (the "**Available Proceeds**")), to the extent legally available therefor, on the later of one hundred fifty (150) days after the completion of such Deemed Liquidation Event, or (if later) thirty (30) days after the Corporation's receipt of the Election Notice (as the case may be, the "**Redemption Date**"), to (1) if the Election Notice is delivered by the Electing Preferred Holders, redeem all outstanding Preferred Shares at a price per share equal to the Class C Liquidation Price, the Class B Liquidation Price or the Class A Liquidation Price, as applicable, in each case, in accordance with Section 1.1, or (2) if the Election Notice is delivered by the Electing Class C Preferred Holders, redeem all outstanding Class C Preferred Shares (other than Class C Preferred Shares held by Opt-Out Holders, as described below) at a price per Class C Preferred Share equal to the Class C Liquidation Price in accordance with Section 1.1; provided, that, if the Electing Class C Preferred Holders represent less than a Class C Investors Majority, then the Corporation shall promptly (but in no event more than three (3) days following the Corporation's receipt of the Election Notice) deliver a copy of the Election Notice to each holder of then outstanding Class C Preferred Shares who or which has not submitted, or is otherwise not a party to, such Election Notice (each, a "**Non-Election Holder**"), and shall give each such Non-Election Holder the option, exercisable by such Non-Election Holder by written notice to the Corporation and the Electing Class C Preferred Holders within ten (10) days following such holder's receipt of the Election Notice, to opt out (with respect to such Non-Election Holder and its Class C Preferred Shares only) of the redemption of their Class C Preferred Shares, and if a Non-Election Holder exercises such opt-out right (each such Holder exercising such Holder's opt-out right, an "**Opt-Out Holder**"), the Class C Preferred Shares of such Opt-Out Holder shall not be redeemed in connection with such redemption request by the Electing Class C Preferred Holders, but the Class C Preferred Shares of the Electing Class C Preferred Holders, and of each Non-Election Holder who or which is not an Opt-Out Holder, shall be redeemed as provided in this Section 1.6.

The Redemption Notice shall state (A) the scheduled Redemption Date and the amounts of the applicable Preferred Share Liquidation Payments for the various classes of Preferred Shares (as applicable) required to be redeemed hereby, (B) the date upon which the holder's right to convert the Preferred Shares held by such holder terminates (as determined in accordance with Section 2), and (C) that the holder is to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the applicable Preferred Shares. Notwithstanding the foregoing, in the event of a redemption pursuant to this Section 1.6, if the Available Proceeds are not sufficient to redeem all of the applicable outstanding Preferred Shares required to be redeemed hereby pursuant to the Election Notice, or if the Corporation does not have sufficient lawfully available funds to effect such redemption, the Corporation shall (in accordance with the

relative priorities and preferences of the classes of Preferred Shares as set forth in Section 1.1) redeem a pro rata portion of each holder's Preferred Shares to be so redeemed (in proportion to the full preferential amount that each such holder of the relevant class of Preferred Shares is otherwise entitled to receive upon such redemption, were such preferential amount to be paid in full) to the fullest extent of such Available Proceeds or such lawfully available funds, as the case may be, and, where such redemption is limited by the amount of lawfully available funds, the Corporation shall redeem the remaining shares to have been redeemed as soon as practicable, and to the maximum extent legally permissible, after the Corporation has funds legally available therefor from time to time in accordance with Section 1.1.

Prior to the distribution or redemption provided for in this Section 1.6, the Corporation shall not expend or dissipate the Available Proceeds except to discharge expenses incurred in connection with such Deemed Liquidation Event. Notwithstanding anything to the contrary contained in this Section 1.6, if the consideration received pursuant to a transaction under clause (a) of the definition of Deemed Liquidation Event is not cash, and the Board determines, acting in good faith, that the distribution of such consideration (or the monetization of such consideration for purposes of distributing the proceeds pursuant to this Section 1.6) would impair the value of such consideration, the Board may delay or postpone the time periods set out in this Section 1.6, but in no event in excess of ninety (90) days in total, among all such delays or postponements combined.

1.7 **Notice**. Written notice of any proposed liquidation, dissolution or winding up of the affairs of the Corporation or any Deemed Liquidation Event, stating a payment date, the amount of the Preferred Share Liquidation Payments by class and the place where such Preferred Share Liquidation Payments shall be payable, shall be delivered by the Corporation to the holders of Preferred Shares not less than fifteen (15) days prior to the proposed date of such proposed liquidation, dissolution or winding up or Deemed Liquidation Event.

2. CONVERSION

The holders of Preferred Shares shall have conversion rights as follows (the "**Conversion Rights**"):

2.1 **Optional Conversion**. Each Existing Preferred Share shall be convertible, without the payment of any additional consideration by the holder thereof and at the option of the holder thereof, at any time after the Class C Original Issue Date (as hereinafter defined) at the office of the Corporation or any transfer agent for the Preferred Shares, into such number of fully paid and non-assessable Common Shares as is determined by making the following calculation. Each Existing Preferred Share shall be converted into that number of fully paid and non-assessable Common Shares determined by multiplying each such share by the ratio determined by dividing the applicable Original Issue Price by the Conversion Price in effect at the time of conversion. The "**Conversion Price**" for a given Existing Preferred Share shall initially be its Original Issue Price, subject to adjustment as hereinafter provided. Each Class Y Preferred Share shall be convertible, without the payment of any additional consideration by the holder thereof and at the option of the holder thereof, at the office of the Corporation or any transfer agent for the Preferred

Shares, into such number of fully paid and non-assessable Class B Common Shares the value of which is equal to the Class Y Redemption Amount of such Class Y Preferred Share.

2.2 **Mechanics of Optional Conversions**. Before any holder of Preferred Shares shall be entitled to convert the same into Common Shares or Class B Common Shares, as the case may be, the holder shall surrender the certificate or certificates therefor (or, if such holder alleges that such certificate has been lost, stolen or destroyed, provide the Corporation with a lost certificate affidavit and a reasonable and appropriate indemnity agreement on account of the alleged loss, theft or destruction of such certificate) at the office of the Corporation or of any transfer agent for Preferred Shares, and shall give written notice to the Corporation at such office that the holder elects to convert the same and shall state therein the holder's name or, subject to any event on which such conversion is contingent, if applicable, and any legal or contractual restrictions on transfer thereof. Such notice shall also (x) provide the name or names of the holder's nominees in which the holder wishes the certificate or certificates for Common Shares or Class B Common Shares, as the case may be, to be issued, and (y) be accompanied by an agreement in form reasonably satisfactory to the Corporation by which the person(s) in whose name the Common Shares or Class B Common Shares, as the case may be, are to be issued agrees to be bound by the provisions of the USA (and/or any other agreement entered into by and among the Corporation and its shareholders generally) if such person is not already a party thereto. On the date of conversion, all rights with respect to the Preferred Shares so converted shall terminate, except for any of the rights of the holder thereof, upon surrender of the holder's certificate or certificates therefor or delivery of the aforementioned agreement, to receive (i) certificates for the number of Common Shares or Class B Common Shares, as the case may be, into which such Preferred Shares have been converted, and (ii) payment from the Corporation of any declared but unpaid dividends on the Preferred Shares so converted. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form reasonably satisfactory to the Corporation, duly executed by the registered holder or by the holder's attorney duly authorized in writing. Upon surrender of such certificates or delivery of the aforementioned agreement, the Corporation shall promptly issue and deliver to such holder, in such holder's name as shown on such surrendered certificate or certificates or as otherwise requested, a certificate or certificates for the number of Common Shares or Class B Common Shares, as the case may be, into which the Preferred Shares surrendered were convertible on the applicable date of conversion. No fractional Common Share or Class B Common Shares, as the case may be, shall be issued upon the optional conversion of Preferred Shares. In lieu of any fractional share to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a Common Share or Class B Common Shares, as the case may be, on the relevant date of conversion, as determined in good faith by the Board. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the Preferred Shares to be converted (notwithstanding the failure of (i) the Corporation to issue any new certificates at or prior to such time, or (ii) the holder or holders thereof to surrender any certificates at or prior to such time), and the person or persons entitled to receive the Common Shares or Class B Common Shares, as the case may be, issuable upon conversion shall be treated for all purposes as the record holder or

holders of such Common Shares or Class B Common Shares, as the case may be, on such date.

2.3 **Automatic Conversion**. All Existing Preferred Shares shall be converted automatically into that number of fully paid and non-assessable Common Shares determined by multiplying each such share by the ratio determined by dividing the applicable Original Issue Price by the Conversion Price in effect at the time of conversion, and each Class Y Preferred Share shall be converted automatically into that number of fully paid and non-assessable Class B Common Shares the value of which is equal to the Class Y Redemption Amount of such Class Y Preferred Share, upon the earlier to occur of:

(a) in respect of all Preferred Shares, the closing of a firm-commitment underwritten public offering or offerings pursuant to an effective registration statement and/or a receipted prospectus under the *Securities Act* (Ontario), as amended, or similar document filed under other applicable securities laws in Canada or the United States, covering the offer and sale of Common Shares for the account of the Corporation to the public in which each of the following conditions are satisfied (a "**Qualified IPO**"):

(i) the Common Shares become listed for trading or otherwise trade on the Toronto Stock Exchange, the New York Stock Exchange, the main board of NASDAQ, or such other Qualified Exchange (as defined in the USA) as is approved in accordance with the terms of the USA;

(ii) the net proceeds of the Qualified IPO are in excess of CAD$75 million;

(iii) the price per Common Share in the Qualified IPO is (i) at least CAD$10.071 (i.e., two-times (2x) the Original Issue Price of the Class C Preferred Shares), subject to appropriate adjustment in the event of any share dividend, share split, share combination or other similar recapitalization with respect to the Common Shares and/or Class C Preferred Shares, if the Qualified IPO is consummated prior to August 20, 2019, or (ii) at least CAD$12.58875 (i.e., two and a half times (2.5x) the Original Issue Price of the Class C Preferred Shares), subject to appropriate adjustment in the event of any share dividend, share split, share combination or other similar recapitalization with respect to the Common Shares and/or Class C Preferred Shares, if the Qualified IPO is consummated on or after August 20, 2019; and

(iv) if the Qualified IPO is completed other than in Canadian dollars, then any calculation contemplated by this Section 2.3 shall be made on the basis of the average noon spot rate announced by the Bank of Canada for the five (5) consecutive business days ending one (1) business day prior to the date on which the calculation is to be made (being the date of completion of the Qualified IPO).

(b) (i) in respect of the Class A Preferred Shares only, the date and time, or the occurrence of an event, specified by vote or written consent of the holders of not less than eighty-five percent (85%) of the then outstanding Class A Preferred Shares, requiring such conversion;

(ii) in respect of the Class B Preferred Shares only, the date and time, or the occurrence of an event, specified by vote or written consent of the holders of not less than eighty-five percent (85%) of the then outstanding Class B Preferred Shares, requiring such conversion; and

(iii) in respect of the Class C Preferred Shares only, the date and time, or the occurrence of an event, specified by vote or written consent of the Class C Investors Majority, requiring such conversion.

2.4 **Mechanics of Automatic Conversions**. Upon the occurrence of an event specified in Section 2.3, the applicable class of Preferred Shares shall be converted automatically without any further action by the holders thereof and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that all holders of the class of Preferred Shares being converted shall be given written notice of the occurrence of an event specified in Section 2.3 including the date such event occurred (the "**Automatic Conversion Date**"), and the Corporation shall not be obligated to issue certificates evidencing the Common Shares or Class B Common Shares, as the case may be, issuable upon such conversion unless certificates evidencing such class of Preferred Shares being converted are either delivered to the Corporation or its transfer agent, or the holder notifies the Corporation or any transfer agent that such certificates have been lost, stolen, or destroyed and executes an agreement reasonably satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection therewith and, if the Corporation so elects, provides a reasonable and appropriate indemnity agreement, and the holder of the Common Shares or Class B Common Shares, as the case may be, enters into an agreement in form satisfactory to the Corporation acting reasonably by which the person(s) in whose name the Common Shares or Class B Common Shares, as the case may be, are to be issued agrees to be bound by the provisions of the USA (and/or any other agreement entered into by and among the Corporation and its shareholders generally) if such person is not already a party thereto. On the Automatic Conversion Date, all rights with respect to the class of Preferred Shares so converted shall terminate, except for any of the rights of the holder thereof, upon surrender of the holder's certificate or certificates therefor or delivery of the aforementioned agreement, to receive (i) certificates for the number of Common Shares or Class B Common Shares, as the case may be, into which such Preferred Shares have been converted, and (ii) payment from the Corporation of any declared but unpaid dividends on the Preferred Shares so converted. Upon the automatic conversion of the class of Preferred Shares, the holders thereof shall surrender the certificates representing such shares or deliver the aforementioned agreement at the office of the Corporation or of its transfer agent. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by the holder's attorney duly authorized in writing. Upon surrender of such certificates or delivery of the aforementioned agreement, the Corporation

shall promptly issue and deliver to such holder, in such holder's name as shown on such surrendered certificate or certificates or as otherwise requested, a certificate or certificates for the number of Common Shares or Class B Common Shares, as the case may be, into which the Preferred Shares surrendered were convertible on the Automatic Conversion Date. No fractional Common Share or Class B Common Shares, as the case may be, shall be issued upon the automatic conversion of any class of Preferred Shares. In lieu of any fractional share to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a Common Share or Class B Common Shares, as the case may be, on the Automatic Conversion Date, as determined in good faith by the Board. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of the occurrence of the relevant conversion event described in Section 2.3 (notwithstanding the failure of (i) the Corporation to issue any new certificates at or prior to such time, or (ii) the holder or holders thereof to surrender any certificates at or prior to such time), and the person or persons entitled to receive the Common Shares or Class B Common Shares, as the case may be, issuable upon conversion shall be treated for all purposes as the record holder or holders of such Common Shares or Class B Common Shares, as the case may be, on such date.

2.5 **Adjustments to Conversion Price**.

(a) Special Definitions. For purposes of this Section 2.5, the following definitions shall apply:

(i) "**Additional Common Shares**" shall mean all Common Shares issued (or, pursuant to Section 2.5(b), deemed to be issued) by the Corporation after the Class C Original Issue Date, other than (x) for certainty, Class B Common Shares or (y) Common Shares (or options exercisable therefore) representing, in the aggregate, up to the Approved Number (appropriately adjusted to take account of any share split, share dividend, share combination or the like with respect to the Common Shares), or such higher number as is approved in accordance with the USA, other than (1) the following Common Shares, and (2) Common Shares deemed issued pursuant to the following Options and Convertible Securities (clauses (1) and (2), collectively, "**Exempted Securities**"):

(A) Common Shares actually issued upon the conversion or exchange of a given class of Preferred Shares, provided such issuance is made in accordance with the terms of such class of Preferred Shares, respectively;

(B) Common Shares actually issued upon exercise of Options outstanding as of the Class C Original Issue Date (including the warrants issued to Comerica Bank and Thomvest (as defined in the USA));

(C) Common Shares issued in connection with a Qualified IPO;

(D) The EIP Warrant and the Common Shares directly or indirectly issuable upon exercise of the EIP Warrant; and

(E) Class C Preferred Shares issued pursuant to the Class C Purchase Agreement.

(ii) "**Approved Number**" shall have the meaning given to it in the USA.

(iii) "**Class C Original Issue Date**" shall mean the date on which the first Class C Preferred Share was issued.

(iv) "**Class C Purchase Agreement**" means that certain Class C Preferred Share Subscription Agreement, dated on or about February 20, 2018, between the Corporation and certain purchasers of Class C Preferred Shares identified therein, as the same may be amended from time to time.

(v) "**Convertible Securities**" shall mean any evidences of indebtedness, shares in the capital of the Corporation (other than Common Shares) or other securities directly or indirectly convertible into or exchangeable for Additional Common Shares, excluding Options.

(vi) "**EIP Warrant**" shall have the meaning set forth in the Class C Purchase Agreement.

(vii) "**Options**" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Additional Common Shares or Convertible Securities.

(viii) "**Original Issue Price**" shall mean, with respect to a given class of Existing Preferred Share, the original issue price at which such Existing Preferred Share was issued, subject to appropriate adjustment in the event of any share dividend, share split, share combination or other similar recapitalization with respect to such class of Existing Preferred Share. The Original Issue Price of the Class A Preferred Shares is CAD$0.922 per share, the Original Issue Price of the Class B Preferred Shares is CAD$3.166228 per share and the Original Issue Price of the Class C Preferred Shares is CAD$5.0355 per share.

(b) Issue of Securities Deemed to be Issue of Additional Common Shares.

(i) *Options and Convertible Securities*. In the event the Corporation at any time or from time to time after the Class C Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of Common Shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Common Shares issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided

that in any such case in which Additional Common Shares are deemed to be issued:

(A) no further adjustment of the Conversion Price shall be made upon the subsequent issue of Convertible Securities or Common Shares upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(B) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the Consideration (as defined in Section 2.5(d)) payable to the Corporation, or increase or decrease in the number of Common Shares issuable, upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

(C) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:

(1) in the case of the Convertible Securities or Options for Common Shares, the only Additional Common Shares issued were the Common Shares, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the Consideration received therefor was the Consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the Consideration actually received by the Corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional Consideration, if any, actually received by the Corporation upon such conversion or exchange; and

(2) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the Consideration received by the Corporation for the Additional Common Shares deemed to have been then issued was the Consideration actually received by the

Corporation for the issue of all such Options, whether or not exercised, plus the Consideration deemed to have been received by the Corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(D) no readjustment pursuant to clause (B) or (C) above shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (i) the Conversion Price on the original adjustment date; or (ii) the Conversion Price that would have resulted from any issue of any other Additional Common Shares pursuant to the Options and Convertible Securities referred to in clause (B) or (C) between the original adjustment date and such readjustment date;

(E) in the case of any Options which expire by their terms not more than thirty (30) days after the date of issue thereof, no adjustment of the Conversion Price shall be made until the expiration or exercise of all such Options, whereupon such adjustment shall be made in the same manner provided in clause (C) above;

(F) if such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made to the Conversion Price which became effective on such record date shall be cancelled as of the close of business on such record date, and thereafter the Conversion Price shall be adjusted pursuant to this Section 2.5(b) as of the actual date of their issue; and

(G) If the number of Common Shares issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, cannot be calculated at all at the time such Option or Convertible Security is issued or amended, any adjustment to the Conversion Price that would result under the terms of this Section 2.5(b) at the time of such issuance or amendment shall instead be effected at the time such number of shares and/or amount of consideration is first calculable (even if subject to subsequent adjustments), assuming for purposes of calculating such adjustment to the Conversion Price that such issuance or amendment took place at the time such calculation can first be made.

(ii) Share Dividends, Share Distribution. In the event the Corporation at any time or from time to time following the Class C Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Shares entitled to receive, a dividend or other distribution payable on the Common Shares in additional Common Shares, then and in each such

event the Conversion Price for each class of Preferred Shares in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Conversion Price for each class of Preferred Shares then in effect by a fraction:

(A) the numerator of which shall be the total number of Common Shares issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(B) the denominator of which shall be the total number of Common Shares issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of Common Shares issuable in payment of such dividend or distribution.

Notwithstanding the foregoing: (a) if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price for each class of Preferred Shares shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price for each class of Preferred Shares shall be adjusted pursuant to this subsection as of the time of actual payment of such dividends or distributions; and (b) no such adjustment shall be made with respect to the Conversion Price for a given class of Preferred Shares if the holders of such class of Preferred Shares simultaneously receive a dividend or other distribution of Common Shares in a number equal to the number of Common Shares as they would have received if all outstanding shares of the relevant class of Preferred Shares had been converted into Common Shares on the date of such event.

(c) Adjustment of the Conversion Price Upon Issue of Additional Common Shares. In the event that at any time or from time to time after the Class C Original Issue Date, the Corporation shall issue Additional Common Shares (including, without limitation, Additional Common Shares deemed to be issued pursuant to Section 2.5(b)(i) but excluding Additional Common Shares deemed to be issued pursuant to Section 2.5(b)(ii), which event is dealt with in Section 2.5(e)(i)), without consideration or for Consideration Per Share (as defined below) less than the Conversion Price for a particular Preferred Share, then and in such event, the Conversion Price for such share shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying the Conversion Price by a fraction, the numerator of which shall be (x) the number of Common Shares outstanding immediately prior to such issue or deemed issue plus the number of Common Shares which the aggregate consideration received by the Corporation for the total number of Additional Common Shares so issued would purchase at the Conversion Price in effect immediately prior to such issuance, and the denominator of which shall be (y) the number of Common Shares outstanding immediately prior to such issue or deemed issue plus the number of such Additional

Common Shares so issued. For the purposes of the above calculation, the number of Common Shares outstanding immediately prior to such issue shall be calculated on a fully diluted basis, as if all outstanding Preferred Shares and all Convertible Securities had been fully converted into Common Shares immediately prior to such issuance and any outstanding warrants, options, or other outstanding rights for the purchase of capital shares or convertible securities had been fully exercised immediately prior to such issuance (and the resulting securities fully converted into Common Shares, if so convertible) as of the date, but not including in such calculation any Additional Common Shares issuable with respect to Preferred Shares, Convertible Securities or outstanding options, warrants or other rights for the purchase of capital shares or convertible securities, solely as a result of the adjustment of the Conversion Price resulting from the issuance of the Additional Common Shares causing the adjustment in question.

(d) Determination of Consideration. For purposes of this Section 2.5, the consideration (the "**Consideration**") received or receivable by the Corporation for the issue of any Additional Common Shares shall be computed as follows:

(i) *Cash and Property*. Such Consideration shall:

(A) insofar as it consists of cash, be computed at the aggregate amounts of cash received or receivable by the Corporation excluding amounts paid or payable for accrued interest or

(B) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith by the Board; and

(C) in the event Additional Common Shares are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received or receivable, computed as provided in Section 2.5(d)(i)(A) and Section 2.5(d)(i)(B) above, allocable to such Additional Common Shares as determined in good faith by the Board.

(ii) Options and Convertible Securities. The consideration per share (the "**Consideration Per Share**") received by the Corporation for Additional Common Shares deemed to have been issued pursuant to Section 2.5, relating to Options and Convertible Securities, shall be determined by dividing:

(A) The total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent

adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(B) the maximum number of Common Shares (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities.

(e) Adjustment of the Conversion Price for Subdivisions, Combinations or Consolidations of Common Shares.

(i) *Subdivisions*. In the event the Corporation shall be deemed to have issued Additional Common Shares in connection with a subdivision of capital shares, the Conversion Price in effect immediately before such deemed issue shall, concurrently with the effectiveness of such deemed issue, be proportionately decreased.

(ii) *Combinations or Consolidations*. In the event the outstanding Common Shares shall be combined or consolidated, by reclassification or otherwise, into a lesser number of Common Shares, the Conversion Price in effect immediately prior to such combination or consolidation shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.

2.6 **Adjustments for Certain Dividends and Distributions**. In the event that at any time or from time to time after the Class C Original Issue Date, the Corporation shall make or issue, or fix a record date for the determination of holders of Common Shares entitled to receive, a dividend or other distribution or a share dividend payable in Common Shares which event is dealt with in Section 2.5(e)(i), then and in each such event provision shall be made so that the holders of Preferred Shares shall receive upon conversion thereof, in addition to the number of Common Shares receivable thereupon, the amount of the dividend of the Corporation that they would have received had their Preferred Shares been converted into Common Shares on the date of such event and had they thereafter, during the period from the date of such event to and including the Conversion Date, retained such securities receivable by them as aforesaid during such period, giving application during such period to all adjustments called for herein.

2.7 **Adjustment for Reclassification, Exchange or Substitution**. In the event that at any time or from time to time after the Class C Original Issue Date, the Common Shares issuable upon the conversion of such Preferred Shares shall be changed into the same or a different

number of shares of any class or classes of shares, whether by capital reorganization, reclassification, or otherwise other than a merger, amalgamation, consolidation, or sale of assets provided for in Section 2.9 below, then and in each such event the holder of any such Preferred Shares shall have the right thereafter to convert such shares into the kind and amount of capital shares and other securities and property receivable upon such reorganization, reclassification, or other change, by the holder of a number of Common Shares equal to the number of Common Shares into which such Preferred Shares might have been converted immediately prior to such reorganization, reclassification, or change, all subject to further adjustment as provided herein.

2.8 **Adjustment for Share Splits and Combinations**. If the Corporation shall at any time or from time to time when there are Preferred Shares outstanding effect a subdivision of the outstanding Common Shares, the Conversion Price for each class of Preferred Shares in effect immediately before that subdivision shall be proportionately decreased so that the number of Common Shares issuable on conversion of each Class C Preferred Share, Class B Preferred Share and Class A Preferred Share shall be increased in proportion to such increase in the aggregate number of Common Shares outstanding. If the Corporation shall at any time or from time to time when there are Preferred Shares outstanding combine the outstanding Common Shares, the Conversion Price for each class of Preferred Shares in effect immediately before the combination shall be proportionately increased so that the number of Common Shares issuable on conversion of each Class C Preferred Share, Class B Preferred Share and Class A Preferred Share shall be decreased in proportion to such decrease in the aggregate number of Common Shares outstanding. Any adjustment under this subsection shall become effective at the close of business on the date the subdivision or combination becomes effective.

2.9 **Adjustment for Merger, Consolidation or Sale of Assets**. Subject to the provisions of Section 1, if there shall occur any reorganization, recapitalization, reclassification, consolidation, amalgamation or merger involving the Corporation in which the Common Shares (but not the Class C Preferred Shares, the Class B Preferred Shares or the Class A Preferred Shares, as the case may be) are converted into or exchanged for securities, cash or other property (other than a transaction already covered by Sections 2.5, 2.6 or 2.7), then, following any such reorganization, recapitalization, reclassification, consolidation, amalgamation or merger, each unconverted Class C Preferred Share, Class B Preferred Share and Class A Preferred Share shall thereafter be convertible in lieu of the Common Shares into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of Common Shares of the Corporation issuable upon conversion of one Class C Preferred Share, Class B Preferred Share or Class A Preferred Share, as applicable, immediately prior to such reorganization, recapitalization, reclassification, consolidation amalgamation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board) shall be made in the application of the provisions in this Section 2 with respect to the rights and interests thereafter of the holders of each class of Preferred Shares (as the case may be) to the end that the provisions set forth in this Section 2 (including provisions with respect to changes in and other adjustments of the Conversion Price for each class of Preferred Shares) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable

upon the conversion of the Class C Preferred Shares, the Class B Preferred Shares or the Class A Preferred Shares (as the case may be).

2.10 **No Impairment**. The Corporation shall not, by amendment of its Articles of Incorporation or through any reorganization, transfer of assets, consolidation, amalgamation, merger, dissolution, issue or sale of securities or any other voluntary action, including, without limitation, voluntary bankruptcy proceedings, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but shall at all times in good faith assist in the carrying out of all the provisions of this Section 2 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of Preferred Shares under this Section 2 against impairment.

2.11 **Certificate as to Adjustments**. Promptly (but in any event within ten (10) days) of the occurrence of each adjustment or readjustment pursuant to this Section 2, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each affected holder of Preferred Shares a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any affected holder of Preferred Shares, furnish or cause to be furnished to such holder a like certificate setting forth:

(a) all such adjustments and readjustments; and

(b) the number of Common Shares and the amount, if any, of other property which at the time would be received upon the conversion of each Preferred Share.

2.12 **Notices of Record Date**. In the event (a) the Corporation shall take a record of the holders of its Common Shares (or other shares in the capital of the Corporation or securities at the time issuable upon conversion of the Preferred Shares) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares in the capital of the Corporation of any class or any other securities, or to receive any other security; or (b) of any capital reorganization of the Corporation, any reclassification of the Common Shares of the Corporation, or any Deemed Liquidation Event; or (c) of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation, then, and in each such case, the Corporation will send or cause to be sent to the holders of each class of Preferred Shares a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, amalgamation, merger, transfer, dissolution, liquidation or winding-up or other Deemed Liquidation Event is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Shares (or such other shares in the capital of the Corporation or securities at the time issuable upon the conversion of the Class C Preferred Shares, the Class B Preferred Shares or the Class A Preferred Shares, as the case may be) shall be entitled to exchange their Common Shares (or such other shares in the capital of the Corporation or securities) for securities or other property deliverable upon such reorganization, reclassification,

consolidation, amalgamation, merger, transfer, dissolution, liquidation or winding-up or other Deemed Liquidation Event, and the amount per share and character of such exchange applicable to the Class C Preferred Shares, the Class B Preferred Shares, the Class A Preferred Shares and the Common Shares. Except as otherwise contemplated with respect to notice of a Deemed Liquidation Event in Section 1.7, such notice shall be sent at least ten (10) days prior to the record date or effective date for the event specified in such notice.

2.13 **Common Shares Reserved**. The Corporation shall, at all times when any Preferred Shares shall be outstanding, reserve and keep available out of its authorized but unissued shares in the capital of the Corporation, for the purpose of effecting the conversion of the Preferred Shares, such number of its duly authorized Common Shares as shall from time to time be sufficient to effect the conversion of all outstanding Preferred Shares; and if at any time the number of authorized but unissued Common Shares shall not be sufficient to effect the conversion of all then outstanding Preferred Shares, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued Common Shares to such number of shares as shall be sufficient for such purposes, including engaging in best efforts to obtain the requisite shareholder approval of any necessary amendment to the Articles of Incorporation.

2.14 **Certain Taxes**. The Corporation shall pay any issue or transfer taxes payable in connection with the conversion of Preferred Shares, provided, however, that the Corporation shall not be required to pay any tax which may be payable in respect of any transfer to any person other than the holder of the Preferred Shares.

2.15 **Closing of Books**. Except upon the consummation of a Liquidation Event, the Corporation shall at no time close its transfer books against the transfer of any Preferred Shares or any Common Shares issued or issuable upon the conversion of any Preferred Shares in any manner which interferes with the timely conversion or transfer of such Preferred Shares or Common Shares.

3. RESTRICTIONS

The capital shares of the Corporation shall be subject to any and all applicable restrictions set forth in the USA, including any restrictions on the transfer of securities of the Corporation.

4. VOTING RIGHTS

The holders of Preferred Shares shall be entitled to notice of any meeting of shareholders and except as otherwise required by law, these Articles or by the express terms of the USA (and without limiting the approval, veto or voting provisions of the USA, including Sections 1.8, 2.1, 5.2, 5.11 and 7.5 thereof), shall vote together with the holders of Common Shares and the Class B Common Shares as a single class upon any matter submitted to the shareholders for a vote on the following basis:

4.1 holders of Common Shares and Class B Common Shares shall have one vote per share, except that the Class B Common Shares shall have one additional vote per share on matters relating to subsection 173(1(b) of the *Canada Business Corporations Act* to change the

province in which the Corporation's registered office is situated;

4.2 holders of Preferred Shares shall have that number of votes per share as is equal to the number of Common Shares or Class B Common Shares (in each case, including fractions of a share) into which each such Preferred Share held by such holder could be converted on the date for determination of shareholders entitled to vote at the meeting or on the date of any written consent;

4.3 on any matter presented to, or required by non-waivable provisions of applicable law or by the provisions of the Articles of Incorporation to be approved by, the holders of Preferred Shares, voting together as a single class on an as-converted to Common Shares or Class B Common Shares basis, as the case may be, at any meeting of shareholders of the Corporation (or by written consent of shareholders in lieu of meeting), each outstanding Preferred Share shall have one (1) vote, and such matter shall be determined by the holders of at least sixty-six and two-thirds percent (66-2/3%) of the then outstanding Preferred Shares (which approval must include the approval of the Class B Investors Majority and the Class C Investors Majority);

4.4 on any matter presented to, or required by non-waivable provisions of applicable law or by the provisions of the Articles of Incorporation to be approved by, the holders of Class C Preferred Shares, voting exclusively and as a separate class, at any meeting of shareholders of the Corporation (or by written consent of shareholders in lieu of meeting), each outstanding Class C Preferred Share shall have one (1) vote, and such matter shall be determined by the Class C Investors Majority;

4.5 on any matter presented to, or required by non-waivable provisions of applicable law or by the provisions of the Articles of Incorporation to be approved by, the holders of Class B Preferred Shares, voting exclusively and as a separate class, at any meeting of shareholders of the Corporation (or by written consent of shareholders in lieu of meeting), each outstanding Class B Preferred Share shall have one (1) vote, and such matter shall be determined by the Class B Investors Majority;

4.6 on any matter presented to, or required by non-waivable provisions of applicable law or by the provisions of the Articles of Incorporation to be approved by, the holders of Class A Preferred Shares, voting exclusively and as a separate class, at any meeting of shareholders of the Corporation (or by written consent of shareholders in lieu of meeting), each outstanding Class A Preferred Share shall have one (1) vote, and such matter shall be determined by the holders of at least a majority of the Class A Preferred Shares then outstanding (the "**Class A Investors Majority**"); and

4.7 there shall be no cumulative voting.

5. DIVIDENDS

5.1 Except as otherwise required pursuant to Section 1 in connection with a Liquidation Event or as authorized or approved in accordance with the terms of the USA, or as provided in Section 5.8 or Section 6 below, no declaration, payment or setting aside for payment of

any dividend, no distribution of any surplus or earnings, no return of any capital, no repayment or retirement of any indebtedness of the Corporation to any shareholder, nor any other payment or distribution of assets of the Corporation to any holder of any securities, other than on the Preferred Shares, shall be declared or paid.

5.2 Upon the occurrence of a Liquidation Event, or if, as and when declared by the Board, the holders of the Class C Preferred Shares shall be entitled to receive fixed preferential cumulative dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend on the Common Shares, the Class A Preferred Shares, the Class B Preferred Shares and any other class of shares of the Corporation ranking junior to the Class C Preferred Shares (other than the Class B Common Shares), at the rate of eight percent (8%) of the Original Issue Price then in effect per annum per share (the "**Class C Preferred Dividend**"), which dividend shall accrue and be cumulative from the respective dates of issue of the said Class C Preferred Shares. Subject to the rights of the holders of any other class of shares of the Corporation entitled to receive dividends in priority to or concurrently with the holders of the Class C Preferred Shares, the Board may in its sole discretion (but subject to the approvals required under the USA) declare dividends on the Class C Preferred Shares to the exclusion of any other class of shares of the Corporation.

5.3 Upon the occurrence of a Liquidation Event, or if, as and when declared by the Board, the holders of the Class B Preferred Shares shall be entitled to receive fixed preferential cumulative dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend on the Common Shares, the Class A Preferred Shares and any other class of shares of the Corporation ranking junior to the Class B Preferred Shares (other than the Class B Common Shares), at the rate of eight percent (8%) of the Original Issue Price then in effect per annum per share (the "**Class B Preferred Dividend**"), which dividend shall accrue and be cumulative from the respective dates of issue of the said Class B Preferred Shares. Subject to the rights of the holders of the Class C Preferred Shares and any other class of shares of the Corporation entitled to receive dividends in priority to or concurrently with the holders of the Class B Preferred Shares, the Board may in its sole discretion (but subject to the approvals required under the USA) declare dividends on the Class B Preferred Shares to the exclusion of any other class of shares of the Corporation.

5.4 Subject to Section 5.8, no dividends may be paid on the Common Shares, the Class A Preferred Shares, the Class B Preferred Shares or any class of shares of the Corporation ranking junior to the Class C Preferred Shares (whether in cash or property) unless all accrued dividends on the Class C Preferred Shares have been paid in full.

5.5 Subject to Section 5.8, dividends on the Class A Preferred Shares and the Common Shares are payable only if, as and when declared by the Board, and shall have no preference or priority in the payment of dividends.

5.6 Subject to Section 5.8, in the event of any dividend with respect to any other class of capital shares of the Corporation (to the extent permitted by the Articles of Incorporation and approved in accordance with the terms of the USA), the holders of the Class B Preferred

Shares and Class C Preferred Shares then outstanding shall (in their capacities as such) first receive, or shall simultaneously receive, a dividend on each outstanding share of the relevant class of Preferred Shares in an amount at least equal to all dividends accrued but unpaid in respect of such Class B Preferred Shares or Class C Preferred Shares (as applicable) pursuant to Section 5.2 or Section 5.3 (as applicable), plus: (i) in the case of a dividend on Common Shares or any other class of shares in the capital of the Corporation that is convertible into Common Shares, a dividend per Class C Preferred Share or Class B Preferred Share, as applicable, as would equal the product of (x) the dividend payable on each share of such other class as to which such dividend is payable, determined as if all shares of such other class had been converted into Common Shares, and (y) the number of Common Shares then issuable upon conversion of a Class C Preferred Share or Class B Preferred Share, as applicable, in each case calculated on the record date for determination of holders entitled to receive such dividend, or (ii) in the case of a dividend on any other class that is not convertible into Common Shares, at a rate per Class C Preferred Share or Class B Preferred Share, as applicable, determined by (x) dividing the amount of the dividend payable on each share of such other class of shares in the capital of the Corporation by the original issuance price of such other class of shares in the capital of the Corporation (subject to appropriate adjustment in the event of any share dividend, share split, combination or other similar recapitalization with respect to such other class of shares) and (y) multiplying such fraction by an amount equal to the Original Issue Price per Class C Preferred Share or the Original Issue Price per Class B Preferred Share (as applicable); provided, that if the Corporation declares, pays or sets aside, on the same date, a dividend on shares of more than one class of shares in the capital of the Corporation of the Corporation, the dividend payable to the holders of Preferred Shares pursuant to this Section 5.6 shall be calculated based upon the dividend on the class of shares in the capital of the Corporation that would result in the highest dividend to the relevant class of Preferred Shares; and provided, further, that the foregoing will not apply in the case of a liquidating dividend where the provisions of Sections 1.1 through 1.7 apply; and provided, finally, that this Section 5.6 shall not entitle the holders of Class B Preferred Shares to participate in a dividend declared exclusively on the Class C Preferred Shares.

5.7 In the event the Corporation shall declare a dividend or distribution payable in securities of the Corporation or other persons, evidences of indebtedness issued by the Corporation or other persons, options or rights to purchase any such securities or evidences of indebtedness, or other non-cash assets (but excluding dividends or distributions in respect of outstanding shares of Common Shares covered in Section 2), then, in each such case the holders of the Preferred Shares shall be entitled to participate in such dividend or distribution in accordance with this Section 5.

5.8 Notwithstanding anything to the contrary herein, the directors of the Corporation may, in their discretion, declare dividends on the Common Shares and/or the Class B Common Shares at such time or from time to time as they may deem advisable, without declaring or paying a dividend on any other class of shares of the Corporation.

6. REDEMPTION AND RETRACTION

6.1 The "**Class Y Redemption Amount**" with respect to each Class Y Preferred Share held by

a particular holder of Class Y Preferred Shares (a "**Class Y Holder**") shall be equal to the amount determined by dividing the net fair market value of the consideration received by the Corporation from that Class Y Holder for the first issuance of Class Y Preferred Shares, as determined by the directors of the Corporation, by the number of Class Y Preferred Shares first issued to such Class Y Holder. For greater certainty, the net fair market value of the consideration received for the first issuance of Class Y Preferred Shares is the fair market value of any property or assets transferred to the Corporation or any other consideration received in consideration for the first issuance of the Class Y Preferred Shares minus the fair market value of any liabilities assumed by the Corporation and any other non-share consideration for the transfer, with all such amounts being determined in accordance with generally accepted accounting and valuation principles.

6.2 The Corporation may, upon giving notice to a Class Y Holder, redeem the whole or any part of the Class Y Preferred Shares upon payment of the Class Y Redemption Amount for each Class Y Preferred Share to be redeemed, together with all dividends declared thereon and unpaid. Not less than 14 days' notice in writing of such redemption shall be given by mailing such notice to the holders of the Class Y Preferred Shares to be redeemed, specifying the date (the "**Redemption Date**") and place or places of redemption. Upon the Redemption Date, the Corporation shall pay or cause to be paid to the order of the registered holder of each Class Y Preferred Share to be redeemed the Class Y Redemption Amount thereof, together with all dividends declared thereon and unpaid, on presentation and surrender, at the place or places specified for redemption in the notice, of the certificate(s) representing such Class Y Preferred Shares. For the purpose of this paragraph, the issuance and delivery to a shareholder of a non-interest bearing promissory note payable on demand by the Corporation for the aggregate Class Y Redemption Amount of the Class Y Preferred Shares of the shareholder to be redeemed, together with all dividends declared thereon and unpaid, may constitute payment therefor. If a part only of the Class Y Preferred Shares represented by any certificate shall be redeemed, a new certificate for the balance shall be issued at the expense of the Corporation. From and after the Redemption Date, the holder of each Class Y Preferred Share to be redeemed shall cease to be entitled to dividends and shall not be entitled to exercise any of the rights as shareholder in respect thereof unless payment of the Class Y Redemption Amount, together with all dividends declared thereon and unpaid, shall not be made upon presentation of certificate(s) in accordance with the foregoing provisions, in which case the rights of the holder in respect of those Class Y Preferred Shares for which payment has not been made shall remain unaffected. The Corporation shall have the right at any time after the Redemption Date to deposit the aggregate Class Y Redemption Amount of the Class Y Preferred Shares to be redeemed or of such of the said shares represented by certificates as have not as of the date of such deposit been surrendered by the holder thereof in connection with such redemption, together with all dividends declared thereon and unpaid, to a special account at any chartered bank or any trust company to be paid without interest to or to the order of the holder of such Class Y Preferred Shares upon presentation and surrender to such bank or trust company of the certificates representing the same. Upon such deposit(s) being made the Class Y Preferred Shares in respect whereof such deposit(s) shall have been made shall be deemed to have been redeemed and the right of the holder(s) thereof after such deposit or such Redemption Date, as the case may be, shall be limited to receiving without interest the Class Y Redemption Amount, together with all dividends declared

thereon and unpaid, so deposited against presentation and surrender of the said certificates held by him. Any interest allowed on any such deposit shall belong to the Corporation, provided that with any such deposit the Corporation shall forthwith mail to the holder of each such Class Y Preferred Share a notice in writing advising of such deposit and specifying the name of the chartered bank or trust company, as the case may be, wherein such special account is for the time being maintained.

6.3 Any registered holder of Class Y Preferred Shares may, at its option, upon giving notice as hereinafter provided, require the Corporation at any time or times to redeem all or any part of the Class Y Preferred Shares held by it, and the Corporation shall pay to such holder for each such share which the holder requires to be redeemed, the Class Y Redemption Amount, together with all dividends declared thereon and unpaid. In the event that any registered holder of Class Y Preferred Shares desires to require the redemption of all or any part of the Class Y Preferred Shares held by it, such registered holder shall mail by prepaid mail addressed to the Corporation at its registered office notice in writing of its intention to require redemption, which notice shall also specify therein the number of Class Y Preferred Shares to be so redeemed. On the date 14 days next following the receipt of such notice by the Corporation (the "**Retraction Date**"), the Corporation shall pay or cause to be paid to the order of the registered holder of such Class Y Preferred Shares the Class Y Redemption Amount, together with all dividends declared thereon and unpaid, on presentation and surrender at the registered office of the Corporation of the certificates representing the Class Y Preferred Shares specified in the notice. For the purpose of this paragraph, the issuance and delivery of a non-interest bearing promissory note payable on demand by the Corporation for the aggregate Class Y Redemption Amount of the Class Y Preferred Shares to be redeemed, together with all dividends declared thereon and unpaid, may constitute payment therefor. If a part only of the Class Y Preferred Shares represented by any certificate shall be redeemed, a new certificate for the balance shall be issued at the expense of the Corporation. From and after the Retraction Date, the holder of the Class Y Preferred Shares to be redeemed shall cease to be entitled to dividends and shall not be entitled to exercise any of the rights as shareholder in respect thereof unless payment of the Class Y Redemption Amount, together with all dividends declared thereon and unpaid, shall not be made upon presentation of certificates in accordance with the foregoing provisions, in which case the rights of the holder in respect of those Class Y Preferred Shares for which payment has not been made shall remain unaffected.

7. WAIVER

Except where a higher approval percentage is expressly required in the Articles of Incorporation or the USA (in which case such higher approval percentage shall apply) or a separate approval is required pursuant to the USA, any of the rights, powers, preferences and other terms applicable to: (a) the Class C Preferred Shares (specifically, as such) set forth herein may be waived on behalf of all holders of Class C Preferred Shares by the affirmative written consent or vote of the Class C Investors Majority; (b) the Class B Preferred Shares (specifically, as such) set forth herein may be waived on behalf of all holders of Class B Preferred Shares by the affirmative written consent or vote of the holders of the Class B Investors Majority; (c) the Class A Preferred Shares (specifically, as such) set forth herein may be waived on behalf of all holders of Class A Preferred

Shares by the affirmative written consent or vote of the Class A Investors Majority; (d) all Preferred Shares (specifically, as such, without regard to class) set forth herein may be waived on behalf of all holders of Preferred Shares (regardless of class) by the affirmative written consent or vote of the holders of at least sixty-six and two-thirds percent (66-2/3%) of the Preferred Shares then outstanding (which written consent or vote must include the written consent or approval by vote of the Class B Investors Majority and the Class C Investors Majority); and (e) all Common Shares, Class B Common Shares and all Preferred Shares, without regard to class, set forth herein may be waived on behalf of all holders of Common Shares, Class B Common Shares and Preferred Shares by the affirmative written consent or vote of the holders of a majority of the Common Shares, Class B Common Shares and Preferred Shares then outstanding, voting as a single class on an as-converted to Common Shares or Class B Common Shares, as the case may be, basis.

8. NOTICES

All notices, requests, consents, demands and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given, made and received: (a) when delivered against receipt; (b) upon transmitter's confirmation of the receipt of a facsimile transmission, which shall be followed by an original sent otherwise in accordance with this Section 8; (c) upon confirmed delivery by a standard overnight carrier, or (d) upon expiration of five (5) business days after the date when deposited in the mail, first class postage prepaid, addressed to the Corporation at its registered office or at such other address of which the Corporation may notify the holders of Preferred Shares from time to time, or if to a holder of Preferred Shares, Common Shares or Class B Common Shares, to such holder's address as shown by the records of the Corporation.

9. OTHER

The Corporation shall elect, in the manner and within the time provided under the *Income Tax Act* (Canada) (the "**Tax Act**"), under subsection 191.2(1) of Part VI.1 of the Tax Act, or any successor or replacement provision of similar effect, and take all other necessary action under the Tax Act, to pay or cause payment of tax under Part VI.1 of the Tax Act at a rate such that the holders of the Class B Preferred Shares and Class C Preferred Shares will not be required to pay tax on dividends received (or deemed to be received) on the Class B Preferred Shares or Class C Preferred Shares under section 187.2 of Part IV.1 of the Tax Act or any successor or replacement provision of similar effect. The amount of CAD$3.166228 is specified in respect of each Class B Preferred Share for the purposes of subsection 191(4) of the Tax Act. The amount of CAD$5.0355 is specified in respect of each Class C Preferred Share for the purposes of subsection 191(4) of the Tax Act.

Exhibit B
Capital Dividend

The amount of the capital dividend declared and paid by the Company shall be up to Cdn. $80,000,000, subject to adjustment in accordance with the terms of Schedule 5.12 of the Arrangement Agreement, and shall be set out in a resolution of the directors of the Company dated as of the Effective Date.

EXHIBIT E
TO THE ARRANGEMENT AGREEMENT

[Form of]
LETTER OF TRANSMITTAL

for securities of ecobee Inc.

Explanatory Note *(to be removed in actual Letter of Transmittal)*

The substantive provisions of the Letter of Transmittal shall be substantially in the substance set forth in this form Letter of Transmittal (with such changes as the Company prior to Closing or Securityholder Representative, on the one hand, or Purchaser, on the other hand, may reasonably agree). The Letter of Transmittal will also include, and may be adjusted to reflect, appropriate instructions, disclaimers, forms and attachments (including, but not limited to, those included in this form) to collect reasonable and customary documents and information as determined by the Exchange Agent to (1) provide for the surrender of Company Securities (including any original certificates or lost certificate affidavits and indemnities in lieu thereof), (2) allow for and verify the proper, secure and lawful distribution of the Arrangement Consideration and (3) to comply with reporting and withholding obligations. The parties anticipate that the Letter of Transmittal will be made available to Company Securityholders through an online portal, and Company Securityholders will electronically accept the substantive terms of this Agreement.

Ladies and Gentlemen:

Reference is made to (1) the Arrangement Agreement (the "**Arrangement Agreement**"), dated as of [November 1], 2021, by and among 13462234 Canada Inc., a Canadian federal corporation ("**Purchaser**"), Generac Power Systems, Inc., a Wisconsin corporation ("**Parent**"), and ecobee Inc, a Canadian federal corporation (the "**Company**"), and Shareholder Representative Services LLC, a Colorado limited liability company, solely in its capacity as Securityholder Representative (the "**Securityholder Representative**"), and (2) the Support and Voting Agreement (the "**Support Agreement**"), dated as of November 1, 2021, by and among Purchaser and the securityholders of the Company party thereto. Capitalized terms used but not defined in this letter (this "**Letter of Transmittal**") have the meanings given to them in the Arrangement Agreement.

The undersigned holder of Company Securities hereby agrees as follows:

1. **Surrender of Securities.** The undersigned hereby delivers and surrenders to the Exchange Agent all of their Company Securities. The undersigned acknowledges that as of the Effective Time, all of such Company Securities have been or will be cancelled and the undersigned's sole right with respect thereto (or otherwise with respect to any securities of or interests in) the Company Group shall be the right to receive the Arrangement Consideration as and when provided in the Arrangement Agreement and Plan of Arrangement, as determined in accordance therewith and subject to the terms and conditions thereof. The undersigned agrees, as a condition to receiving the Arrangement

Consideration, to provide such information as Purchaser or Exchange Agent may reasonably request to (1) provide for the surrender of Company Securities (including any original certificates or lost certificate affidavits and indemnities in lieu thereof), (2) allow for and verify the proper, secure and lawful distribution of the Arrangement Consideration and (3) to comply with reporting and withholding obligations, and the undersigned represents and warrants that such information will be accurate and complete.

2. **Title/Authority**. The undersigned, including the individual executing or otherwise accepting this Letter of Transmittal on behalf of any trust or entity, has full power and authority to execute and deliver this Letter of Transmittal on behalf of the undersigned and to deliver, transfer and to surrender the Company Securities, free and clear of all liens, claims and encumbrances. If the undersigned's Company Securities are represented by one or more certificates, the undersigned shall promptly send, or cause to be sent, the original certificate(s) or instrument(s) as directed by the Exchange Agent. To the extent such certificates are already in the custody of the Company or its representatives, such certificates are surrendered as of the Effective Time and the Company Group and its representatives are authorized to handle such certificates accordingly. The undersigned will, upon request, execute and deliver any additional documents reasonably requested by Purchaser or Exchange Agent to process payment of the Arrangement Consideration in connection with the surrender of the Company Securities. The surrender of Company Securities as of the Effective Time is irrevocable. The undersigned acknowledges and agrees that the delivery of such certificate(s) will be effected, and the risk of loss and title to such certificate(s) will pass to Purchaser, only upon actual delivery to Exchange Agent of such certificate(s), or an affidavit of lost certificate and indemnity in the form provided by the Exchange Agent. All authority conferred or agreed to be conferred in this Agreement shall be binding upon the successors, assigns, heirs, executors, administrators and legal representatives of the undersigned and shall not be affected by, and shall survive, the death or incapacity of the undersigned. All obligations of the undersigned hereunder shall be binding upon the successors, assigns, heirs, executors, administrators and legal representatives of the undersigned.

3. **Acceptance of Arrangement**. The undersigned acknowledges, accepts and consents to the Arrangement Agreement, the Plan of Arrangement and the Arrangement, and all of the terms thereof. Without limiting the generality of the foregoing, the undersigned confirms the irrevocable authorization and appointment of the Securityholder Representative as the undersigned's representative and attorney-in-fact as provided in Section 10.01 of the Agreement and agrees to be bound by the indemnification and exculpation provisions in favor of the Securityholder Representative thereof.

4. **Support Agreement**. The undersigned is either already a party to, or hereby joins and becomes party to, the Support Agreement as a Supporting Securityholder [by executing the Joinder Agreement attached hereto as **Exhibit A**]. The undersigned hereby ratifies and confirms the undersigned's obligations pursuant to the Support Agreement. The undersigned represents and warrants that the Support Agreement is a binding agreement of the undersigned enforceable against the undersigned in accordance with its

terms and that the representations and warranties made by the undersigned therein are true and correct as of the date hereof as if made on and as of the date hereof.

5. **Pre-Closing Reorganization**. To the extent the undersigned is electing to participate in the Pre-Closing Reorganization, the undersigned is executing [the attached Pre-Closing Reorganization Election attached hereto as **Exhibit B** and the related consent to election under subsection 184(3) of the *Income Tax Act* (Canada) a copy of which is attached hereto as **Exhibit C**].

6. **Release.** Without limiting the generality of Section 3 above, the undersigned acknowledges that the Support Agreement includes a release of Claims (as defined therein), including unknown Claims and Claims that may have arisen between the date of the undersigned's original execution of the Support Agreement and the Effective Time. With full understanding of the terms of such release, the undersigned hereby ratifies and confirms such release.

7. **Governing Law**. This Letter of Transmittal shall be governed by and construed in accordance with the laws of the Provinces of Ontario and the federal laws of Canada applicable therein without giving effect to any choice or conflict of Law provision or rule (whether of such jurisdiction or any other jurisdiction).

8. **Reliance/Survival**. The undersigned understands that Purchaser, Parent, Generac Holdings, the Company Group, the Exchange Agent, the Securityholder Representative, and any related entity may rely upon and enforce the representations, warranties, covenants and agreements contained herein. Such representations, warranties, covenants and agreements shall survive the surrender of Company Securities and the payment of the Arrangement Consideration.

IN WITNESS WHEREOF, the undersigned has executed this Letter of Transmittal as of the date hereof.

[*Appropriate Signature Block or Electronic Execution Method to be inserted*]

Exhibit A

Joinder Agreement

This Joinder Agreement (the "**Joinder Agreement**") is made as of [_____], 2021 by the undersigned in connection with the support and voting agreement dated as of November 1, 2021 (the "**Support Agreement**") by and among (i) the securityholders of ecobee Inc. ("**Company**") party thereto (collectively, the "**Supporting Securityholders**"), and (ii) 13462234 Canada Inc. ("**Purchaser**").

WHEREAS the Support Agreement allows securityholders of the Company that are not Supporting Securityholders to become a party thereto by executing a Joinder Agreement;

AND WHEREAS the undersigned desires to become a party to, and to be bound by the terms of, the Support Agreement;

NOW, THEREFORE, in consideration of the premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned hereby agrees as follows:

1. The undersigned hereby acknowledges that the undersigned has received and reviewed a copy of the Support Agreement.

2. The undersigned hereby acknowledges and agrees to be fully bound as a Supporting Securityholder under the Support Agreement.

3. The undersigned hereby represents and warrants to the Purchaser that the representations and warranties set forth in the Support Agreement are true and correct with respect to the undersigned as if given on the date hereof.

4. This Joinder Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Joinder Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Joinder Agreement.

5. This Joinder Agreement and the relationship between the parties shall be governed by and construed in accordance with the laws of the Provinces of Ontario and the federal laws of Canada applicable therein without giving effect to any choice or conflict of Law provision or rule (whether of such jurisdiction or any other jurisdiction). Any legal suit, action or proceeding arising out of or based upon this Support Agreement may be instituted in the Province of Ontario, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit,

action or any proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

IN WITNESS WHEREOF, the undersigned has executed this Joinder Agreement as of the date first written above.

Securityholder Name:	
Securityholder Signature:	

CONTACT INFORMATION

Mailing Address:	
Email:	
Telephone:	
Fax:	

Exhibit B

PRE-CLOSING REORGANIZATION ELECTION FORM
FOR COMPANY SHAREHOLDERS

If you are an Option holder and not a shareholder of ecobee Inc., this document is not applicable to you.

This Election Form for Company Shareholders (the "**Election Form**") is provided by ecobee Inc. (the "**Company**") for use in connection with the plan of arrangement pursuant to the *Canada Business Corporations Act* (the "**Arrangement**") described in the Management Proxy Circular of the Company dated November **[8]**, 2021 (the "**Information Circular**"). Reference is made to the Information Circular for further information. Please read this Election Form and the Information Circular (including any exhibits and appendices thereto) carefully before completing this Election Form. Capitalized terms used herein and not otherwise defined have the meanings given to them in the Information Circular.
This Election Form is for use by Company Shareholders who wish to elect to participate in the Pre-Closing Reorganization. IN ORDER TO ELECT TO PARTICIPATE IN THE PRE-CLOSING REORGANIZATION, COMPANY SHAREHOLDERS MUST COMPLETE THIS ELECTION FORM AND DELIVER SUCH FORM TO THE COMPANY PRIOR TO 5:00 P.M. (TORONTO TIME) ON [●], 2021.

On the Effective Date, a Pre-Closing Reorganization of the Company's share capital will be effected pursuant to the Arrangement and there will be a payment of a capital dividend on the shares held by the Company Shareholders who elect to participate in the Pre-Closing Reorganization (such electing Company Shareholders are referred to as "Reorganization Participants"), which will be satisfied in full by way of the issuance of promissory notes by the Company to the Reorganization Participants (the “CDA Notes”). The Reorganization Participants will agree to make a contribution of capital in respect of their Existing Company Common Shares in an amount equal to their respective CDA Notes and the obligation to satisfysuch contribution of capital will be set-off against the CDA Notes, with the result that such Company Shareholders will increase the adjusted cost base in their Existing Company Common Shares.

A full description of the Pre-Closing Reorganization is described in the Information Circular and in steps [(3) to (9)] in the Plan of Arrangement attached to the Information Circular. This summary contained herein is qualified in its entirety by the Information Circular and the Plan of Arrangement.

In order to participate in the Pre-Closing Reorganization, a Company Shareholder must be a resident of Canada for purposes of the *Income Tax Act* (Canada) and must deliver a duly executed Election Form to the Company by email such that it is received prior to 5:00 p.m. (Toronto time) on [●], 2021 at the following email address: [●]; Attention: [●]

*****

The undersigned Company Shareholder hereby certifies that such Company Shareholder is a resident of Canada for purposes of the Income Tax Act (Canada) and wishes to participate in the Pre-Closing Reorganization.

Dated [●], 2021.

Company Shareholder Name:	

Company Shareholder Signature:	

Exhibit C

Canada Revenue Agency
1050 Notre Dame Avenue
Sudbury ON P3A 5C2

TAXPAYER (the "Corporation")
BN: XXXXX XXXX RC000X
Election Pursuant to Subsection 184(3)

Dear Sir/Madam:

I am writing in connection with the reassessment of TAXPAYER during which it was determined that excessive capital dividends were paid as follows:

Date of Election	***Date Dividend paid/became Payable***	***Payor Corporation***	***Original Capital Dividend Amount***	***Excess Amount***
		TAXPAYER	$	$

I wish to elect under subsection 184(3) of the *Income Tax Act* (Canada) ("the Act") to treat the excess capital dividends as taxable dividends as outlined below.

Date Dividend paid/became Payable	***Recipient***	***Social Insurance/ Business Number***	***Amount Elected***
	[List all recipients]		

I also enclose the following documents as required by Regulation 2106 of the Act to support the election under subsection 184(3):

1. Certified copy of director's resolution and their declaration that the election is made with the concurrence of all shareholders who received said dividend; and
2. Consents from the shareholders agreeing that the excess amount will be treated as a taxable dividend.

Yours truly,

Authorized Signer of TAXPAYER

ecobee Inc.
(the "**Corporation**")
CONSENT

The undersigned, being the holder of [●] issued and outstanding [Common] shares in the share capital of the Corporation, received a capital dividend representing a total amount of $[●] pursuant to an election under subsection 83(2) of the *Income Tax Act* (Canada), payable on [●].

The undersigned does hereby consent to the following:

In a situation where the tax authorities consider that the Corporation has designated as a capital dividend an amount that exceeds the amount eligible to be so designated, according to the capital dividend account at that time, the undersigned does consent, as of now, to the election in the prescribed manner by the Corporation under subsection 184(3) of the *Income Tax Act* (Canada) and corresponding provincial legislation, and acknowledges that, pursuant to such election by the Corporation, the portion of the dividend, if any, by which the dividend exceeds the capital dividend account will be deemed to be a taxable dividend.

The undersigned concurs, as of now, with said election by the Corporation and acknowledges that any assessment that is necessary to take the Corporation's election into account, by the tax authorities of the tax, interest and penalties payable by the undersigned, shall be made.

SIGNED as of _____, at _____.

Per: _____
Shareholder

	June 30, 2021 $	(Nov 30, 2021 $
Assets		
Current assets		
Cash and cash equivalents	22,110	14,092
Trade and other receivables, net **(A)**	19,210	22,701
Inventories **(A)**	11,918	8,703
Prepaid expenses and other assets **(A)**	5,024	4,141
	58,262	49,637
Other long-term assets		
Property and equipment, net	3,780	3,751
Right-of-use assets– net	9,793	9,589
Intangible assets – net	1,483	1,434
Goodwill	-	-
	15,056	14,774
Total assets	73,318	64,912
Liabilities		
Current liabilities		
Accounts payable **(B)**	15,987	19,036
Accrued liabilities **(B)**	10,477	9,985
Provisions **(B)**	7,133	7,984
Lease liability **(B)**	1,136	1,103
Loans and borrowings	25,203	25,488
Deferred revenue	7,859	8,243
Debt warrant liabilities	27,140	26,845
	94,935	98,684
Long-term liabilities		
Loans and borrowings	23,656	23,750
Deferred revenue	24,559	24,787
Lease liability	10,441	10,083
	153,591	157,304
Commitments and contingencies		
Mezzanine equity		
Contingently redeemable preference shares	138,071	138,071
Shareholders' Deficit		
Common shares	1,685	1,723
Additional paid-in-capital	14,551	15,075
Accumulated deficit	(234,385)	(247,322)
Accumulated other comprehensive loss	(195)	61
Total shareholders' deficit	(218,344)	(230,341)
Total liabilities and shareholders' deficit	73,318	64,912
Closing Working Capital	**1,419**	**(2,563)**

Schedule 1.1

AGREED ACCOUNTING PRINCIPLES

Assets

Trade and Other Receivables and Assets

Accounts receivables are primarily comprised of trade receivables presented net of allowance for doubtful accounts. The Company maintains an allowance for doubtful accounts based on its assessment of the collectability of amounts owed by customers. The Company evaluates the collectability of its accounts receivable balance based upon a combination of factors on a periodic basis such as specific credit risk of its customers, historical trends and economic circumstances. The Company, in the normal course of business, monitors the financial condition of its customers and reviews the credit history of each new customer. When the Company becomes aware of a specific customer's inability to meet its financial obligations to the Company (such as in the case of bankruptcy filings or material deterioration in the customer's operating results or financial position, and payment experiences), the Company records a specific bad debt provision to reduce the customer's related accounts receivable to its estimated net realizable value. If circumstances related to specific customers change, the Company's estimates of the recoverability of accounts receivable balances could be further adjusted.

Prepaids

The company records future expenses that have been paid in advance.

Inventories

Inventories are stated at the lower of cost or net realizable value. Cost of inventories is determined on a weighted-average cost basis. Cost of inventory includes invoiced cost from the manufacturer and other costs incurred to bring the inventory to its present location and condition. Net realizable value is the estimated selling price in the ordinary course of business, less the estimated cost of completion and the estimated costs necessary to get the product ready for sale. The Company assesses the valuation of inventory balances including an assessment to determine potential excess and/or obsolete inventory. The Company may be required to write down the value of inventory if estimates of future demand and market conditions indicate excess or obsolete inventory. For the periods presented, the Company has not experienced significant write-downs.

Liabilities

Accounts payable, credit cards and accruals

Accruals are recorded when goods or services have been received but not yet invoiced.

Accounts payable are recorded when good or services have been received, obligation has been created and invoice has been received.

Sales provisions

Sales provisions include future returns, discounts, chargebacks, promotional and marketing development funds for specific customers, all based on management's best estimate of such costs, taking into account historical experience and contractual terms where applicable.

Sales returns, warranties and defects

The Company provides for future costs of sales returns based on costs incurred in the prior years (most recently, this has resulted in determining provision by taking a five percent (5.0%) reserve on gross revenue and provides for future warranties and defects by taking a one percent (1.0%) reserve on gross revenue), which in each case is based on management's best estimate of such costs, taking into account historical experience and warranty provisions as per the terms of the sale agreements with its customers. The Company evaluates these provisions annually.

Leases

Accounting Standards Codification Topic 842, Leases, or ASC 842 requires lessees to recognize a right-of-use, or ROU, asset and a lease liability on the balance sheet for substantially all leases, except for short-term leases. Leases are classified as either finance or operating, with classification affecting the pattern of expense recognition in the statement of operations. The Company adopted ASC 842 on July 1, 2018 under a modified retrospective method. As a practical expedient, the Company has elected to use hindsight with respect to determining the lease term.

The Company analyzes new contracts to determine whether they include leased assets; such leases are referred to as embedded leases. When evaluating contracts for embedded leases, the Company exercises judgment to determine if there is an explicitly or implicitly identified asset in the contract and if the Company controls the use of that asset. The Company's accounting policy deems leases with an initial term of 12 months or less short-term leases. The Company recognizes lease expense for short-term lease payments on a straight-line basis over the term of the lease.

Operating lease right-of-use, or ROU, assets and lease liabilities are recognized based on the present value of lease payments over the lease term. Because most of the Company's leases do not include an implicit discount rate, the Company uses its incremental borrowing rate to calculate the present value of lease payments. As a practical expedient, the Company made an accounting policy election not to separate lease components (e.g. payments for rent, real estate taxes and insurance costs) from non-lease components (e.g. common-area maintenance costs) which the Company has applied to all leases. As a result, the Company includes both lease and non-lease components to calculate the right-of-use asset and related lease liability (if the non-lease components are fixed).

Deferred Revenue

On sales of hardware (other than cameras) by the Company, the Company allocated eight percent (8.0%) of net revenue as deferred revenue to be recognized over 7 years.

On sales of cameras by the Company, the Company allocated eight percent (8.0%) of net revenue as deferred revenue to be recognized over 3 years.

Contract Assets and Contract Liabilities (Deferred Revenue)

A contract asset results when goods or services have been transferred to the customer, but payment is contingent upon a future event, other than the passage of time (i.e., type of unbilled receivable). The Company does not have any material unbilled receivables, therefore, does not have any contract assets. The Company only has accounts receivable as disclosed on the face of the balance sheet.

The Company records contract liabilities to deferred revenue when the Company receives customer payments in advance of the performance obligations being satisfied on the Company's contracts, which is generally the Company's service revenues.

Disputed Balance

If the disputed liability in the amount of $115,000 described in Section 3.15 of the Disclosure Letter is not fully and finally resolved prior to the Effective Time, the amount of the asserted liability shall be included in Indebtedness.

Schedule 1.2

ILLUSTRATIVE CALCULATION OF NET WORKING CAPITAL

See attached Excel spreadsheet.

Project Honey
Net working capital exhibit
Source: Monthly TB's provided by management

				Current assets / Current liabilities	Indebtedness	Other					
	GL Description	**Mapping**	**Balance June 30, 2020** *USD in thousand*	**NWC**	**Indebtedness**	**Other**	**Balance June 30, 2021** *USD in thousand*	**NWC**	**Indebtedness**	**Other**	**Comments**
KPM											
Cas	10330 - Apple Pay Account	Indebtedness	-	-	-	-	-	-	-	-	
Cas	10250 - CIBC INC CAD #2882-4010	Indebtedness	3,593	-	3,593	-	1,110	-	1,110	-	
Cas	10260 - CIBC INC USD #2020-0816	Indebtedness	11,309	-	11,309	-	687	-	687	-	
Cas	10270 - CIBC LTD USD #0002693445	Indebtedness	10,975	-	10,975	-	10,882	-	10,882	-	
Cas	10271 - CIBC LTD USD Money Market #3347885	Indebtedness	10,129	-	10,129	-	5,150	-	5,150	-	
Cas	10170 - City National Bank - USD	Indebtedness	259	-	259	-	342	-	342	-	
Cas	10180 - PayPal CAD - Use before December 2020 (OLD)	Indebtedness	-	-	-	-	-	-	-	-	
Cas	10120 - Comerica CAD # 102-067-6	Indebtedness	2	-	2	-	3	-	3	-	
Cas	10140 - Comerica USD	Indebtedness	510	-	510	-	1,836	-	1,836	-	
Cas	10160 - Comerica USD 400-9254	Indebtedness	58	-	58	-	53	-	53	-	
Cas	10280 - Concur Personal Expense Payment Clearing - Inc. CAD	Indebtedness	1	-	1	-	1	-	1	-	
Cas	10285 - Concur Personal Expense Payment Clearing - Ltd. USD	Indebtedness	0	-	0	-	0	-	0	-	
Cas	10295 - Concur Credit Card Payment Clearing - Ltd. USD	Indebtedness	-	-	-	-	-	-	-	-	
Cas	10151 - HSBC GBP #0666	Indebtedness	262	-	262	-	251	-	251	-	
Cas	10152 - HSBC GBP #6214	Indebtedness	13	-	13	-	14	-	14	-	
Cas	10182 - PayPal CAD - Use after January 2021 (NEW)	Indebtedness	-	-	-	-	1	-	1	-	
Cas	10181 - PaypPal GBP	Indebtedness	2	-	2	-	-	-	-	-	
Cas	10100 - RBC CAD #102-641-8	Indebtedness	567	-	567	-	922	-	922	-	
Cas	10110 - RBC CAD #102-945-3	Indebtedness	20	-	20	-	22	-	22	-	
Cas	10130 - RBC USD #400-594-8	Indebtedness	196	-	196	-	141	-	141	-	
Cas	10220 - Scotiabank Axcendo CAD #51326-01338-17	Indebtedness	295	-	295	-	325	-	325	-	
Cas	10005 - Undeposited Funds	Indebtedness	200	-	200	-	472	-	472	-	
Cas	10225 - Scotiabank Axcendo USD #42432-01116-19	Indebtedness	37	-	37	-	38	-	38	-	
Cas	10311 - Stripe - ecobee air filters (CA)	Indebtedness	2	-	2	-	2	-	2	-	
Cas	10321 - Stripe - ecobee air filters (US)	Indebtedness	10	-	10	-	12	-	12	-	
Cas	10300 - Customer Deposits	Indebtedness	(116)	-	(116)	-	(279)	-	(279)	-	
Cas	11000 - Short term investment RBC #451-00504-1-4	Indebtedness	-	-	-	-	-	-	-	-	
Cas	10312 - Stripe - ecobee Haven (CA)	Indebtedness	0	-	0	-	1	-	1	-	
Cas	10322 - Stripe - ecobee Haven (US)	Indebtedness	0	-	0	-	1	-	1	-	
Res	10720 - Restricted Cash - CIBC Deposit	Indebtedness	103	-	103	-	103	-	103	-	
Res	10710 - Restricted Cash - Comerica Deposit	Indebtedness	20	-	20	-	20	-	20	-	
	Cash and cash equivalents		**38,448**	**-**	**38,448**	**-**	**22,110**	**-**	**22,110**	**-**	
Acc	12100 - Accounts Receivable - CAD	Current assets	1,044	1,044	-	-	1,484	1,484	-	-	
Acc	12210 - Accounts Receivable - GBP	Current assets	(1)	(1)	-	-	(1)	(1)	-	-	
Acc	12200 - Accounts Receivable - USD	Current assets	18,410	18,410	-	-	16,763	16,763	-	-	
Acc	12400 - Accrued receivable	Current assets	52	52	-	-	10	10	-	-	
Acc	12450 - Accrued receivable USD	Current assets	2	2	-	-	(19)	(19)	-	-	
Acc	12300 - Allowance for Doubtful Accounts	Current assets	(292)	(292)	-	-	(347)	(347)	-	-	
Acc	12310 - Allowance for Non-Compliance / Chargeback	Current assets	(213)	(213)	-	-	(165)	(165)	-	-	
Acc	12500 - Non-compliance receivable	Current assets	469	469	-	-	226	226	-	-	
Oth	12410 - Government tax credits receivable	Current assets	183	183	-	-	123	123	-	-	
Oth	12475 - Other Receivable	Current assets	(258)	(258)	-	-	471	471	-	-	
	Trade and other receivables		**19,396**	**19,396**	**-**	**-**	**18,546**	**18,546**	**-**	**-**	
Inve	13330 - E4 Bundle Pack with RS	Current assets	-	-	-	-	0	0	-	-	
Inve	13510 - Ecobee 3 - Refurbished	Current assets	49	49	-	-	47	47	-	-	
Inve	13323 - Ecobee 4 (Apollo) CAN Pro	Current assets	(1)	(1)	-	-	(2)	(2)	-	-	
Inve	13910 - Good in Transit	Current assets	699	699	-	-	123	123	-	-	
Inve	13500 - Inventory - Accessories	Current assets	32	32	-	-	56	56	-	-	

Inve	13670 - Inventory - bundle packs	Current assets	-	-	-	-	229	229	-	-	
Inve	13605 - Inventory - display units	Current assets	2	2	-	-	7	7	-	-	
Inve	13100 - Inventory - E3	Current assets	17	17	-	-	17	17	-	-	
Inve	13150 - Inventory - E3HK	Current assets	(154)	(154)	-	-	(154)	(154)	-	-	
Inve	13322 - Inventory - Ecobee 4 Apollo CAN	Current assets	(5)	(5)	-	-	(5)	(5)	-	-	
Inve	13360 - Inventory - Ecobee Switch CAN	Current assets	98	98	-	-	(7)	(7)	-	-	
Inve	13600 - Inventory - ecobee5	Current assets	1,677	1,677	-	-	3,443	3,443	-	-	
Inve	13300 - Inventory - EMS Si	Current assets	1,501	1,501	-	-	972	972	-	-	
Inve	13355 - Inventory - Hyperion Light Switch	Current assets	119	119	-	-	98	98	-	-	
Inve	13310 - Inventory - Nike	Current assets	14	14	-	-	14	14	-	-	
Inve	13315 - Inventory - Nike CAN	Current assets	(38)	(38)	-	-	521	521	-	-	
Inve	13650 - Inventory - Room Sensors	Current assets	183	183	-	-	741	741	-	-	
Inve	13655 - Inventory - Room Sensors display	Current assets	0	0	-	-	3	3	-	-	
Inve	13350 - Inventory - RS Modules	Current assets	0	0	-	-	0	0	-	-	
Inve	13325 - Inventory - RS Packs	Current assets	(21)	(21)	-	-	(23)	(23)	-	-	
Inve	13225 - Inventory - Smart	Current assets	0	0	-	-	0	0	-	-	
Inve	13250 - Inventory - Smart Si	Current assets	1	1	-	-	(1)	(1)	-	-	
Inve	13275 - Inventory - EMS	Current assets	-	-	-	-	-	-	-	-	
Inve	13365 - Inventory - Theia	Current assets	519	519	-	-	287	287	-	-	
Prep	14130 - Prepaid Inventory - Reimbursable Parts	Current assets	100	100	-	-	62	62	-	-	
Prep	14200 - Prepaid Inventory - Inventory Deposits	Current assets	1	1	-	-	-	-	-	-	
Prep	17110 - Intercompany - Inventory In Transit	Current assets	-	-	-	-	0	0	-	-	
Prep	14136 - Prepaid Inventory - Ecobee 4 (Apollo)	Current assets	-	-	-	-	-	-	-	-	
Prep	14138 - Prepaid Inventory - Hyperion	Current assets	-	-	-	-	-	-	-	-	
Inve	13320 - Inventory Ecobee 4 - Apollo	Current assets	484	484	-	-	206	206	-	-	
Inve	13321 - Ecobee 4 Apollo Pro	Current assets	-	-	-	-	-	-	-	-	
Inve	13861 - Inventory Ecobee 4 - Apollo Display CAN	Current assets	(0)	(0)	-	-	(0)	(0)	-	-	
Inve	13810 - Ecobee 3 HK Display	Current assets	-	-	-	-	-	-	-	-	
Inve	13311 - Inventory Nike	Current assets	1,424	1,424	-	-	6,034	6,034	-	-	
Inve	13850 - Inventory Nike - Display	Current assets	0	0	-	-	0	0	-	-	
Inve	13860 - Inventory Ecobee 4 - Apollo Display	Current assets	-	-	-	-	-	-	-	-	
Inve	13930 - Inventory obsolescence	Current assets	(443)	(443)	-	-	(777)	(777)	-	-	
Inve	13800 - Inventory on consignment	Current assets	23	23	-	-	23	23	-	-	
Inve	13870 - Inventory Remote Sensor - Display	Current assets	1	1	-	-	1	1	-	-	
Inve	13890 - Inventory - Nike Display Boards	Current assets	-	-	-	-	-	-	-	-	
Inve	13920 - Inventory RMA	Current assets	8	8	-	-	3	3	-	-	
	Inventory		**6,290**	**6,290**	**-**	**-**	**11,918**	**11,918**	**-**	**-**	
Prep	22220 - GST/HST on Purchases	Current assets	410	410	-	-	1,776	1,776	-	-	
Prep	15110 - 250 University Ave - Current portion of lease asset	Current assets	-	-	-	-	0	0	-	-	
Prep	14500 - Deposits and Advances	Current assets	886	886	-	-	885	885	-	-	
Prep	17510 - Long Term Asset - Employee Loan	Other	149	-	-	149	142	-	-	142	Loan to be settled prior to Close
Prep	14150 - Other Prepaids	Current assets	224	224	-	-	309	309	-	-	
Prep	14110 - Prepaid Insurance	Current assets	9	9	-	-	10	10	-	-	
Prep	14100 - Prepaid Membership Fees	Current assets	49	49	-	-	77	77	-	-	
Prep	14120 - Prepaid Software	Current assets	780	780	-	-	1,682	1,682	-	-	
Prep	14160 - Usage-based Prepaids	Current assets	(9)	(9)	-	-	-	-	-	-	
Prep	21171 - VAT on Purchases	Current assets	33	33	-	-	20	20	-	-	
Othe	18110 - Investment in Axcendo	Current assets	-	-	-	-	-	-	-	-	This balance has to be $0 at Close
Othe	18220 - Investment in Cocoon	Current assets	-	-	-	-	-	-	-	-	This balance has to be $0 at Close
Othe	18100 - Investment in ecobee Ltd.	Current assets	(0)	(0)	-	-	(0)	(0)	-	-	This balance has to be $0 at Close
Inter	17200 - Intercompany Clearing Account	Current assets	-	-	-	-	(0)	(0)	-	-	This balance has to be $0 at Close
Inter	17120 - Intercompany Payable - Axcendo Inc.	Current assets	(0)	(0)	-	-	0	0	-	-	This balance has to be $0 at Close
Inter	17130 - Intercompany Payable - Cocoon Labs Ltd.	Current assets	0	0	-	-	0	0	-	-	This balance has to be $0 at Close
Inter	17100 - Intercompany Receivable / Payable INC - LTD	Current assets	0	0	-	-	(0)	(0)	-	-	This balance has to be $0 at Close
	Prepaid expenses and other assets		**2,531**	**2,382**	**-**	**149**	**4,901**	**4,759**	**-**	**142**	

Furn	16405 - Furniture & Fixtures, Accum. Depr.	Fixed assets	(537)	-	-	(537)	(672)	-	-	(672)
Furn	16400 - Furniture & Fixtures, Cost	Fixed assets	790	-	-	790	792	-	-	792
Leas	16600 - Leasehold Improvements 207 Queens Quay, Cost	Fixed assets	-	-	-	-	-	-	-	-
Leas	16605 - Leasehold Improvements 207 Queens Quay, Accum. Depr.	Fixed assets	-	-	-	-	-	-	-	-
Leas	16550 - Leasehold Improvements - Other, Cost	Fixed assets	714	-	-	714	716	-	-	716
Leas	16555 - Leashold Improvements - Other, Accum. Depr.	Fixed assets	(692)	-	-	(692)	(696)	-	-	(696)
Leas	16645 - Leaseholds - Corus, Accum. Depr.	Fixed assets	(164)	-	-	(164)	(378)	-	-	(378)
Leas	16640 - Leaseholds - Corus, Cost	Fixed assets	1,890	-	-	1,890	1,893	-	-	1,893
Man	16355 - Manufacturing Equipm., Accum. Depr.	Fixed assets	(1,564)	-	-	(1,564)	(2,168)	-	-	(2,168)
Man	16350 - Manufacturing Equipment, Cost	Fixed assets	3,351	-	-	3,351	3,480	-	-	3,480
Non	16250 - Non-Production Hardware, Cost	Fixed assets	2,658	-	-	2,658	3,042	-	-	3,042
Non	16255 - Non-Production HW, Accum. Depr.	Fixed assets	(1,747)	-	-	(1,747)	(2,355)	-	-	(2,355)
Non	16300 - Non-Production Software, Cost	Fixed assets	252	-	-	252	254	-	-	254
Non	16305 - Non-Production SW, Accum. Depr.	Fixed assets	(232)	-	-	(232)	(248)	-	-	(248)
Offic	16455 - Office Equipment, Accum. Depr.	Fixed assets	(96)	-	-	(96)	(109)	-	-	(109)
Offic	16450 - Office Equipment, Cost	Fixed assets	110	-	-	110	113	-	-	113
Prod	16155 - Production Software, Accum. Depr.	Intangible assets	(66)	-	-	(66)	(136)	-	-	(136)
Prod	16150 - Production Software, Cost	Intangible assets	200	-	-	200	200	-	-	200
Serv	16105 - Server Hardware, Accum. Depr.	Fixed assets	(537)	-	-	(537)	(587)	-	-	(587)
Serv	16100 - Server Hardware, Cost	Fixed assets	616	-	-	616	637	-	-	637
	Property and equipment		**4,945**	**-**	**-**	**4,945**	**3,780**	**-**	**-**	**3,780**
Righ	16835 - Accumulated Amort - Right-to-use Asset - 207QQ Lease	Fixed assets	(161)	-	-	(161)	(577)	-	-	(577)
Righ	16830 - Right-to-use Asset - 207QQ Lease	Fixed assets	4,660	-	-	4,660	4,660	-	-	4,660
Righ	16825 - Accumulated Amort - Right-to-use Asset - 210DD Lease	Fixed assets	(163)	-	-	(163)	(163)	-	-	(163)
Righ	16820 - Right-to-use Asset - 210DD Lease	Fixed assets	162	-	-	162	162	-	-	162
Righ	16815 - Accumulated Amort - Right-to-use Asset - 250U Lease	Fixed assets	(440)	-	-	(440)	(715)	-	-	(715)
Righ	16810 - Right-to-use Asset - 250U Lease	Fixed assets	826	-	-	826	826	-	-	826
Righ	16845 - Accumulated Amort - Right-to-use Asset - Corus	Fixed assets	(940)	-	-	(940)	(1,322)	-	-	(1,322)
Righ	16840 - Right-to-use Asset - Corus	Fixed assets	7,061	-	-	7,061	6,920	-	-	6,920
Net	17520 - Net lease investment	Fixed assets	-	-	-	-	-	-	-	-
	Right-of-use assets		**11,006**	**-**	**-**	**11,006**	**9,793**	**-**	**-**	**9,793**
Lice	16920 - Accumulated Amort - Licenses	Intangible assets	(8)	-	-	(8)	(19)	-	-	(19)
Lice	16915 - Licenses	Intangible assets	30	-	-	30	30	-	-	30
Pate	16910 - Accumulated Amort - Patent Assets	Intangible assets	(387)	-	-	(387)	(626)	-	-	(626)
Pate	16905 - Patent Assets	Intangible assets	2,102	-	-	2,102	2,097	-	-	2,097
	Intangible assets		**1,737**	**-**	**-**	**1,737**	**1,483**	**-**	**-**	**1,483**
Goo	19500 - Goodwill	Intangible assets	2,305	-	-	2,305	-	-	-	-
	Goodwill		**2,305**	**-**	**-**	**2,305**	**-**	**-**	**-**	**-**
Emp	21513 - Bill W CAD CIBC Credit Card 0617	Current liabilities	(31)	(31)	-	-	-	-	-	-
Emp	21511 - Niamh B CAD CIBC Credit Card 4876	Current liabilities	-	-	-	-	-	-	-	-
Emp	21512 - David B CAD CIBC Credit Card 0492	Current liabilities	0	0	-	-	-	-	-	-
Emp	21516 - Jackie P CAD CIBC Credit Card 0534	Current liabilities	-	-	-	-	-	-	-	-
Emp	21519 - Elliott CAD CIBC Credit Card 1836	Current liabilities	-	-	-	-	-	-	-	-
Emp	21521 - John A CAD CIBC Credit Card 2570	Current liabilities	-	-	-	-	-	-	-	-
Emp	21527 - Brent L CAD CIBC Credit Card 6957	Current liabilities	0	0	-	-	(0)	(0)	-	-
Emp	21518 - Chris C CAD CIBC Credit Card 0518	Current liabilities	(0)	(0)	-	-	-	-	-	-
Emp	21517 - Derrick B CAD CIBC Credit Card 0526	Current liabilities	(0)	(0)	-	-	-	-	-	-
Emp	21515 - Ivan P CAD CIBC Credit Card 4756	Current liabilities	(0)	(0)	-	-	(6)	(6)	-	-
Emp	21522 - Jon P CAD CIBC Credit Card 0476	Current liabilities	(0)	(0)	-	-	(0)	(0)	-	-
Emp	21520 - Jordan C CAD CIBC Credit Card 0567	Current liabilities	-	-	-	-	-	-	-	-
Emp	21523 - Kirk W CAD CIBC Credit Card 4485	Current liabilities	0	0	-	-	-	-	-	-
Emp	21524 - Casey M CAD CIBC Credit Card 0591	Current liabilities	-	-	-	-	-	-	-	-
Emp	21525 - Stuart L CAD CIBC Credit Card 0484	Current liabilities	-	-	-	-	-	-	-	-
Emp	21526 - Kevin B CAD CIBC Credit Card 9581	Current liabilities	(0)	(0)	-	-	-	-	-	-
Emp	21528 - Kristen J CAD CIBC Credit Card 9817	Current liabilities	-	-	-	-	(0)	(0)	-	-

Emp	21510 - Nalini A CAD CIBC Credit Card 0542	Current liabilities	(0)	(0)	-	-	-	-	-	-
Emp	21514 - Penny F CAD CIBC Credit Card 0575	Current liabilities	(5)	(5)	-	-	(0)	(0)	-	-
Emp	21620 - Dan C GBP HSBC credit card 6325	Current liabilities	2	2	-	-	2	2	-	-
Emp	21610 - Sanjay GBP HSBC credit card 4985	Current liabilities	3	3	-	-	3	3	-	-
Emp	21564 - Chris C USD CIBC Credit Card 4723	Current liabilities	(0)	(0)	-	-	(0)	(0)	-	-
Emp	21562 - Derrick B USD CIBC Credit Card 4731	Current liabilities	0	0	-	-	(0)	(0)	-	-
Emp	21563 - Ivan P USD CIBC Credit Card 0559	Current liabilities	(11)	(11)	-	-	(8)	(8)	-	-
Emp	21561 - Jackie P USD CIBC Credit Card 4749	Current liabilities	(0)	(0)	-	-	-	-	-	-
Emp	21565 - Jon P USD CIBC Credit Card 4699	Current liabilities	(6)	(6)	-	-	(0)	(0)	-	-
Emp	21568 - Kevin B USD CIBC Credit Card 1170	Current liabilities	(0)	(0)	-	-	(0)	(0)	-	-
Emp	21566 - Kirk W USD CIBC Credit Card 9380	Current liabilities	0	0	-	-	-	-	-	-
Emp	21569 - Kristen J USD CIBC Credit Card 7983	Current liabilities	-	-	-	-	(0)	(0)	-	-
Emp	21567 - Stuart L USD CIBC Credit Card 4707	Current liabilities	0	0	-	-	0	0	-	-
Othe	22800 - Billable Receivable - Clearing Account	Current liabilities	(10)	(10)	-	-	1	1	-	-
PPP	26700 - Government Grant - PPP Loan	Indebtedness	(352)	-	(352)	-	-	-	-	-
Othe	21170 - VAT Payable	Current liabilities	(39)	(39)	-	-	-	-	-	-
Accr	21100 - Accounts Payable Trade - CAD	Current liabilities	(1,005)	(1,005)	-	-	(1,547)	(1,547)	-	-
Accr	21160 - Accounts Payable Trade - GBP	Current liabilities	(0)	(0)	-	-	(0)	(0)	-	-
Accr	21159 - Accounts Payable Trade - Cocoon clearing	Current liabilities	-	-	-	-	-	-	-	-
Accr	21150 - Accounts Payable Trade - USD	Current liabilities	(10,598)	(10,598)	-	-	(14,440)	(14,440)	-	-
	Accounts payable		**(12,052)**	**(11,699)**	**(352)**	**-**	**(15,997)**	**(15,997)**	**-**	**-**
Accr	22000 - Accrued Liabilities	Current liabilities	(5,223)	(5,223)	-	-	(7,336)	(7,336)	-	-
Accr	22642 - Accrued Liabilities - US Other Employee Tax Payable	Current liabilities	-	-	-	-	(1)	(1)	-	-
Accr	22641 - Accrued Liabilities - US State Income Tax Payable	Indebtedness	-	-	-	-	-	-	-	-
Accr	22645 - Accrued Liability - 401k/ROTH payable	Current liabilities	(44)	(44)	-	-	(5)	(5)	-	-
Accr	22632 - Accrued Liability - EHT Payable	Current liabilities	(175)	(175)	-	-	(0)	(0)	-	-
Accr	22631 - Accrued Liability - Federal & Provincial Tax Payable	Indebtedness	2	-	2	-	(0)	-	(0)	-
Accr	22646 - Accrued Liability - Misc employee deductions	Current liabilities	(4)	(4)	-	-	(14)	(14)	-	-
Accr	22630 - Accrued Liability - Payable benefits CPP & EI	Current liabilities	1	1	-	-	(0)	(0)	-	-
Accr	22620 - Accrued Liability - Sales Commissions	Current liabilities	(201)	(201)	-	-	(206)	(206)	-	-
Accr	22640 - Accrued Liability - US FICA Payroll Taxes	Current liabilities	-	-	-	-	-	-	-	-
Accr	22612 - Accrued Liability - US Other Employer Taxes Payable	Current liabilities	0	0	-	-	(1)	(1)	-	-
Accr	22610 - Accrued Liability - Vacation Pay	Current liabilities	(1,170)	(1,170)	-	-	(1,864)	(1,864)	-	-
Accr	22210 - GST/HST Liability on Sales	Current liabilities	0	0	-	-	-	-	-	-
Accr	22230 - GST/HST Payable	Current liabilities	(324)	(324)	-	-	(959)	(959)	-	-
Accr	24000 - Income Taxes Payable - Current	Indebtedness	1	-	1	-	-	-	-	-
Accr	26500 - Leasehold - Deferred Rent	Current liabilities	(368)	(368)	-	-	(79)	(79)	-	-
Accr	22670 - Pensions Payable	Current liabilities	(11)	(11)	-	-	(8)	(8)	-	-
Accr	22390 - PST Payable MB	Current liabilities	(0)	(0)	-	-	-	-	-	-
Accr	22450 - PST Payable ON	Current liabilities	(0)	(0)	-	-	-	-	-	-
Accr	22470 - QST Payable QC	Current liabilities	122	122	-	-	172	172	-	-
Accr	22500 - Sales Tax Payable Alabama	Current liabilities	3	3	-	-	7	7	-	-
Accr	22505 - Sales Tax Payable Colorado	Current liabilities	4	4	-	-	10	10	-	-
Accr	22575 - Sales Tax Payable OHIO	Current liabilities	45	45	-	-	63	63	-	-
Accr	22571 - Sales Tax Payable Oregan	Current liabilities	-	-	-	-	3	3	-	-
Accr	22525 - Sales Tax Payable US Avalara	Current liabilities	(602)	(602)	-	-	(1,257)	(1,257)	-	-
Accr	22510 - Sales Taxes Payable CA	Current liabilities	122	122	-	-	232	232	-	-
Accr	22520 - Sales Taxes Payable FL	Current liabilities	38	38	-	-	69	69	-	-
Accr	22530 - Sales Taxes Payable IL	Current liabilities	22	22	-	-	48	48	-	-
Accr	22540 - Sales Taxes Payable IN	Current liabilities	6	6	-	-	19	19	-	-
Accr	22550 - Sales Taxes Payable MA	Current liabilities	9	9	-	-	28	28	-	-
Accr	22560 - Sales Taxes Payable MD	Current liabilities	14	14	-	-	25	25	-	-
Accr	22565 - Sales Taxes Payable NC	Current liabilities	9	9	-	-	24	24	-	-
Accr	22515 - Sales Taxes Payable NJ	Current liabilities	9	9	-	-	23	23	-	-
Accr	22570 - Sales Taxes Payable NV	Current liabilities	72	72	-	-	140	140	-	-

Accr	22576 - Sales Taxes Payable SC	Current liabilities	11	11	-	-	38	38	-	-	
Accr	22585 - Sales Taxes Payable TN	Current liabilities	25	25	-	-	40	40	-	-	
Accr	22580 - Sales Taxes Payable TX	Current liabilities	46	46	-	-	101	101	-	-	
Accr	22586 - Sales Taxes Payable VA	Current liabilities	34	34	-	-	47	47	-	-	
Accr	22590 - Sales Taxes Payable WA	Current liabilities	22	22	-	-	38	38	-	-	
Accr	22660 - UK Tax & NI Payable	Current liabilities	(53)	(53)	-	-	(90)	(90)	-	-	
Accr	22495 - US Sales Taxes Payable	Current liabilities	(67)	(67)	-	-	(67)	(67)	-	-	
Accr	22680 - Childcare Vouchers Payable	Current liabilities	(0)	(0)	-	-	(1)	(1)	-	-	
Accr	22600 - Visa Payable	Current liabilities	0	0	-	-	0	0	-	-	
Accr	22150 - Accrued Payable - Payroll Clearing Account	Current liabilities	3	3	-	-	3	3	-	-	
Accr	22100 - Accrued Payables	Current liabilities	(0)	(0)	-	-	1	1	-	-	
Accr	21175 - Accrued Purchases	Current liabilities	-	-	-	-	(1)	(1)	-	-	
Accr	22200 - Sales Tax Payable	Current liabilities	101	101	-	-	292	292	-	-	
	Accrued liabilities		**(7,522)**	**(7,524)**	**3**	**-**	**(10,467)**	**(10,467)**	**(0)**	**-**	
Sale	21250 - Customer Discount Provision	Current liabilities	(115)	(115)	-	-	(130)	(130)	-	-	
Sale	21260 - MDF Provision	Current liabilities	(597)	(597)	-	-	(629)	(629)	-	-	
Sale	21230 - Non-compliance / Chargebacks Provision	Current liabilities	-	-	-	-	-	-	-	-	
Sale	21240 - Promotional Spend Provision	Current liabilities	(2,286)	(2,286)	-	-	(2,820)	(2,820)	-	-	
Sale	21241 - Promotional Spend Provision - Bundle Sales	Current liabilities	-	-	-	-	(11)	(11)	-	-	
Sale	21210 - Returns Provision	Current liabilities	(1,766)	(1,766)	-	-	(2,729)	(2,729)	-	-	
Sale	21220 - Warranty Provision	Current liabilities	(45)	(45)	-	-	(815)	(815)	-	-	
	Provisions		**(4,810)**	**(4,810)**	**-**	**-**	**(7,133)**	**(7,133)**	**-**	**-**	
Cap	26130 - Capital Lease - 207QQ Lease ST	Current liabilities	(246)	(246)	-	-	(458)	(458)	-	-	
Cap	26120 - Capital Lease - 210DD Lease ST	Current liabilities	(0)	(0)	-	-	-	-	-	-	
Cap	26110 - Capital Lease - 250U Lease ST	Current liabilities	(259)	(259)	-	-	(125)	(125)	-	-	
Cap	26140 - Capital Lease - Corus Lease ST	Current liabilities	(409)	(409)	-	-	(553)	(553)	-	-	
	Lease liability		**(913)**	**(913)**	**-**	**-**	**(1,136)**	**(1,136)**	**-**	**-**	
Defe	23010 - Contract Liabilities (IFRS 15 - Product HW Revenue)	Deferred revenue	(20,215)	-	-	(20,215)	(26,981)	-	-	(26,981)	
Defe	23020 - Contract Liabilities (IFRS 15 - Product Service Revenue)	Deferred revenue	(3,847)	-	-	(3,847)	(2,902)	-	-	(2,902)	
Defe	23000 - Deferred Revenue	Deferred revenue	150	-	-	150	(11)	-	-	(11)	
Defe	23150 - Deferred Revenue - Apple subscriptions	Deferred revenue	-	-	-	-	(2)	-	-	(2)	
Defe	23120 - Deferred Revenue - Filters	Deferred revenue	(1)	-	-	(1)	35	-	-	35	
Defe	23160 - Deferred Revenue - Hardware/Software bundles	Deferred revenue	-	-	-	-	-	-	-	-	
Defe	23141 - Deferred Revenue - Home Monitoring - Annual Subscription	Deferred revenue	-	-	-	-	(6)	-	-	(6)	
Defe	23140 - Deferred Revenue - Home Monitoring - Monthly Subscription	Deferred revenue	(1)	-	-	(1)	(4)	-	-	(4)	
Defe	23110 - Deferred Revenue - Maintenance and Support	Deferred revenue	(41)	-	-	(41)	(37)	-	-	(37)	
Defe	23060 - Deferred Revenue - Other	Deferred revenue	(361)	-	-	(361)	(444)	-	-	(444)	
Defe	23100 - Deferred Revenue - SmartBuilding	Deferred revenue	(408)	-	-	(408)	(636)	-	-	(636)	
Defe	23050 - Deferred Revenue - Utility and API	Deferred revenue	(1,631)	-	-	(1,631)	(1,428)	-	-	(1,428)	
	Deferred revenue		**(26,355)**	**-**	**-**	**(26,355)**	**(32,417)**	**-**	**-**	**(32,417)**	
Debt	28500 - Warrant Liability	Indebtedness	(5,308)	-	(5,308)	-	(7,660)	-	(7,660)	-	
	Debt warrant liabilities		**(5,308)**	**-**	**(5,308)**	**-**	**(7,660)**	**-**	**(7,660)**	**-**	
Pron	28020 - Promissory Note - Deferred Financing Expense	Indebtedness	13	-	13	-	2	-	2	-	
Pron	28011 - Promissory Note - USD (Thomvest)	Indebtedness	(24,790)	-	(24,790)	-	(25,000)	-	(25,000)	-	
Pron	28016 - Promissory Note - USD (Thomvest) - Accumulated Interest	Indebtedness	(205)	-	(205)	-	(205)	-	(205)	-	
	Promissory note		**(24,983)**	**-**	**(24,983)**	**-**	**(25,204)**	**-**	**(25,204)**	**-**	
Leas	28130 - Capital Lease - 207QQ Lease LT	Lease liability	(4,432)	-	-	(4,432)	(4,320)	-	-	(4,320)	
Leas	28120 - Capital Lease - 210DD Lease LT	Lease liability	0	-	-	0	-	-	-	-	
Leas	28110 - Capital Lease - 250U Lease LT	Lease liability	(122)	-	-	(122)	-	-	-	-	
Leas	28140 - Capital Lease - Corus Lease LT	Lease liability	(6,205)	-	-	(6,205)	(6,121)	-	-	(6,121)	
	Lease liability - Long term		**(10,758)**	**-**	**-**	**(10,758)**	**(10,441)**	**-**	**-**	**(10,441)**	
Con	28220 - Convertible debt - accrued interest	Indebtedness	(261)	-	(261)	-	(2,008)	-	(2,008)	-	
Con	28010 - Convertible Debt - Principal	Indebtedness	-	-	-	-	-	-	-	-	
Con	28015 - Convertible Debt - - Accumulated Interest	Indebtedness	-	-	-	-	-	-	-	-	
Con	28230 - Convertible debt - deferred financing fees	Indebtedness	139	-	139	-	108	-	108	-	

Con 28210 - Convertible debt - principle	Indebtedness	(21,244)	-	(21,244)	-	(21,756)	-	(21,756)	-	
Convertible debt		**(21,367)**	**-**	**(21,367)**	**-**	**(23,656)**	**-**	**(23,656)**	**-**	
Net asset above		**(27,411)**	**3,121**	**(13,560)**	**(16,973)**	**(61,582)**	**489**	**(34,409)**	**(27,662)**	

Net asset / Equity per BS	27,411			61,582	
Definationally adjusted NWC + Adj#6		4,034			1,626
Diff	0	913		0	1,136

Schedule 2.09

EARNOUT CONSIDERATION

The following table sets forth, for each of the Earnout Metrics and Earnout Measurement Dates, the applicable Earnout Target and the amount of Earnout Consideration that would be payable with respect to such Earnout Target at various levels of achievement:

Earnout Measurement Date	**Earnout Metric**	**Earnout Target**	**Resulting Earnout Consideration** (*based on percentage achievement of Earnout Target*)		
			80%	**100%**	**≥120%**
June 30, 2022	Connected Homes	2,962,464	$26,000,000	$32,500,000	$39,000,000
	Eco+ ARR	$6,655,733	$14,000,000	$17,500,000	$21,000,000
June 30, 2023	Connected Homes	4,187,144	$26,000,000	$32,500,000	$39,000,000
	Eco+ ARR	$18,833,934	$14,000,000	$17,500,000	$21,000,000

As used in this Agreement:

"**Connected Homes**" means, as of any Earnout Measurement Date, the number of distinct residential dwelling units containing at least one of the Business's smart home devices that (x) has been registered on the Company Group's platform, (y) the user of which has affirmatively elected to permit such device to transmit data to, and be remotely controlled via, the Company Group's platform, and (z) has actively exchanged data with the Company Group in the 90 day period ending on the Earnout Measurement Date. As of June 30, 2021, the number of Connected Homes was 2,082,852, and the number of Connected Homes as of each Earnout Measurement Date shall be calculated consistent with the methodology used to determine such number as of June 30, 2021.

"**Eco+ ARR**" means, as of any Earnout Measurement Date, the aggregate amount of (a) annualized recurring net revenue ("**Utility Web Portal / API / License Revenue**") of the Business under Contracts with utilities and aggregators for the provision of the Business's eco+ service (being the Company's service of energy management and demand response services between utilities and consumers monetized in the form of monthly API fees and annual license fees), calculated by taking the monthly API fees plus the annual license fees recognized, net of any discounts, commissions, rebates, refunds, clawbacks, chargebacks or sales taxes with respect to such Contract, in each case as recognized in accordance with the Accounting Principles as revenue in the calendar month in which the Earnout Measurement Date occurs with respect to services under such Contracts and multiplying such net figure by twelve (12), plus (b) net revenue ("**Pay for Performance Revenue**") of the Business under Contracts with respect to the eco+ pay (being the Company's service of providing grid services monetized in the form of a commission on energy savings, arbitrage on energy prices, direct involvement in energy markets, or monetized through programs similar to California's DRAM program or virtual power plant programs such as the Company's program with Ohm Connect), calculated as the amount of revenue, net of any discounts, commissions, rebates, refunds, clawbacks, chargebacks or sales taxes with respect to

such Contract, recognized in accordance with the Accounting Principles under the applicable Contract in the twelve month period ending on the Earnout Measurement Date. Eco+ ARR will exclude any revenue for which Purchaser and its Affiliates (including the Company Group) has received, as of the applicable Earnout Measurement Date, notice of termination or affirmative non-renewal of the applicable Contract. For the sake of clarity, Eco+ ARR does not include any hardware sales or any rebates or incentives and, with respect to any bundled products or services of the Business, includes only that portion of fees attributable to the Business's eco+ service or eco+ pay, as applicable, in accordance with GAAP. As of June 30, 2021, the amount of Eco+ ARR was $4,717,720, and the amount of Eco+ ARR as of each Earnout Measurement Date shall be calculated consistent with the methodology used to determine such amount as of June 30, 2021.

For purposes of Section 2.09(d), the agreed budget is aggregate operating expenses as follows in each of the following periods (which amounts include any expenditures during such periods that occur during such period whether before or after the Effective Time:

(Amounts in USD)

	December 1, 2021 - December 31, 2021	January 1, 2022 - December 31, 2022	January 1, 2023 - June 30, 2023
Total Operating Expenses	$6,419,392	$108,906,245	$56,348,100

Schedule 5.01(b)

INTERIM OPERATING COVENANT EXCEPTIONS

As set forth in Section 5.01(b) of the supplementary letter delivered by the Company concurrently with execution of this Agreement.

Schedule 5.12

PRE-CLOSING REORGANIZATION

The following steps will occur as part of the Pre-Closing Reorganization prior to the Effective Date:

1. Company Shareholders will be notified that the Company intends to declare and pay a capital dividend on the existing Company Common Shares (hereinafter referred to as the "Existing Company Common Shares") on the Effective Date. The Company will elect in respect of the full amount of the dividend to be paid as a capital dividend pursuant to subsection 83(2) of the Tax Act. The dividend will not exceed the capital dividend account balance ("CDA") of the Company. The CDA of the Company will be increased as a result of the capital gain realized by the Company as a consequence of the 111(4)(e) designation(s) described in Step 3. Shareholders who elect to participate will be required to notify the Company in the manner prescribed in the shareholder communication.

2. Holders of Company Options will be notified of their right to exercise their vested options to acquire Class B Common Shares of the Company.

3. As a result of the acquisition of all of the outstanding securities of the Company by Purchaser, the Company will be subject to an acquisition of control for Canadian income tax purposes , which should give rise to a deemed taxation year-end for Canadian income tax purposes at the end of the day immediately prior to the Effective Date (the "AOC Taxation Year").

    - In its tax return in respect of the AOC Taxation Year, the Company will make a designation under paragraph 111(4)(e) of the Tax Act in the amount of CAD$160,000,000 (the "Designated Amount") in respect of Class 12 property (internally generated software) (the "Class 12 Property"), provided that: (a) in the event that the aggregate non-capital loss carryforward balance and scientific research and experimental development expenditure pool carryforward balance (collectively, the "Carryforward Balance") is less than CAD$80,000,000 in the Canadian income tax return that is filed for the Company's June 30, 2021 taxation year then the Designated Amount shall be reduced to an amount that is equal to two times the amount of the Carryforward Balance; and (b) in the event that the fair market value of such Class 12 Property at the end of the AOC Taxation Year is reasonably determined by the Purchaser (based on a reasonable valuation obtained by a reputable third party valuation firm) to be less than the Designated Amount (as adjusted in accordance with paragraph (a)) then (i) the amount designated under paragraph 111(4)(e) of the Tax Act in respect of the Class 12 Property shall be equal to the fair market value of such property, as specified in the aforementioned valuation report, and (ii) the Company shall make a designation under paragraph 111(4)(e) of the Tax Act in respect of one or more other classes of capital property, which classes of property shall be determined by the Purchaser and Securityholder Representative, acting reasonably (it being the

intent of the parties to minimize the amount of recaptured tax depreciation (if any) realized in respect of the designation), in an aggregate amount equal to the difference between the Designated Amount (as adjusted in accordance with paragraph (a)) and the amount determined by the Purchaser to be the fair market value of such Class 12 Property. The non-taxable portion of the capital gain (i.e. 50%) realized as a result of the paragraph 111(4)(e) designation(s) described above will be added to the Company's CDA balance.

The following steps will occur in sequential order as part of the Plan of Arrangement on the Effective Date:

1. The Company will amend its articles to create one new class of common shares and one new class of preferred shares:

    - Class B Common Shares

        i. The terms of the Class B Common shares will be similar to the terms of the Existing Company Common Shares in all material respects except the Class B Common shareholders will receive an extra vote on changing the registered office of the corporation.

        ii. The Company's articles will provide that dividends may be declared and paid on the Existing Company Common Shares without the need to declare and pay a dividend on the shares of the other classes of shares of the Company.

    - Class Y Preferred Shares

        - The Class Y Preferred Shares would be redeemable and retractable. The aggregate redemption amount of the issued and outstanding Class Y Preferred Shares would be equal to the aggregate fair market value of the shares of the Company owned by the shareholders who do not participate in the CDA dividend (the "Non-Participating Shareholders") on a fully diluted basis immediately before the issuance of the Class Y Preferred Shares.

        - The Class Y Preferred Shares would be convertible into such number of Class B Common Shares, the total value of which is equal to the aggregate redemption amount of the Class Y Preferred Shares.

2. The shareholders who have not responded to the notification outlined in Pre-Closing Step 1 prior to the applicable deadline (or have indicated that they do not wish to participate in the dividend) (the "Non-Participating Shareholders"), will exchange all their Existing Company Common Shares, Class A Preferred Shares, Class B Preferred Shares and Class C Preferred Shares of the Company into Class Y Preferred Shares.

3. The Reorganization Participants (those who have indicated that they will participate in the dividend) will convert all of their Class A Preferred Shares, Class B Preferred Shares

and Class C Preferred Shares into Existing Company Common Shares in accordance with the terms of the preferred shares.

4. The Company will resolve to declare and pay a capital dividend on the Existing Company Common Shares up to an amount equal to its available capital dividend account balance. The Company will issue promissory notes (the "CDA Notes") payable to the Reorganization Participants holding Existing Company Common Shares in full and absolute payment of the capital dividend.

    - On the Effective Date, the Company will file Form T2054 *Election for a Capital Dividend Under Subsection 83(2),* as well as a certified copy of the directors' resolution authorizing the dividend payment, with the Canada Revenue Agency.

5. The Reorganization Participants will agree to make a capital contribution in respect of their Existing Company Common Shares in an amount equal to their respective CDA Notes. The obligation to satisfy the capital contribution will be legally set-off against the CDA Notes payable by the Company to each Reorganization Participant, which will each be respectively cancelled.

6. The Class Y Preferred Shareholders will convert their Class Y Preferred Shares into Class B Common Shares.

Schedule 8.02(g)

CERTAIN INDEMNIFICATION MATTERS

Losses, if any, that result from the following:

- Taxes of the Company Group in respect of a Pre-Closing Tax Period as a result of a Loss for Tax purposes in taxation years ending on or before June 30, 2015 where the Loss is otherwise adjusted by a tax authority.
- Any adjustments related to the refundable ITC credit claimed by the Company in its June 30, 2020 tax return.
- Any withholding Taxes related to royalty payments by the Company on use of software and patent agreements to US recipients.

The following Losses (including enhanced damages under Section 284 of the Patent Act), if any, that result from the below-specified Intellectual Property proceedings: amounts (including ongoing royalty obligations) paid in settlement of such dispute to which the Securityholder Representative consents (such consent not to be unreasonably withheld, conditioned or delayed), a Governmental Order against Purchaser or its Affiliates, and expenses in excess of $1.509 million reasonably incurred by Purchaser and its Affiliates in connection with the foregoing during the period commencing on the Effective Time and ending on the three year anniversary thereof.

1) *Smart HVAC Systems, and Components Thereof,* No. 337-TA-1185 (ITC filed October 23, 2019)

2) *EcoFactor, Inc. v. ITC,* No. 21-2339 (Fed. Cir. filed Sept. 22, 2021)

3) *EcoFactor, Inc. v. ecobee, Inc.*, No. 1:19-cv-12325 (D. Mass. filed Nov. 12, 2019)

4) *EcoFactor, Inc. v. ecobee, Inc.*, No. 6:20-cv-00078 (W.D. Tex. filed Jan. 31, 2020)

5) *Certain Smart Thermostat Systems, Smart HVAC Systems, Smart HVAC Control Systems, And Components Thereof,* No. 337-TA-1258 (ITC filed Feb. 26, 2021)

6) *ecobee, Inc. v. EcoFactor Inc.*, No. 1:21-cv-00323 (D. Del. filed Feb. 26, 2021)
7) *Portus Singapore PTE LTD et al. v. ecobee, Inc.*, No. 6:20-cv-000694 (W.D. Tex. Filed July 29, 2020)
9) *EcoFactor, Inc. v. ecobee, Inc.*, No. 6:21-cv-00428 (W.D. Tex. filed Apr. 28, 2021)

10) *Smart Thermostats, Load Control Switches and Components Thereof,* No. 337-TA-1277 (ITC filed July 28, 2021)

11) Causam Enterprises, Inc. v. ecobee, Inc., No. 6:21-cv-00748 (W.D. Tex. Filed July 22, 2021)

12) Matter # 12 (Acacia Research/Stingray) disclosed on Section 3.13(d) of the Disclosure Letter.

13) Any appeal, collateral proceeding, or transferred/removed/refiled/restyled proceeding with respect to the foregoing matters, and any other Action in which the Company Group or its Affiliates (including, after the Closing, Parent and its Affiliates) is a defendant that is substantially related to the foregoing matters or based on the same underlying facts and circumstances.

THIS IS EXHIBIT "G" REFERRED TO IN THE AFFIDAVIT OF MICHAEL CARTER, SWORN BEFORE ME OVER VIDEO CONFERENCE THIS 8TH DAY OF NOVEMBER, 2021.

Commissioner For Taking Affidavits
Andrew Rintoul

Court File No. CV-21-00671437-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF AN APPLICATION under section 192 of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended

AND IN THE MATTER OF AN APPLICATION under Rules 14.05(2) and 14.05(3) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended

AND IN THE MATTER OF a proposed arrangement of ecobee Inc. involving Generac Power Systems, Inc. and 13462234 Canada Inc.

ECOBEE INC.

Applicant

AFFIDAVIT OF STUART LOMBARD

I, Stuart Lombard, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Chief Executive Officer and a member of the board of directors (the "**Board**") of ecobee Inc. ("**Ecobee**"), a corporation existing under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended (the "**CBCA**"). Therefore, I have personal knowledge of the facts set out in this affidavit, except where otherwise indicated to be based on information provided to me by others, in which case I believe that information to be true.

2. In this affidavit, where I do not define a term, I rely on the definitions contained in the draft Notice of Meeting and Management Proxy Circular for the Special Meeting of shareholders of Ecobee (the "**Circular**") attached as **Exhibit** "**A**" to this affidavit. I have reviewed this draft of the Circular and believe that it is in substantially final form, subject to various changes and updates which may have to be made before it is finalized.

3. I swear this affidavit in support of an application for an order approving a plan of arrangement involving Ecobee pursuant to section 192 of the CBCA (the "**Arrangement**"), under

which 13462234 Canada Inc. (the "**Purchaser**") will, subject to certain terms and conditions, acquire all of the issued and outstanding Common Shares, Class A Preferred Shares, Class B Preferred Shares and Class C Preferred Shares in the capital of Ecobee (collectively, the "**Shares**"), such that upon completion of the Arrangement and subject to all applicable conditions being met or waived and necessary approvals being obtained, Ecobee will be a wholly-owned subsidiary the Purchaser, and indirectly a subsidiary of the Purchaser's parent company, Generac Power Systems, Inc. ("**Generac**").

4. This affidavit is also sworn in support of a motion for an interim order for advice and directions pursuant to section 192(4) of the CBCA, in the form of the draft Interim Order (the "**Interim Order**"), which I understand will be filed with the court together with this affidavit. The draft Interim Order concerns the conduct of the proposed special meeting of holders of Shares (the "**Shareholders**"), to be held on November 22, 2021 at 10:00 a.m. (Toronto time) (unless adjourned or postponed to a later date) (the "**Meeting**"), to consider and vote on a special resolution approving of the Arrangement (the "**Arrangement Resolution**").

5. The steps and transactions relating to the Arrangement will be effected under:

5.1. an Arrangement Agreement dated as of November 1, 2021 between Ecobee, Generac and the Purchaser (the "**Arrangement Agreement**"), a copy of which is attached as **Exhibit "B"**, and

5.2. the plan of arrangement attached to the Circular as Appendix "3" (the "**Plan of Arrangement**", as may be subsequently modified or amended pursuant to its terms, the terms of the proposed Interim Order and the terms of the Arrangement Agreement).

Background on the Relevant Parties

Ecobee

6. Ecobee is a private company incorporated under the CBCA, with its head and registered office located in Toronto, Ontario. Ecobee designs and sells smart home devices.

7. Ecobee had the following Shares issued and outstanding as at November 1, 2021 (the "**Record Date**"):

7.1. 6,047,743 Common Shares;

7.2. 37,969,630 Class A Preferred Shares;

7.3. 12,633,329 Class B Preferred Shares; and

7.4. 19,859,001 Class C Preferred Shares.

8. The Shares are distributed among approximately 130 different Shareholders, most of whom are current or former employees or directors who reside in the Greater Toronto Area. The remaining Shareholders, who hold a majority of the Shares, are institutional investors who are closely involved in the business and affairs of Ecobee. These Shareholders are able to exercise independent judgment in exercising their voting rights, rather than being dependent on the recommendations of the Board.

9. All Shareholders are party to a unanimous shareholders agreement dated April 24, 2018 (as amended, the "**USA**"). A copy of the USA is attached as **Exhibit "C"**.

10. To the knowledge of the directors and officers of Ecobee, the only persons or companies who beneficially own, directly or indirectly, or exercise control or direction over Shares carrying 10% or more of the voting rights attached to any class of outstanding Shares of the Corporation entitled to vote in connection with any matters being proposed for consideration at the Meeting are indicated below as at November 1, 2021:

Name	Number and Class of Securities	Percentage of Class
Relay Ventures Fund L.P.	Class A Preferred Shares: 8,299,400	21.85%
Just Management Corp.	Class A Preferred Shares: 7,341,420 Class B Preferred Shares: 1,703,540	19.33% 13.48%
Energy Impact Fund LP	Class C Preferred Shares: 4,964,751	25.00%
Ontario Capital Growth Corporation	Class A Preferred Shares: 6,525,380	17.18%
CDP Investissements inc.	Class C Preferred Shares: 5,798,163	29.19%

Name	Number and Class of Securities	Percentage of Class
Tech Capital Sidecar I L.P.	Class A Preferred Shares: 5,283,918	13.92%
O&S Assets LP	Class B Preferred Shares: 3,728,138	29.51%
Andrea Lombard	Common Shares: 3,186,426	52.68%

11. Ecobee has additionally issued options to purchase Shares, pursuant to Ecobee's stock option plan ("**Options**"), warrants to purchase Shares ("**Warrants**") and promissory notes pursuant to a Note Purchase Agreement dated as of May 5, 2020 ("**Convertible Notes**"). There are more than 350 different option-holders. Some of the holders of Options and Warrants are also Shareholders.

12. Among directors and senior officers, and those who beneficially own or exercise control or direction over 10% or more of the voting rights attached to any class of Shares, no one (and none of their associates or affiliates) has a material interest in the approval of the Arrangement beyond their ownership interest in the Shares, except as noted in the paragraph below.

13. On October 14, 2021, the board of directors of Ecobee (the "**Board**") revised the compensation arrangements with me, in my capacity as Chief Executive Officer, to include a bonus payment as part of my compensation package in the amount of $1,062,000. That bonus will become payable upon completion of the Arrangement. In addition, I and other officers hold Options that will, by their terms, become fully vested and exercisable in connection with the Arrangement. As well, pursuant to the Arrangement Agreement, the Purchaser has agreed to pay certain retention payments to certain employees of the Corporation if they continue to remain employed by the Corporation in accordance with the terms of the retention plan. Although I benefit from some of these sources of compensation, my family and I directly and indirectly own Common and Preferred Shares, and I believe my interests in the transaction are aligned with those of Shareholders. In this affidavit, my evidence reflects the views of the entire Board, which unanimously supports the Arrangement, and not just me personally.

14. Ecobee's auditor, re-appointed on December 10, 2020, is Deloitte LLP.

Generac

15. The information about Generac and the Purchaser below is based on the representations made by Generac to Ecobee in connection with the Arrangement Agreement.

16. Generac is a company incorporated under the laws of Wisconsin, with its head and registered office located in Waukesha, Wisconsin. Generac's parent company, Generac Holdings Inc., is a leading global designer and manufacturer of a wide range of energy technology solutions, which provides power generation equipment, energy storage systems, grid service solutions, and other power products serving the residential, light commercial and industrial markets.

17. Founded in 1959, Generac introduced the first affordable backup generator and later created the category of automatic home standby generator - a market in which nearly eight of ten generators sold is a Generac. The company is committed to sustainable, cleaner energy products poised to revolutionize the 21st century electrical grid.

18. Common shares of Generac's parent company, Generac Holdings Inc., ("**Generac Shares**") are listed on the New York Stock Exchange under the symbol GNRC. The Generac Shares are highly liquid.

19. The Purchaser, 13462234 Canada Inc., is a company incorporated under the CBCA for the purpose of the Arrangement, with its head and registered office located in Toronto, Ontario. The Purchaser is wholly-owned by Generac.

Effect of the Arrangement

20. Set out below is a brief summary of certain key aspects of the Arrangement, which are qualified by reference to the complete text of the Arrangement Agreement and Plan of Arrangement:

20.1. the purchase price to be paid at closing is US$200 million cash and US$450 million of Generac Shares, with a further "earn out" of up to US$120 million, payable in Generac Shares, if the business is able to meet certain target metrics in the fiscal years ending June 30, 2022 and 2023;

20.2. Shareholders (including holders of Common Shares, Class A Preferred Shares, Class B Preferred Shares and Class C Preferred Shares) will participate in the Arrangement and be entitled to receive the consideration to be paid to Shareholders at closing;

20.3. Options and Warrants that are not exercised pre-closing will be deemed to have been exercised, with the exercise being price funded by a loan from the Purchaser, and the holders thereof will receive the same consideration payable at closing for a Common Share, less a proportionate amount of cash and Generac Shares to repay the loan by way of set-off; and

20.4. holders of Convertible Notes will receive, in accordance with the terms of such notes, a cash amount equal to two times (2x) the outstanding principal amount thereon plus one times (1x) the accrued but unpaid interest thereof, less any withholding tax applicable in respect thereof, which will be withheld and remitted in accordance with the Arrangement.

21. The amount available to be paid to holders of Shares, Warrants and Options (collectively, the "**Securityholders**") at closing will be reduced by various loan repayments, expenses, and escrows as noted in the Waterfall in Appendix 6 to the Circular. The net cash available for distribution to Securityholders from the $200 million of cash to be received, after deducting the obligations to be paid at closing and other customary adjustments, is expected to be approximately US$176.49, or US$1.54 per Share on a fully diluted basis (excluding the Convertible Notes).[1]

22. The Generac Shares issuable pursuant to the Arrangement will be listed on the New York Stock Exchange and will be freely tradeable in reliance on the exemption from the registration requirements of the *Securities Act of 1933*, as amended, as provided by Section 3(a)(10) thereof, subject to the restrictions applicable to "affiliates" as set out in more detail in the Circular.

23. The acceleration of Options and Warrants in connection with the Arrangement is consistent with their terms. To enable the cash-free exercise of the Options and Warrants, the Arrangement provides for the Purchaser to issue a "Daylight Loan" to finance the exercise price, which will then

[1] These are estimated amounts and the actual amount that Securityholders will receive on closing could differ.

be repaid by way of a set-off of a proportionate amount of the cash and Generac Shares otherwise payable to the option or warrant holder. The net result of the Daylight Loan approach is that the proceeds to be received by Option and Warrant holders from the Arrangement will be reduced by the aggregate amount of their respective exercise price.

24. The exercise price in respect of each of the Options and Warrants is less the expected price per Share payable at closing under the Arrangement (i.e., all Options and Warrants are "in the money").

25. The rights of holders of Options, Warrants and Convertible Notes are undiminished by the Arrangement.

26. If the Arrangement Resolution is approved, then, subject to the satisfaction of customary conditions, the Arrangement is scheduled to be completed on or around December 1, 2021 (the "**Closing Date**").

Background to the Arrangement

27. The terms of the Arrangement are the result of arm's length negotiations between representatives of Ecobee, Generac, the Purchaser, and their respective advisors. The following is a summary of certain events leading up to the negotiation of the Arrangement.

28. In March 2021, the Board determined to explore strategic alternatives for Ecobee. In connection with such process, Ecobee explored, with the assistance of its financial advisor (BofA Securities, Inc.), potential financings with private equity firms, the potential sale to a strategic acquirer, as well as the potential acquisition by a U.S.-based Special Purpose Acquisition Fund. As part of this process, Ecobee participated in meetings with numerous parties, including certain U.S. special purpose acquisition corporations ("SPACs").

29. Initially, the Board favoured exploring a possible transaction with a U.S. SPAC whereby Ecobee would become a publicly-traded company. On April 29, 2021, the Board signed a letter of intent with a NYSE-listed U.S. SPAC. That transaction initially valued Ecobee at US$1,000 million but that was later reduced to US$750 million. Negotiations stalled as the U.S. SPAC market continued to deteriorate. A significant portion of the valuation would have been attributed

to stock in the U.S. SPAC, which would have involved a high degree of risk if the deal had proceeded. Negotiations stalled as the U.S. SPAC market deteriorated and the valuation was likely to lower further. The parties ultimately could not agree on a valuation and decided not to proceed.

30. At that point, the Board began to favour a strategic combination and Ecobee pursued discussions with Generac, one of the strategic acquirers it had identified in the strategic review. The parties negotiated a term sheet that was signed on August 19, 2021, pursuant to which Ecobee agreed to negotiate exclusively with Generac in connection with a potential acquisition transaction.

31. Throughout the negotiation of the term sheet and the Arrangement Agreement with Generac, the Board was assisted by its financial adviser, BofA Securities Inc., and received and considered legal advice from Choate, Hall & Stewart LLP (as U.S. counsel) and Bennett Jones LLP (as Canadian counsel), and tax advice from Deloitte LLP. Neither I nor Ecobee intends by the delivery of this affidavit to waive any legal or related privileges that might exist.

32. The Board, having undertaken a thorough review of, and having carefully considered the terms of the Arrangement, and after (i) consulting with its investment banker, and legal and tax advisors, and (ii) in recognition that Shareholders holding more than a sufficient number of Shares to trigger the drag along provisions of the USA (discussed below) were supportive of the transaction, unanimously (a) determined that the Arrangement is fair to Shareholders and in the best interests of the Corporation, (b) approved the execution and delivery by Ecobee of the Arrangement Agreement, and (c) recommended Shareholders vote their Shares in favour of the Arrangement Resolution.

33. Each director and executive officer of Ecobee has entered into a support agreement with the Purchaser and intends to vote all of their Shares in favour of the Arrangement Resolution.

Impact of Ecobee's Unanimous Shareholders' Agreement

34. As noted above, Ecobee and all Shareholders are parties to the USA (attached as Exhibit "C"). The USA contains provisions intended to deal with a transaction involving the sale of the business. Section 7.5 of the USA (the "**Drag Along**") contains provisions that provide for the compulsory cooperation of Shareholders in a transaction that is a "Qualifying Offer" that results in the change of control of Ecobee and becomes a "Qualified DLE" as defined in the USA. Among

the compulsory cooperation provisions in section 7.5 is an express waiver of dissenter rights: "In such event, all Shareholders will vote their shares in favor of (and waive any dissenter's rights, rights of appraisal or other similar rights as to) the Qualifying Offer".

35. Approval of the Qualifying Offer by the following shareholders (the "**Drag Shareholder Approvals**"), in addition to Board approval, is required to implement the compulsory cooperation provisions of the Drag Along:

35.1. The Qualifying Offer must be approved by a majority of the votes cast by holders of Common Shares at a meeting of holders of Common Shares, or by the written agreement of the holders of a majority of the Common Shares (which in either case will include only holders of outstanding Common Shares and will not include holders of Preferred Shares or holders of any other securities on an as-converted basis); and

35.2. The Qualifying Offer must be approved in writing by the holders of a majority of the Class B Preferred Shares and Class C Preferred Shares, voting together on an as-converted basis (or the Common Shares issued upon the conversion of such shares).

36. Both Drag Shareholder Approvals have been obtained and exceeded through Support Agreements signed by a sufficient number of Shareholders to achieve the required thresholds (*i.e.,* more than 50% of votes cast by the holders of Common Shares and more than 50% of the votes cast by the holders of Class B Preferred Shares and Class C Preferred Shares). As noted, the USA permits the Drag Shareholder Approvals to be provided in writing. Board approval of the Qualifying Offer has also been obtained.

37. The Board has determined in good faith that the Arrangement Agreement is a "Qualifying Offer" and, as a result of the receipt of the Drag Shareholder Approvals, is a "Qualified DLE". The Board has further determined that the conditions to the application of the Drag Along provisions contained in Section 7.5 of the USA have been satisfied and the Drag Along applies to the Arrangement. Accordingly, each Shareholder is required to vote in favour of the Arrangement Resolution.

38. In connection with the Drag Shareholder Approvals process, Shareholders who provided their approval had the opportunity to seek, and were not prevented or discouraged by any party to the Arrangement Agreement from seeking, independent legal advice. A number of Shareholders engaged legal counsel to review and negotiate terms of the Arrangement Agreement, Support Agreement and other documents.

Reasons for the Board's Recommendation

39. In making its determinations and arriving at its recommendation, the Board considered and relied upon a number of substantive factors, carefully considered all aspects of the Arrangement, and considered a variety of uncertainties, risks and other potentially negative factors concerning the Arrangement and the Arrangement Agreement, including the following.

40. **Strategic Review and Consideration of Strategic Alternatives**. The Arrangement is the result of a robust, strategic review process carried out by Ecobee and overseen by the Board, which process included a review of, among other things, potential alternatives to maximize shareholder value. Ecobee conducted a review of various strategic alternatives, including evaluating third-party interest in a potential transaction involving Ecobee and entering into a sale arrangement with other interested parties. In furtherance of the foregoing, Ecobee took into consideration the potential rewards, risks and uncertainties associated with these and other alternatives. Following a consideration of the strategic alternatives available to Ecobee, the Board concluded that the Arrangement is the most favourable alternative for Ecobee to pursue.

41. **Strategic Partnership and Increased Financial Resources.** The Board considered its capital needs and the fact that Ecobee would require additional funding to finance its business and operations. The Board also considered the risk that any such funding may not be obtained on terms satisfactory to Ecobee. If completed, Ecobee will benefit from access to support and potential synergies from the existing Generac business.

42. **Value and Immediate Liquidity.** The Arrangement provides Securityholders with consideration comprised of both cash and Generac Shares, which trade publicly on the New York Stock Exchange. The Generac Shares to be issued to the Securityholders pursuant to the Arrangement are highly liquid and will be immediately freely tradable, subject to securities laws

applicable to "affiliates". The Arrangement therefore provides shareholders with immediate liquidity and value.

43. **Interests of Stakeholders.** The Board considered that the Arrangement will have a positive impact on Ecobee's employees, customers, suppliers and governments as the Arrangement will provide more capital to Ecobee and the business will continue to operate with its current employees as a standalone business operating from its current facilities which the Board believes is in the long term best interests of the Corporation.

44. **Compelling Value Relative to Alternatives.** The value offered to Securityholders under the Arrangement is attractive relative to the value that might be realized for Securityholders through other alternatives considered to be reasonably available to Ecobee, including remaining a stand-alone private company.

45. **Arm's-Length Negotiations.** The Arrangement is the result of arm's-length negotiations between Ecobee, on the one hand, and the Purchaser and Generac, on the other. The Board took an active role in overseeing and providing guidance and instructions to management and Ecobee's advisors in respect of the strategic review process and the negotiations concerning the Arrangement. In addition, certain shareholders participated directly in the negotiations through their legal counsel.

46. **Shareholder Approval Required.** The Arrangement must be approved (i) by an affirmative vote of at least two-thirds (66 and 2/3%) of the votes cast in respect of the Arrangement Resolution at the Meeting by Shareholders present in person (or virtually) or represented by proxy; or (ii) by all of the Shareholders signing the Arrangement Resolution in lieu of the Meeting;

47. **Significant Shareholder Support**. Certain Shareholders who, at the time of swearing this affidavit, beneficially own or exercise control or direction over, in the aggregate, 80.45% of the Shares outstanding as of the Record Date, have entered into support agreements under which they have agreed, on the terms and conditions specified therein, to vote their Shares in favour of the Arrangement Resolution, demonstrating significant shareholder support for the Arrangement.

48. **Credible Purchaser; Limited Conditions to Closing.** The Purchaser is a company controlled by the Generac, a highly credible and reputable company with the financial capacity to

complete the Arrangement. The Purchaser's obligation to complete the Arrangement is subject only to a limited number of customary conditions and is not subject to any financing-related conditions.

49. **Financial, Legal and Other Advice.** Extensive financial, legal and other advice was provided to Ecobee and the Board. This advice included detailed financial advice from highly qualified and experienced financial advisors.

50. **Determination of Fairness by the Court.** Completion of the Arrangement is conditional upon receipt of the Final Order. The Court will consider, during the hearing for the Final Order, the procedural and substantive fairness of the terms and conditions of the Arrangement.

Solvency

51. Ecobee is not insolvent. It is able to pay its liabilities as they become due and the realizable value of its assets is not less than the aggregate of its liabilities and stated capital.

Impracticability

52. The Board, after considering advice received from its advisors, determined that it is not practicable for the transaction contemplated by the Arrangement Agreement to be completed under any provision of the CBCA other than section 192 as a plan of arrangement.

53. The implementation of the Arrangement requires the simultaneous occurrence, and the mutual conditionality, of all of the steps in the Plan of Arrangement. Ecobee would not undertake any single aspect of the Plan of Arrangement without the assurance that all of the steps therein would be accomplished. The Arrangement is the only method that would allow all the necessary steps to occur in the proper and necessary sequence. Therefore, even if it were possible to effect the steps of the Plan of Arrangement with a series of steps over a period of time under the various sections of the CBCA, it would not be practicable to proceed in that manner.

54. One specific issue that would make the transaction impractical, except through a plan of arrangement, is the large number of Option-holders (more than 350). Further, the Plan of Arrangement contemplates a pre-closing reorganization that confers potential tax advantages on Shareholders, and the reorganization would not be possible except through a plan of arrangement.

55. Additionally, the Generac Share consideration payable under the Arrangement is intended to be freely tradeable in reliance on the section 3(a)(10) exemption of the *Securities Act of 1933*, which exemption is only available where a court of competent jurisdiction has approved the terms and conditions of the shares' issuance, after a hearing upon the fairness of the terms and conditions of such issuance and exchange at which all persons to whom it is proposed to issue the securities have the right to appear and receive timely notice thereof.

Fairness of the Arrangement to Securityholders

56. The following facts and circumstances provide assurance of the fairness of the Arrangement to Securityholders:

56.1. Ecobee is majority-controlled by sophisticated institutional investors, all of whom actively participate in the business and affairs of Ecobee through representation on the Board, and all of whom have committed to support the Arrangement. These are not passive retail investors being asked to follow the recommendation of the Board; they are members of the Board who have been involved in the process that lead to the Arrangement, and who are able to independently judge the fairness of the terms of the Arrangement.

56.2. The interests of the officers and directors who negotiated the terms of the Arrangement, and of the institutional investors who have signed support agreements in favour of the Arrangement, are aligned with the interests of Shareholders at large. The USA, to which all Shareholders are party, contemplates this alignment of interest in setting the thresholds for triggering the "drag along".

56.3. The Arrangement is the culmination of an approximately eight-month long process, during which Ecobee was advised by a reputable investment bank (BofA Securities Inc.), and during which Ecobee engaged in negotiations with prospective purchasers. This process provided Ecobee with a reliable indication of its market value. Further, whereas other offers considered by Ecobee involved illiquid or volatile share consideration, the consideration under the Arrangement includes a significant cash component, and the share component (Generac Shares traded on

the New York Stock Exchange) has a high degree of liquidity. The Arrangement is clearly Ecobee's best available option.

56.4. Non-voting securities (Options, Warrants and Convertible Notes) are being treated in accordance with their terms, without diminishing the rights of their respective holders. All options and warrants are "in the money", and with the benefit of the "daylight loan", the holders thereof will not need to pay any money out of pocket to exercise their securities and participate in the Arrangement.

56.5. The process leading to the Arrangement and the process by which it is to be approved are consistent with the expectations of Shareholders, as reflected in the USA.

57. Under the circumstances, the Board determined that there were sufficiently clear indicia of fairness such that obtaining an external fairness opinion, although customary for public company transactions, was not a necessary or appropriate expenditure of Ecobee's time and resources.

Advice and Directions Sought by Interim Order

58. Ecobee proposes to hold the Meeting to seek approval of the Arrangement on November 22, 2021 at 10:00 a.m. The Board has fixed November 1, 2021 as the Record Date for the purpose of determining the Shareholders entitled to receive notice of the Meeting and to vote at the Meeting (or sign the Arrangement Resolution, as applicable).

59. The minimum notice period (10 days) and quorum requirement (not less than two persons entitled to vote at the Meeting and holding not less than 50.1% of the issued and outstanding Shares) contemplated by the draft Interim Order are consistent with the terms of Ecobee's articles and by-laws.

60. As set out in the draft Interim Order, Ecobee intends that the Circular will be sent to all holders of Shares, Options, Warrants, and Convertible Notes as at the Record Date, as well as Ecobee's directors and auditors. The Circular will be accompanied by the Notice of Meeting, and will include, among other things, the following documents attached as schedules:

60.1. the Arrangement Resolution;

60.2. the Plan of Arrangement;

60.3. the Notice of Application for this proceeding; and

60.4. the Interim Order for this proceeding.

61. Pursuant to the Arrangement Agreement, the requisite approval threshold for the Arrangement Resolution is at least two-thirds of the votes cast by Shareholders present in person (or virtually) or represented by proxy at the Meeting. Alternatively, in lieu of the Meeting, the Arrangement Resolution may be passed by all shareholders signing the Arrangement Resolution (either personally or by power of attorney under a support agreement).

62. The Arrangement Resolution must receive the requisite Ecobee Shareholder approvals in order for Ecobee to seek a final order of the Court approving the Arrangement (the "**Final Order**") and implement the Arrangement on the Effective Date in accordance with the Final Order.

63. It is expected that, if the Arrangement receives the required approvals of Ecobee Shareholders, the Arrangement and Plan of Arrangement will be submitted for final approval of this Court on November 26, 2021, or such later date as the Court may direct. In advance of the hearing of the Application for final approval of the Arrangement, a supplementary affidavit will be filed to advise this Court of the results of the vote at the Meeting and compliance with the terms of the Interim Order.

64. If the Final Order is obtained, Ecobee intends to complete the Plan of Arrangement shortly thereafter, subject to satisfactory resolution of any outstanding issues before closing.

Extension of Time For Holding Annual Meeting

65. Pursuant to section 133(1)(b) of the CBCA, Ecobee is required to hold its annual meeting within six months of the end of its most recent financial year; since Ecobee's most fiscal year ended on June 30, 2021, it is therefore required to hold its annual meeting before December 30, 2021.

66. It would serve no purpose for the Shareholders to address annual meeting matters (such as the election of directors) on the eve of a change of ownership. Ecobee's next annual meeting should wait until the Arrangement has closed, and the Purchaser has assumed ownership. In order to

ensure that Ecobee has the flexibility to postpone the Meeting, or otherwise to delay closing, should the Board determine that it is appropriate to do so, Ecobee is seeking an extension of the deadline for holding its annual general meeting by two months, to February 28, 2021.

Sworn remotely by Stuart Lombard)
of the City of Toronto in the Province)
of Ontario, before me at the City of Toronto)
in the Province of Ontario)
this 3rd day of November, 2021)
In accordance with O. Reg. 431/20,)
Administering Oath or Declaration Remotely)

WILLIAM A. BORTOLIN)

A commissioner for taking affidavits)
in and for the Province of Ontario)

STUART LOMBARD

IN THE MATTER OF AN APPLICATION under section 192 of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended
AND IN THE MATTER OF AN APPLICATION under Rules 14.05(2) and 14.05(3) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended
AND IN THE MATTER OF a proposed arrangement of ecobee Inc. involving Generac Power Systems, Inc. and 13462234 Canada Inc.
ECOBEE INC.
Applicant

Court File No. CV-21-00671437-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF STUART LOMBARD

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Lawyers for the Applicant,
ecobee Inc.

THIS IS EXHIBIT "H" REFERRED TO IN THE AFFIDAVIT OF MICHAEL CARTER, SWORN BEFORE ME OVER VIDEO CONFERENCE THIS 8TH DAY OF NOVEMBER, 2021.

Commissioner For Taking Affidavits
Andrew Rintoul

Court File No. CV-21-00671437-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	MONDAY, THE 8th
	)	
JUSTICE MCEWEN	)	DAY OF NOVEMBER, 2021

IN THE MATTER OF AN APPLICATION under section 192 of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended

AND IN THE MATTER OF AN APPLICATION under Rules 14.05(2) and 14.05(3) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended

AND IN THE MATTER OF a proposed arrangement of ecobee Inc. involving Generac Power Systems, Inc. and 13462234 Canada Inc.

ECOBEE INC.

Applicant

INTERIM ORDER

THIS MOTION made by the Applicant, ecobee Inc. ("Ecobee"), for an interim order for advice and directions pursuant to section 192 of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended (the "CBCA"), was heard this day by videoconference due to the COVID-19 pandemic.

ON READING the Notice of Motion, the Notice of Application issued on November 3, 2021 and the affidavit of Stuart Lombard sworn November 3, 2021, (the "Lombard Affidavit"), including the Plan of Arrangement, which is attached as Appendix 3 to the draft management proxy circular of Ecobee (the "Circular"), which is attached as Exhibit A to the Lombard

Affidavit, and on hearing the submissions of counsel for Ecobee and counsel for Generac Power Systems, Inc. and 13462234 Canada Inc. (collectively, "Generac") and on being advised that the Director appointed under the CBCA (the "Director") does not consider it necessary to appear.

Definitions

1. **THIS COURT ORDERS** that all definitions used in this Interim Order shall have the meaning ascribed thereto in the Circular or otherwise as specifically defined herein.

The Meeting

2. **THIS COURT ORDERS** that Ecobee is permitted to call, hold and conduct a special meeting (the "Meeting") of the holders (the "Shareholders") of Common Shares, Class A Preferred Shares, Class B Preferred Shares and Class C Preferred Shares in the capital of Ecobee (collectively, the "Ecobee Shares"), to be held online by means of Microsoft Teams on November, 22 2021 at 10:00 a.m. (Toronto time) in order for the Shareholders to consider and, if determined advisable, pass a special resolution authorizing, adopting and approving, with or without variation, the Arrangement and the Plan of Arrangement substantially in the form attached as Appendix 2 to the Circular (the "Arrangement Resolution").

3. **THIS COURT ORDERS** that the Meeting shall be called, held and conducted in accordance with the CBCA, the notice of meeting of Shareholders, which accompanies the Circular (the "Notice of Meeting"), and the articles and by-laws of Ecobee, subject to what may be provided hereafter and subject to further order of this court; provided that, notwithstanding the foregoing, Ecobee shall not be required to call, hold or conduct the Meeting, if the Arrangement Resolution is signed by all the Shareholders prior to the Meeting, and the

Arrangement Resolution so signed shall be valid as if it had been passed at a meeting of the Shareholders.

4. **THIS COURT ORDERS** that the record date (the "Record Date") for determination of the Shareholders entitled to notice of the Meeting, and to vote at the Meeting (or sign the Arrangement Resolution, as applicable) shall be November 1, 2021.

5. **THIS COURT ORDERS** that the only persons entitled to attend or speak at the Meeting shall be:

a) the Shareholders or their respective proxyholders;

b) the officers, directors, auditors and advisors of Ecobee;

c) representatives and advisors of Generac;

d) the Director; and

e) other persons who may receive the permission of the Chair of the Meeting.

6. **THIS COURT ORDERS** that Ecobee may transact such other business at the Meeting as is contemplated in the Circular, or as may otherwise be properly before the Meeting.

Quorum

7. **THIS COURT ORDERS** that the Chair of the Meeting shall be determined by Ecobee and that the quorum at the Meeting shall be not less than two (2) persons present in person (or virtually) at the opening of the Meeting who are entitled to vote at the Meeting either as Shareholders or proxyholders holding personally or representing as proxies not less than 50.1% of the issued and outstanding Ecobee Shares on the Record Date.

Amendments to the Arrangement and Plan of Arrangement

8. **THIS COURT ORDERS** that Ecobee is authorized to make, subject to the terms of the Arrangement Agreement, and paragraph 9, below, such amendments, modifications or supplements to the Arrangement and the Plan of Arrangement as it may determine without any additional notice to the Shareholders, or others entitled to receive notice under paragraphs 13 and 14 hereof, provided same are to correct clerical errors, are non-material, or are authorized by subsequent Court order, and the Arrangement and Plan of Arrangement, as so amended, modified or supplemented, shall be the Arrangement and Plan of Arrangement to be submitted to the Shareholders at the Meeting (or submitted with the Arrangement Resolution to be signed by Shareholders, as applicable) and shall be the subject of the Arrangement Resolution. Amendments, modifications or supplements may be made following the Meeting (or the date the Arrangement Resolution is signed by all Shareholders), but shall be subject to review and, if appropriate, further direction by this Honourable Court at the hearing for the final approval of the Arrangement.

9. **THIS COURT ORDERS** that, if any amendments, modifications or supplements to the Arrangement or Plan of Arrangement as referred to in paragraph 8, above, would, if disclosed, reasonably be expected to affect a Shareholder's decision to vote for or against the Arrangement Resolution, notice of such amendment, modification or supplement shall be distributed, subject to further order of this Honourable Court, by prepaid ordinary mail, e-mail, or by the method most reasonably practicable in the circumstances, as Ecobee may determine.

Amendments to the Circular

10. **THIS COURT ORDERS** that Ecobee is authorized to make such amendments, revisions and/or supplements to the draft Circular as it may determine and the Circular, as so

amended, revised and/or supplemented, shall be the Circular to be distributed in accordance with paragraphs 13 and 14.

Adjournments and Postponements

11. **THIS COURT ORDERS** that Ecobee, if it deems advisable and subject to the terms of the Arrangement Agreement, is specifically authorized to adjourn or postpone the Meeting on one or more occasions, without the necessity of first convening the Meeting or first obtaining any vote of the Shareholders respecting the adjournment or postponement, and notice of any such adjournment or postponement shall be given by such method as Ecobee may determine is appropriate in the circumstances. This provision shall not limit the authority of the Chair of the Meeting in respect of adjournments and postponements.

Annual Meeting

12. **THIS COURT ORDERS**, pursuant to section 133(3) of the CBCA, that the time for Ecobee to call its next annual meeting of shareholders is hereby extended from December 31, 2021 until February 28, 2022.

Notice of Meeting

13. **THIS COURT ORDERS** that, in order to effect notice of the Meeting, Ecobee shall send the Circular (including the Notice of Application and this Interim Order), the Notice of Meeting, the form of proxy and the letter of transmittal, along with such amendments or additional documents as Ecobee may determine are necessary or desirable and are not inconsistent with the terms of this Interim Order (collectively, the "Meeting Materials"), to the following:

a) the registered Shareholders at the close of business (Toronto time) on the Record Date, at least ten (10) days prior to the date of the Meeting, excluding the date of sending and the date of the Meeting, by one or more of the following methods:

i) by pre-paid ordinary or first class mail at the addresses of the Shareholders as they appear on the books and records of Ecobee at the close of business (Toronto time) on the Record Date and if no address is shown therein or if another address has been requested by the Shareholder, then the last address of the person known to the Chief Financial Officer of Ecobee;

ii) by delivery, in person or by recognized courier service or inter-office mail, to the address specified in (i) above; or

iii) by email or other form of electronic transmission to any Shareholder, who is identified to the satisfaction of Ecobee;

b) the directors and auditors of Ecobee, and to the Director appointed under the CBCA, by delivery in person, by recognized courier service, by pre-paid ordinary or first class mail or, with the consent of the person, by email or other form of electronic transmission, at least ten (10) days prior to the date of the Meeting, excluding the date of sending and the date of the Meeting;

and that compliance with this paragraph shall constitute sufficient notice of the Meeting.

14. **THIS COURT ORDERS** that Ecobee is hereby directed to distribute the Circular (including the Notice of Application, and this Interim Order), and any other communications or

documents determined by Ecobee to be necessary or desirable (collectively, the "Court Materials") to the holders of options to purchase shares issued by Ecobee ("Options"), the holders of warrants to purchase shares issued by Ecobee ("Warrants") and the holders of convertible notes of Ecobee ("Convertible Notes") by any method permitted for notice to Shareholders as set forth in paragraphs 13(a) or 13(b), above, concurrently with the distribution described in paragraph 13 of this Interim Order (provided that delivery need only be made once notwithstanding that a person may be entitled to Court Materials under more than one paragraph hereof). Unless distributed by inter-office mail, distribution to such persons shall be to their mailing or e-mail addresses as they appear on the books and records of Ecobee at the close of business (Toronto time) on the Record Date and if no address is shown therein or if another address has been requested, then the last address of the person known to the Chief Financial Officer of Ecobee.

15. **THIS COURT ORDERS** that accidental failure or omission by Ecobee to give notice of the meeting or to distribute the Meeting Materials or Court Materials to any person entitled by this Interim Order to receive notice, or any failure or omission to give such notice as a result of events beyond the reasonable control of Ecobee, or the non-receipt of such notice shall, subject to further order of this Honourable Court, not constitute a breach of this Interim Order nor shall it invalidate any resolution passed or proceedings taken at the Meeting. If any such failure or omission is brought to the attention of Ecobee, it shall use its best efforts to rectify it by the method and in the time most reasonably practicable in the circumstances.

16. **THIS COURT ORDERS** that Ecobee is hereby authorized to make such amendments, revisions or supplements to the Meeting Materials and Court Materials, as Ecobee may determine in accordance with the terms of the Arrangement Agreement ("Additional

Information"), and that notice of such Additional Information may, subject to paragraph 9, above, be distributed by pre-paid ordinary mail, e-mail or by the method most reasonably practicable in the circumstances, as Ecobee may determine.

17. **THIS COURT ORDERS** that distribution of the Meeting Materials and Court Materials pursuant to paragraphs 13 and 14 of this Interim Order shall constitute notice of the Meeting and good and sufficient service of the within Application upon the persons described in paragraphs 13 and 14 and that those persons are bound by any orders made on the within Application. Further, no other form of service of the Meeting Materials or the Court Materials or any portion thereof need be made, or notice given or other material served in respect of these proceedings and/or the Meeting to such persons or to any other persons, except to the extent required by paragraph 9, above.

Solicitation and Revocation of Proxies

18. **THIS COURT ORDERS** that Ecobee is authorized to use the letter of transmittal and proxies substantially in the form of the drafts accompanying the Circular, with such amendments and additional information as Ecobee may determine are necessary or desirable, subject to the terms of the Arrangement Agreement. Ecobee and Generac are authorized, at their expense, to solicit proxies, directly or through their officers, directors or employees, and through such agents or representatives as they may retain for that purpose, and by mail or such other forms of personal or electronic communication as they may determine. Ecobee may waive generally, in its discretion, the time limits set out in the Circular for the deposit or revocation of proxies by Shareholders, if Ecobee deems it advisable to do so.

19. **THIS COURT ORDERS** that Shareholders shall be entitled to revoke their proxies in accordance with section 148(4) of the CBCA (except as the procedures of that section are varied by this paragraph) provided that any instruments in writing delivered pursuant to s.148(4)(a)(i) of the CBCA must be received by Ecobee not later than 5:00 p.m. (Toronto time) on the date that is two (2) business days (excluding Saturdays, Sundays and holidays) prior to the Meeting (or any adjournment or postponement thereof).

Voting

20. **THIS COURT ORDERS** that the only persons entitled to vote in person (or virtually) or by proxy on the Arrangement Resolution (or sign the Arrangement Resolution, as applicable), or such other business as may be properly brought before the Meeting, shall be those Shareholders who hold voting Ecobee Shares as of the close of business (Toronto time) on the Record Date. Illegible votes, spoiled votes, defective votes and abstentions shall be deemed to be votes not cast at the Meeting. Proxies that are properly signed and dated but which do not contain voting instructions shall be voted in favour of the Arrangement Resolution at the Meeting.

21. **THIS COURT ORDERS** that votes shall be taken at the Meeting on the basis of one vote per Ecobee Share and that in order for the Plan of Arrangement to be implemented, subject to further Order of this Honourable Court, the Arrangement Resolution must be passed, with or without variation by an affirmative vote of at least two-thirds ($66^{2}/_{3}\%$) of the votes cast in respect of the Arrangement Resolution at the Meeting by Shareholders present in person (or virtually) or represented by proxy voting together as a single class. Alternatively, in lieu of the Meeting, the Arrangement Resolution may be passed by all Shareholders signing the Arrangement Resolution prior to the Meeting. Such votes or unanimous consent shall be

sufficient to authorize Ecobee to do all such acts and things as may be necessary or desirable to give effect to the Arrangement and the Plan of Arrangement on a basis consistent with what is provided for in the Circular without the necessity of any further approval by the Shareholders, subject only to final approval of the Arrangement by this Honourable Court.

22. **THIS COURT ORDERS** that in respect of matters properly brought before the Meeting pertaining to items of business affecting Ecobee (other than in respect of the Arrangement Resolution), each Shareholder is entitled to one vote for each voting Ecobee Share held or, if the Meeting is dispensed with, such other matters may be approved by a resolution in writing signed by all the Shareholders.

Hearing of Application for Approval of the Arrangement

23. **THIS COURT ORDERS** that upon approval by the Shareholders of the Plan of Arrangement in the manner set forth in this Interim Order, Ecobee may apply to this Honourable Court for final approval of the Arrangement.

24. **THIS COURT ORDERS** that distribution of the Notice of Application and the Interim Order in the Circular, when sent in accordance with paragraphs 13 and 14 shall constitute good and sufficient service of the Notice of Application and this Interim Order and no other form of service need be effected and no other material need be served unless a Notice of Appearance is served in accordance with paragraph 25.

25. **THIS COURT ORDERS** that any Notice of Appearance served in response to the Notice of Application shall be served on the solicitors for Ecobee, with a copy to counsel for Generac, as soon as reasonably practicable, and, in any event, no less than two (2) days before the hearing of this Application at the following addresses:

BENNETT JONES LLP
Suite 3400, 1 First Canadian Place
100 King Street West, P.O. Box 130
Toronto, Ontario M5X 1A4

Attention: Joseph N. Blinick, Gary Solway and Kristopher Hanc

Emails: blinickj@bennettjones.com, solwayg@bennettjones.com, hanck@bennettjones.com

Solicitors for Ecobee

DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto, ON M5V 3J7

Attention: Derek D. Ricci

Email: dricci@dwpv.com

Solicitors for Generac

26. **THIS COURT ORDERS** that, subject to further order of this Honourable Court, the only persons entitled to appear and be heard at the hearing of the within application shall be:

i) Ecobee and its counsel;

ii) Generac and its counsel;

iii) the Director; and

iv) any person who has filed a Notice of Appearance herein in accordance with the Notice of Application, this Interim Order and the *Rules of Civil Procedure*.

27. **THIS COURT ORDERS** that any materials to be filed by Ecobee in support of the within Application for final approval of the Arrangement may be filed up to one day prior to the hearing of the Application without further order of this Honourable Court.

28. **THIS COURT ORDERS** that in the event the within Application for final approval does not proceed on the date set forth in the Notice of Application, and is adjourned, only those persons who served and filed a Notice of Appearance in accordance with paragraph 25 shall be entitled to be given notice of the adjourned date.

Service and Notice

29. **THIS COURT ORDERS** that the Applicant and its counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to Ecobee's Shareholder's, creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

Precedence

30. **THIS COURT ORDERS** that, to the extent of any inconsistency or discrepancy between this Interim Order and the terms of any instrument creating, governing or collateral to the voting Ecobee Shares, the Options, Warrants and Convertible Notes of Ecobee, or any instrument creating, governing or collateral to a contingent entitlement in respect of voting Ecobee Shares, or the articles or by-laws of Ecobee, this Interim Order shall govern.

Extra-Territorial Assistance

31. **THIS COURT SEEKS AND REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and any

judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province and any court or any judicial, regulatory or administrative body of the United States or other country to act in aid of and to assist this Honourable Court in carrying out the terms of this Interim Order.

Variance

32. **THIS COURT ORDERS** that Ecobee shall be entitled to seek leave to vary this Interim Order upon such terms and upon the giving of such notice as this Honourable Court may direct.

IN THE MATTER OF AN APPLICATION under section 192 of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended
AND IN THE MATTER OF AN APPLICATION under Rules 14.05(2) and 14.05(3) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended
AND IN THE MATTER OF a proposed arrangement of ecobee Inc. involving Generac Power Systems, Inc. and 13462234 Canada Inc.

ECOBEE INC.
Applicant

Court File No. CV-21-00671437-00CL

8 Nov 21

Order to go, on an unopposed basis, as per the draft filed and signed.

The statutory requirements have been met. The procedure is fair and reasonable, and I am satisfied that the Applicant is putting forward the proposal in good faith. The company is solvent.

Given the private nature of the company, the provisions of the USA, and the caselaw I am satisfied that dissident shareholders' rights need not be protected.

McEwen J.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

INTERIM ORDER

BENNETT JONES LLP
3400 One First Canadian Place
P.O. Box 130
Toronto ON M5X 1A4

Joseph N. Blinick (#64325B)
Telephone: (416) 777-4828
Email: blinickj@bennettjones.com

Fax: (416) 863-1716

Lawyers for the Applicant,
ecobee Inc.

THIS IS EXHIBIT "I" REFERRED TO IN THE AFFIDAVIT OF MICHAEL CARTER, SWORN BEFORE ME OVER VIDEO CONFERENCE THIS 8TH DAY OF NOVEMBER, 2021.

Commissioner For Taking Affidavits
Andrew Rintoul

[ecobee logo]

NOTICE OF SPECIAL MEETING

OF THE SHAREHOLDERS OF

ECOBEE INC.

TO BE HELD ON NOVEMBER [22], 2021

- and -

MANAGEMENT PROXY CIRCULAR

November [9], 2021

NOTICE OF SPECIAL MEETING OF SHAREHOLDERS

This document and its attachments contain information about ecobee Inc. that is highly confidential and subject to the confidentiality obligations set forth in ecobee Inc.'s Seventh Amended and Restated Unanimous Shareholders' Agreement dated April 24, 2018. Such information is being provided to you for your review and consideration in connection with the Meeting, however the Corporation, its shareholders, employees and other representatives must not disclose the terms of the transaction described in this document and its attachments except to their advisors on a confidential basis in order to consider the matters to be considered at the Meeting and, if approved, facilitate the completion of the transactions described herein.

NOTICE IS HEREBY GIVEN that a special meeting (the "**Meeting**") of holders (collectively, the "**Shareholders**") of Common Shares, Class A Preferred Shares, Class B Preferred Shares and Class C Preferred Shares (collectively, the "**Shares**") in the capital of ecobee Inc. ("**ecobee**" or the "**Corporation**") will be held at **[10:00 a.m.]** (Toronto time), on **[Monday]**, November **[22]**, 2021. In light of the outbreak of the novel coronavirus disease (known as "COVID-19") and to mitigate against its risks, the Meeting will be held using Microsoft Teams in a virtual-only format, which will be conducted via live audio webcast at ■, password "■" (case sensitive). You will not be able to attend the Meeting in person. You can access the meeting platform up to 5 minutes prior to time of the Meeting. If you have not previously used Microsoft Teams, you should download the program and test it on your computer.

The Meeting, if required, is being held for the following purposes:

(a) to consider, pursuant to an interim order issued by the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated November **[8**], 2021 (the "**Interim Order**"), and if deemed advisable, pass, with or without variation, a special resolution of the Shareholders (the "**Arrangement Resolution**"), the full text of which is attached as Appendix 2 to the accompanying Management Proxy Circular dated November [**9**], 2021 (the "**Circular**"), approving a statutory plan of arrangement (the "**Arrangement**") under Section 192 of the *Canada Business Corporations Act* (the "**CBCA**"), whereby 13462234 Canada Inc. (the "**Purchaser**"), a wholly-owned subsidiary of Generac Power Systems, Inc. (the "**Parent**"), will acquire all of the issued and outstanding Shares and all other then-outstanding securities of the Corporation, all as more particularly described in the Circular; and

(b) to transact such other business or matters as may properly be brought before the Meeting and any adjournment or postponement thereof.

Parent and Purchaser are wholly owned subsidiaries of Generac Holdings Inc., a Delaware corporation ("**Generac Holdings**"), which is listed on the New York Stock Exchange under the ticker symbol GNRC. Generac Holdings and its subsidiaries, including Parent and Purchaser, are sometimes collectively referred to herein as "**Generac**."

In order to be effective, the Arrangement Resolution must be passed by (a) the affirmative vote of not less than 66⅔% of the votes cast by the Shareholders present in person or represented by proxy at the Meeting (with each Shareholder being entitled to one vote for each Share held) voting together as a single class, or (b) a written consent signed in advance of the time of the Meeting by Shareholders

holding 100% of the issued and outstanding Shares, in which case the Arrangement Resolution will pass and the Meeting will not be held.

The Board unanimously recommends that the Shareholders vote "FOR" the Arrangement Resolution.

Each of the directors and senior officers and certain other Shareholders of the Corporation, collectively holding Shares representing ■% of the outstanding Shares as of the date hereof, have entered into a support agreement with the Purchaser (the "**Support Agreement**") pursuant to which they have agreed to vote or cause to be voted all Shares held or controlled by them in favour of the Arrangement Resolution.

In light of the foregoing, the Board has determined that the conditions to the application of the "drag-along" provisions contained in Section 7.5 of the Corporation's Seventh Amended and Restated Unanimous Shareholders' Agreement dated April 24, 2018 have been satisfied and that the Arrangement constitutes a "Qualified DLE" thereunder. Accordingly, each Shareholder is required to vote in favour of the Arrangement Resolution and no Shareholder or other security holder of the Corporation shall have the right to object to, dissent from, protest or otherwise contest the same.

In connection with the Arrangement, the Corporation has entered into an Arrangement Agreement dated November 1, 2021 (the "**Arrangement Agreement**") with the Purchaser, the Parent and Shareholder Representative Services LLC, a copy of which is attached as Appendix 4 to this Circular. This Notice of Special Meeting of Shareholders is accompanied by the Circular and forms of proxy and the Circular contains additional information relating to matters to be dealt with at the Meeting.

The Arrangement has been unanimously approved by the board of directors of ecobee (the "**Board**"). If the Arrangement Resolution is approved, the Arrangement is scheduled to be completed on or around December 1, 2021, subject to the satisfaction of the conditions thereof, as more particularly set out in the Arrangement Agreement.

In accordance with the Interim Order, the Corporation has set the close of business (Toronto time) on November 1, 2021 as the record date (the "**Record Date**") for the determination of the Shareholders entitled to receive notice of, attend, be heard and vote at the Meeting. Only the Shareholders whose names have been entered on the register of the Corporation on the close of business on the Record Date ("**Registered Shareholders**") will be entitled to receive notice of and to vote at the Meeting.

Regardless of whether you intend to virtually attend the Meeting, the Board requests that you vote ahead of time. Registered Shareholders who are unable to attend the Meeting or any adjournment or postponement thereof are requested to complete, date, sign and return the accompanying form of proxy for use at the Meeting or any adjournment thereof. To be effective, proxies must be forwarded by shareholders and received by ecobee by email to the attention of **proxy@ecobee.com** by no later than 10:00 a.m. (Toronto time) on Friday, November 19, 2021 or, if the Meeting is adjourned or postponed, not less than 48 hours (other than a Saturday, Sunday or statutory holiday) immediately preceding the time set for any reconvened or postponed Meeting provided that the Chair of the Meeting may waive the proxy cut-off time.

If you have any questions or need assistance regarding the completion and delivery of your proxy, please contact ■.

The Board would like to express its gratitude to ecobee's Shareholders for their past and ongoing support. We look forward to your participation at the Meeting.

DATED at Toronto this [**date**], 2021.

BY ORDER OF THE BOARD OF DIRECTORS

"Stuart Lombard"

Stuart Lombard
Chief Executive Officer and Director

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ECOBEE INC.

MANAGEMENT PROXY CIRCULAR

SPECIAL MEETING OF SHAREHOLDERS

This management proxy circular dated November [9], 2021 (the "**Circular**") is furnished in connection with the solicitation of proxies by and on behalf of the management of ecobee Inc. ("**ecobee**" or the "**Corporation**") for use at the special meeting (the "**Meeting**") of holders (collectively, the "**Shareholders**") of Common Shares, Class A Preferred Shares, Class B Preferred Shares and Class C Preferred Shares (collectively, the "**Shares**") in the capital of the Corporation scheduled to be held on **[Monday]**, November **[22]**, 2021.

INFORMATION CONTAINED IN THIS CIRCULAR

No person has been authorized to give any information or make any representation in connection with any matters to be considered at the Meeting other than those contained in this Circular and, if given or made, any such information or representation must not be relied upon or be considered to have been authorized by the Corporation, the Purchaser, the Parent or Generac Holdings (each as defined below).

NONE OF THIS CIRCULAR, THE ARRANGEMENT OR THE SECURITIES ISSUED PURSUANT TO THE ARRANGEMENT HAVE BEEN APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION NOR ANY SECURITIES AUTHORITY, NOR HAS THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION NOR ANY SECURITIES AUTHORITY PASSED UPON THE FAIRNESS OR MERITS OF SUCH MATTERS OR UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED IN THIS PROXY CIRCULAR AND ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENCE.

The information contained in this Circular is given as at November [**9**], 2021, except where otherwise noted. Information contained in this Circular with respect to the Parent and related entities was supplied by the Parent for inclusion herein.

You should not construe the contents of this Circular as personal legal, tax or financial advice and should consult with your own professional advisors as to the relevant legal, tax, financial and other matters in connection herewith.

All dollar amounts set forth in this Circular are in **[United States dollars]**, unless otherwise stated.

Risk Factors

The Arrangement involves risks and uncertainties. See page [37] for a summary of certain risk factors relating to the Arrangement. A large component of the consideration payable in the Arrangement will be shares of common stock of Generac Holdings, and there are additional risks associated with those shares and Generac Holdings. See the risk factors in the filings of Generac Holdings with the U.S. Securities and Exchange Commission, as described on page [36].

Forward-Looking Statements

Certain statements contained in this Circular, as well as other information that may be provided by the parties to the Arrangement, may contain forward looking statements that involve risks and uncertainties that could cause actual results to differ materially from those in the forward looking statements. You can identify forward-looking statements by the fact that they do not relate strictly to historical or current facts. These statements may include words such as “anticipate,” “estimate,” “expect,” “forecast,” “project,” “plan,” “intend,” “believe,” “confident,” “may,” “should,” “can have,” “likely,” “future,” “optimistic” and other words and terms of similar meaning in connection with any discussion of the timing or nature of future operating or financial performance or other events.

Any such forward looking statements are not guarantees of performance or results, and involve risks, uncertainties (some of which are beyond the Corporation's control) and assumptions. Although the Corporation believes any forward-looking statements are based on reasonable assumptions, you should be aware that many factors could affect actual results and cause them to differ materially from those anticipated in any forward-looking statements, including that: the conditions precedent and required regulatory and third party approvals required to complete the Arrangement may not be satisfied on the timeline or expected at all; the risk that the Arrangement may not be completed in the event that a Material Adverse Effect occurs; risks relating to the adverse effect and fluctuation of the trading price, volume and liquidity of Generac Common Stock after the completion of the Arrangement and the issuance of a significant number of shares of Generac Common Stock; risk relating to any strategic transactions and issuance of additional equity securities following completion of the Arrangement; litigation or disputes may impede or prevent the Arrangement; risk relating to the enforcement of judgments obtained in Canada against any person or company that is incorporated, continued or otherwise organized under the laws of a foreign jurisdiction or that resides outside of Canada; risk that the rights of Securityholders as holders of Generac Common Stock may differ from the rights of Securityholders under the laws of Canada; risk that Securityholders that will be subject to certain indemnification obligations under the Arrangement Agreement; risk that the consideration payable pursuant to the Arrangement is subject to adjustment; risk of Canadian tax consequences resulting from the exchange of ecobee Shares by a Shareholder under the Arrangement; risk relating to the Securityholders’ Representative having broad authority to act on behalf of Securityholders; the possibility that the expected synergies, efficiencies and cost savings of the Arrangement will not be realized, or will not be realized within the expected time period; risk that the Arrangement Agreement may be terminated; risk that the acquisition of the Corporation will not be integrated successfully and the risk that there can be no assurance that the Corporation will be able to find another attractive take-over, merger or business combination if the Arrangement is not completed.

Should one or more of these risks or uncertainties materialize, actual results may vary in material respects from those projected in any forward-looking statements. In the current environment, some of the above factors have materialized and may or will continue to be impacted by the COVID-19 pandemic.

Any forward-looking statement speaks only as of the date on which it is made. Neither the Corporation nor Purchaser, Parent or Generac Holdings undertakes any obligation to update any forward-looking statement, whether as a result of new information, future developments or otherwise, except as may be required by law.

Court Oversight

The Meeting is being held pursuant to an interim order issued by the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated November **[8**], 2021 (the "**Interim Order**"), the full text of which is set forth at Appendix 1 to this Circular.

At the Meeting, Shareholders will be asked to consider, and, if deemed advisable, pass, with or without variation, a special resolution of the Shareholders (the "**Arrangement Resolution**"), the full text of which is set forth in Appendix 2 to this Circular, approving a statutory plan of arrangement (the "**Arrangement**") under Section 192 of the *Canada Business Corporations Act* (the "**CBCA**"), whereby 13462234 Canada Inc. (the "**Purchaser**"), a wholly-owned subsidiary of Generac Power Systems, Inc. (the "**Parent**"), will acquire all of the issued and outstanding Shares and certain other securities of the Corporation, all as more particularly described in the Circular.

If the Arrangement Resolution is approved (either at the Meeting or with the written consent of all Shareholders), a further Court hearing will be held to obtain a final order (the "**Final Order**") approving the Plan of Arrangement. The date of the hearing for the Final Order is currently scheduled to be **[November 26 at 12:30 pm]**. Due to the measures currently being implemented by the Court in response to the COVID-19 pandemic, the application will be heard by way of videoconference via Zoom. Persons wishing to participate, be represented or present evidence or argument at the hearing for the Final Order may do so, subject to filing a Notice of Appearance as set out in the Notice of Application and satisfying certain other requirements as set out in the Interim Order. To attend the videoconference, access Zoom at Meeting ID ■ and Passcode ■, and follow the Court's instructions. If the Final Order is obtained, and all other closing conditions are satisfied or waived, the Corporation will be entitled to complete the Arrangement in accordance with the Final Order and the Arrangement Agreement.

GENERAL MEETING AND VOTING INFORMATION

This Circular is furnished in connection with the solicitation of proxies by the management of the Corporation for use at the Meeting for the purposes set forth in the accompanying Notice of Meeting.

The Board has determined that the conditions to the application of the "drag along" provisions contained in Section 7.5 of the Corporation's Seventh Amended and Restated Unanimous Shareholders' Agreement dated April 24, 2018 (the "**USA**") have been satisfied and that the Arrangement constitutes a "Qualified DLE" thereunder. **Accordingly, each Shareholder is required to vote in favour of the Arrangement Resolution and no Shareholder or other security holder of the Corporation shall have the right to object to, dissent from, protest or otherwise contest the same.**

Solicitation of Proxies by Management

The solicitation of proxies will be primarily by email, but may also be by telephone, facsimile, electronic or other oral or written means of communication by the directors, officers and employees of the Corporation, at no additional compensation. The cost of the solicitation of proxies by management will be borne by the Corporation.

How to Participate at the Meeting

[The meeting will be held online by means of Microsoft Teams. To access the meeting click on or enter the following URL into your browser: ■, password "■" (case sensitive). You can access the meeting platform up to 5 minutes prior to the 10 am Eastern start time. If you have not previously used Microsoft Teams, you should download the program and test it on your computer. You will not be able to attend the meeting in person.]

Appointment of Proxyholders

The enclosed form of proxy (the "Form of Proxy") is solicited by and on behalf of management of the Corporation. The persons named in the enclosed form of proxy are representatives of management and are directors or officers of the Corporation. **A Shareholder who wishes to appoint some other person to represent such Shareholder at the Meeting may do so by striking the names of the management designees and inserting the chosen representative's name in the blank space provided in the form of proxy.** Such other person need not be a Shareholder of the Corporation.

The proxy must be executed by the Shareholder or the Shareholder's attorney authorized in writing or, if the Shareholder is a corporation, by a duly authorized officer or attorney of the corporate Shareholder. A proxy signed by a person acting as attorney or in some other representative capacity should indicate such person's capacity following his or her signature.

To be valid, proxies must be forwarded by Shareholders and received by ecobee by email to the attention of **proxy@ecobee.com** by no later than 10:00 a.m. (Toronto time) on Friday, November 19, 2021 or, if the Meeting is adjourned or postponed, not less than 48 hours (other than a Saturday, Sunday or statutory holiday) immediately preceding the time set for any reconvened or postponed Meeting provided that the Chair of the Meeting may waive the proxy cut-off time.

The Chair of the Meeting is **[Stuart Lombard]**, or if he is unavailable for any reason, **[Alek Krstajic].**

ONLY REGISTERED HOLDERS OF COMMON SHARES, CLASS A PREFERRED SHARES, CLASS B PREFERRED SHARES AND CLASS C PREFERRED SHARES OF THE CORPORATION OR THE PERSONS THEY APPOINT AS THEIR PROXIES, ARE PERMITTED TO ATTEND AND VOTE AT THE MEETING.

Revocation of A Proxy

A Shareholder who has given a proxy may revoke it as to any matter on which a vote has not already been cast pursuant to the authority conferred by such proxy and may do so by depositing an instrument in writing revoking the proxy executed by the Shareholder or by the Shareholder's attorney authorized in writing, or, if the Shareholder is a corporation, by an officer or attorney duly authorized:

(a) by email to proxy@ecobee.com at any time up to and including the last business day preceding the day of the Meeting, or any adjournment or postponement thereof, at which the proxy is to be used; or

(b) with the Chair of the Meeting by email to proxy@ecobee.com at any time prior to the commencement of the Meeting; or

(c) in any other manner permitted by law.

Voting of Proxies and Exercise of Discretion By Proxyholders

The management representatives designated in the enclosed form of proxy will vote or withhold from voting the Shares in respect of which they are appointed by proxy on any ballot that may be called for in accordance with the instructions of the Shareholder as indicated on the proxy and, if the Shareholder specifies a choice with respect to any matter to be acted upon, the Shares will be voted accordingly. **In the absence of such direction, such Shares will be voted by the management representatives for the Arrangement Resolution as indicated under the "Special Business" heading in this Circular**.

The enclosed Form of Proxy confers discretionary authority upon the management representatives designated in the Form of Proxy with respect to amendments or variations to matters identified in the Notice of Meeting and with respect to other matters which may properly come before the Meeting. At the date of the Circular, management of the Corporation knows of no such amendments to, variations of, or other matters to come before the Meeting. If any new matters or variations or amendments to the matters referred to in the Notice of Meeting properly come before the Meeting, the persons named in the Form of Proxy will vote on such matters in accordance with their best judgment.

Quorum

A quorum of Shareholders will be present at the Meeting if two persons present in person (or virtually) who are entitled to vote at the Meeting (either as Shareholders or proxyholders) holding personally or representing as proxies at least 50.1% of the issued and outstanding Shares on the Record Date.

SHARES ENTITLED TO VOTE AT THE MEETING

As of October 31, 2021, the Corporation had outstanding 6,047,743 Common Shares ("**Common Shares**"), 37,969,630 Class A Preferred Shares ("**Class A Preferred Shares**"), 12,633,329 Class B Preferred Shares ("**Class B Preferred Shares**") and 19,859,001 Class C Preferred Shares ("**Class C Preferred Shares**" and, together with the Class A Preferred Shares and Class B Preferred Shares, the "**Preferred Shares**").

In accordance with the Interim Order, the Corporation has set the close of business (Toronto time) on November 1, 2021 as the record date (the "**Record Date**") for the determination of the Shareholders entitled to receive notice of, attend, be heard and vote at the Meeting. Only the Shareholders whose names have been entered on the register of the Corporation on the close of business on the Record Date ("**Registered Shareholders**") will be entitled to receive notice of and to vote at the Meeting.

Each holder of Common Shares, Class A Preferred Shares, Class B Preferred Shares and Class C Preferred Shares of record at the close of business on the Record Date, will be entitled to one vote for

each Share held on all special business matters proposed to come before the Meeting. In accordance with the Interim Order, all Shareholders will vote on the Arrangement Resolution together as a single class.

Other than the Shares, there are no other securities of the Corporation issued and outstanding which would entitle the holder thereof to vote at the Meeting.

PRINCIPAL HOLDERS OF SHARES ENTITLED TO VOTE

To the knowledge of the directors and officers of the Corporation, the only persons or companies who beneficially own, directly or indirectly, or exercise control or direction over shares of the Corporation carrying 10% or more of the voting rights attached to any class of outstanding shares of the Corporation entitled to vote in connection with any matters being proposed for consideration at the Meeting are indicated below as at November **[8]**, 2021.

Name	Number and Class of Securities	Percentage of Class
Relay Ventures Fund L.P.	Class A Preferred Shares: 8,299,400	21.85%
Just Management Corp.	Class A Preferred Shares: 7,341,420 Class B Preferred Shares: 1,703,540	19.33% 13.48%
Energy Impact Fund LP	Class C Preferred Shares: 4,964,751	25.00%
Ontario Capital Growth Corporation	Class A Preferred Shares: 6,525,380	17.18%
CDP Investissements inc.	Class C Preferred Shares: 5,798,163	29.19%
Tech Capital Sidecar I L.P.	Class A Preferred Shares: 5,283,918	13.92%
O&S Assets LP	Class B Preferred Shares: 3,728,138	29.51%
Andrea Lombard	Common Shares: 3,186,426	52.68%

INTEREST OF PERSONS IN THE MATTERS TO BE ACTED UPON AT THE MEETING

Except as disclosed in the following paragraph, no director or senior officer of the Corporation nor any associate or affiliate of any of the foregoing persons, nor any person or company who beneficially owns, directly or indirectly, or exercises control or direction over 10% or more of the voting rights attached to any class of outstanding Shares, has any material interest, direct or indirect, by way of beneficial ownership of securities or otherwise in any matter to be acted upon at the Meeting, except for any interest arising from the direct or indirect ownership of Shares where the holder of any of those securities receives no extra or special benefit or advantage not shared on a pro-rata basis by all holders of Shares.

On ■, 2021, the Board revised the compensation arrangements with Stuart Lombard, Chief Executive Officer, to include a bonus payment as part of his compensation package in the amount of $■. That bonus will become payable upon completion of the Arrangement. In addition, Mr. Lombard and other officers hold Options that will, by their terms, become fully vested and exercisable in connection with the Arrangement. As well, the Purchaser has agreed to pay certain retention payments to certain

employees of the Corporation if they continue to remain employed by the Corporation in accordance with the terms of their retention arrangements.

INTEREST OF MANAGEMENT AND OTHERS IN MATERIAL TRANSACTIONS

No Informed Person (as defined in National Instrument 51-102 – *Continuous Disclosure Obligations*), director or executive officer of the Corporation, or any associate or affiliate of such person, has any material interest, direct or indirect, in any material transactions since the commencement of the last financial year or in any proposed transaction which has materially affected or may materially affect the Corporation, other than as disclosed in the preceding paragraph or as an employee, security holder, or lender of the Corporation who is participating in the Arrangement as described in this Circular.

AUDITOR

The auditor of the Corporation is Deloitte & Touche LLP and was re-appointed on December 10, 2020.

SPECIAL BUSINESS

Plan of Arrangement

The board of directors of the Corporation (the "**Board**"), after consultation with management and the Corporation's professional advisors, has unanimously determined that it is in the best interests of the Corporation to enter into the Arrangement Agreement dated November 1, 2021 (the "**Arrangement Agreement**") with the Purchaser, the Parent and Shareholder Representative Services LLC, a copy of which is attached as Appendix 4 to this Circular, which provides for the acquisition of the Corporation by way of a statutory plan of arrangement under Section 192 of the CBCA (the "**Plan of Arrangement**"), which is attached as Appendix 3 to this Circular.

At the Meeting, Shareholders will be asked to consider, and, if deemed advisable, pass, with or without variation, the Arrangement Resolution, the full text of which is set forth in Appendix 2 to this Circular.

In order to be effective, the Arrangement Resolution must be passed by (a) the affirmative vote of not less than 66⅔% of the votes cast by the Shareholders present in person or represented by proxy at the Meeting (with each Shareholder being entitled to one vote for each Share held) voting together as a single class, or (b) the execution by Shareholders holding 100% of the issued and outstanding Shares of a written resolution approving the matters to be considered at the Meeting in advance of the time of the Meeting, in which case the Arrangement Resolution will pass and the Meeting will not be held.

If the Arrangement Resolution is approved, the Arrangement is scheduled to be effected on or around **[December 1]**, 2021 (the "**Effective Date**"), subject to the satisfaction or waiver of the conditions thereto, as more particularly set out in the Arrangement Agreement. For purposes of this Circular, "**Effective Time**" means 12:01 a.m. (Toronto time) on the Effective Date, or such other time as may be specified in writing by the Corporation and the Purchaser before the Effective Date.

Each of the directors and senior officers and certain other Shareholders of the Corporation, collectively holding Shares representing ■% of the outstanding Shares as of the date hereof, have entered into a

support agreement (the "**Support Agreement**") pursuant to which they have agreed to vote or cause to be voted all Shares held or controlled by them in favour of the Arrangement Resolution.

Meaning of terms Shareholders, Securityholders, Options, Warrants and Convertible Notes

References to the term:

"**Convertible Notes**" means those certain promissory notes issued pursuant to that certain Note Purchase Agreement, dated as of May 5, 2020, between the Corporation and the persons set forth on the signature pages thereto.

"**Options**" means stock options issues pursuant to the Corporation's stock option plan.

"**Securityholders**" means Shareholders and holders of Options, Warrants and Convertible Notes.

"**Shareholders**": (i) in the context of the Meeting, means holders of any class of shares in the capital of the Corporation at the record date of November 1, 2021; and (ii) after the exercise of the Options and Warrants in accordance with the Arrangement, includes in addition, the holders of Options and Warrants.

"**Warrants**" means holders of warrants issued by the Corporation, being Energy Impact Fund LP and Structured Alpha LP.

Impact of Corporation's Unanimous Shareholders' Agreement

The Corporation and all Shareholders are parties to the USA. The USA contains provisions intended to deal with a transaction involving the sale of the business. Section 7.5 (the "**Drag Along**") of the USA contains provisions that provide for the compulsory cooperation of Shareholders in a transaction that is a "Qualifying Offer" that results in the change of control of ecobee and becomes a "Qualified DLE" as defined in the USA.

Approval of the Qualifying Offer by the following shareholders (the "**Drag Shareholder Approvals**"), in addition to Board approval, is required to implement the compulsory cooperation provisions of the Drag Along:

(a) The Qualifying Offer must be approved by a majority of the votes cast by holders of Common Shares at a meeting of holders of Common Shares, or by the written agreement of the holders of a majority of the Common Shares (which in either case will include only holders of outstanding Common Shares and will not include holders of Preferred Shares or holders of any other securities on an as-converted basis); and

(b) The Qualifying Offer must be approved in writing by the holders of a majority of the Class B Preferred Shares and Class C Preferred Shares, voting together on an

as-converted basis (or the Common Shares issued upon the conversion of such shares).

Both Drag Shareholder Approvals have been obtained through Support Agreements signed by a sufficient number of Shareholders to achieve the required thresholds. As noted, the USA permits the Drag Shareholder Approvals to be provided in writing. Board approval of the Qualifying Offer has also been obtained.

The Board has determined in good faith that the Arrangement Agreement is a "Qualifying Offer" and, as a result of the receipt of the Drag Shareholder Approvals, is a "Qualified DLE". The Board has further determined that the conditions to the application of the Drag Along provisions contained in Section 7.5 of the USA have been satisfied and the Drag Along applies to the Arrangement. **Accordingly, each Shareholder is required to vote in favour of the Arrangement Resolution.**

In connection with the Drag Shareholder Approvals process, Shareholders who provided their approval had the opportunity to seek, and were not prevented or discouraged by any party to the Arrangement Agreement from seeking, independent legal advice. A number of Shareholders engaged legal counsel to review and negotiate terms of the Arrangement Agreement, Support Agreement and other documents.

Overview of Arrangement

The following is a brief summary of certain provisions of the Arrangement Agreement and the Arrangement. All summaries of, and references to, the Arrangement Agreement and the Plan of Arrangement in this Circular are qualified in their entirety by reference to the complete text of the Arrangement Agreement, including the Plan of Arrangement, copies of which are attached hereto as Appendices [3] and [4]. **Shareholders are urged to carefully read the full text of the Arrangement Agreement and the Plan of Arrangement.**

If the Arrangement is approved by the Shareholders and the Court, and the other conditions to the closing of the Arrangement set out in the Arrangement Agreement are either satisfied or waived, the Corporation will file Articles of Arrangement to give effect to the Arrangement.

Pursuant to the Arrangement, the Purchaser will acquire all of the issued and outstanding Shares and certain other securities of the Corporation in exchange for a purchase price of up to US$770 million payable in cash and shares ("**Consideration Shares**") of common stock ("**Generac Common Stock**") of Generac Holdings Inc. ("**Generac Holdings**"), on a cash-free and debt-free basis, subject to a customary working capital and other purchase price adjustments. Generac Holdings is a Delaware corporation and the ultimate parent company of the Parent and the Purchaser and its shares are listed and posted for trading on the New York Stock Exchange (the "**NYSE**"). Generac is a leading energy technology company that provides advanced power grid software solutions, backup and prime power systems for home and industrial applications, solar + battery storage solutions, virtual power plant platforms and engine- and battery-powered tools and equipment. Founded in 1959, Generac introduced the first affordable backup generator and later created the category of automatic home standby generator - a market in which nearly eight of ten generators sold is a Generac. Generac is committed to sustainable, cleaner energy products poised to revolutionize the 21st century electrical grid. Additional information about Generac is available at: http://investors.Generac.com/.

At closing, US$200 million will be payable by the Purchaser in cash and US$450 million will be payable in Generac Common Stock. An earn out (the "**Earnout**") of up to a further US$120 million could be payable in Generac Common Stock if the business is able to meet certain target metrics in the fiscal years ending June 30, 2022 and 2023.

The Consideration Shares will be listed on the NYSE and will be freely tradeable in reliance on the exemption from the registration requirements of the Securities Act of 1933, as amended (the "**U.S. Securities Act**") as provided by Section 3(a)(10) thereof, subject to the restrictions applicable to "affiliates" as set out in more detail below under "U.S. Securities Law Matters". The Consideration Shares have not been registered under the U.S. Securities Act or any Canadian, provincial, state or foreign securities laws.

Based on current estimates (excluding the Earnout, before taxes and after customary adjustments and escrows), ecobee expects that the US$650 million of cash and stock payable at closing will result in a payment per share of US$[6.59] on a fully-diluted basis, excluding the Convertible Notes (which notes will be paid out and not converted). For a more detailed analysis of the purchase price, please see Appendix 6. For more information about the Earnout, see "*Earnout*" below.

The number of Consideration Shares to be issued at closing will be calculated using a price of US$448.9326 per Consideration Share, representing the volume-weighted average closing price of a share of Generac Common Stock on the NYSE over a period of twenty trading days ending on October 29, 2021, the last trading day prior to the execution of the Arrangement Agreement.

U.S. Securities Law Matters

The Generac Common Stock to be issued as Consideration Shares to Shareholders pursuant to the Arrangement will be delivered in reliance on the exemption from the registration requirements of the U.S. Securities Act as provided by Section 3(a)(10) thereof and exemptions under applicable state securities laws and will not be registered on the U.S. Securities Act or any state securities laws. Section 3(a)(10) of the U.S. Securities Act exempts the issuance of any security issued in exchange for one or more bona fide outstanding securities from the general requirement of registration where the terms and conditions of such issuance and exchange have been approved by a court of competent jurisdiction that is expressly authorized by law to grant such approval, after a hearing upon the fairness of the terms and conditions of such issuance and exchange at which all persons to whom it is proposed to issue the securities have the right to appear and receive timely notice thereof. The Court is authorized to conduct a hearing at which the fairness of the terms and conditions of the Arrangement will be considered.

The Generac Common Stock to be received by Shareholders will, upon receipt, be freely tradeable under the U.S. Securities Act, except by persons who will be "affiliates" of Parent after the completion of the Arrangement or were affiliates of Parent within 90 days before the completion of the Arrangement. Persons who may be deemed to be "affiliates" of an issuer include individuals or entities that control, are controlled by, or are under common control with, the issuer, whether through the ownership of voting securities, by contract or otherwise, and generally include executive officers and directors of the issuer as well as principal shareholders of the issuer.

Background to the Arrangement

The terms of the Arrangement are the result of arm's length negotiations between representatives of the Corporation, Purchaser, Parent and their respective advisors. The following is a summary of certain events leading up to the negotiation of the Arrangement.

In March 2021, the Board determined to explore strategic alternatives for ecobee. In connection with such process, ecobee explored, with assistance of BofA Securities, Inc., its financial advisor, potential financings with private equity firms, the potential sale to a strategic acquirer, as well as the potential acquisition by a U.S.-based Special Purpose Acquisition Fund. As part of this process, ecobee participated in meetings with numerous parties, including certain U.S. special purpose acquisition corporations ("**SPACs**").

Initially, the Board favoured exploring a possible transaction with one of the U.S. SPACs it had been in discussions with whereby ecobee would become a publicly-traded company. On April 29, 2021, the Board signed a letter of intent with a NYSE-listed U.S.SPAC. That transaction initially valued ecobee at US$1,000 million but that was later reduced to US$750 million. A significant portion of the valuation would have been attributed to stock in the U.S. SPAC, which would have involved a high degree of risk if the deal had proceeded. Negotiations stalled as the U.S.SPAC market deteriorated and the valuation was likely to lower further. The parties ultimately could not agree on a valuation and decided not to proceed.

At that point, the Board began to favour a strategic combination and ecobee pursued discussions with the Parent, one of the strategic acquirers that it had identified in the strategic review. The parties negotiated a term sheet that was signed on August 19, 2021, pursuant to which ecobee agreed to negotiate exclusively with Parent in connection with a potential acquisition transaction.

Throughout the negotiation of the term sheet and the Arrangement Agreement with the Parent, the Board was assisted by BofA Securities, Inc., ecobee's financial advisor, and received and considered legal advice from Choate, Hall & Stewart LLP (as U.S. counsel) and Bennett Jones LLP (as Canadian counsel), and tax advice from Deloitte LLP.

Board Recommendation

The Board, having undertaken a thorough review of, and having carefully considered the terms of the Arrangement, and after (i) consulting with its investment banker, legal and tax advisors, and (ii) in recognition that Shareholders holding more than a sufficient number of Shares to trigger the Drag Along provisions of the USA were supportive of the transaction, unanimously (a) determined that the Arrangement is fair to Shareholders and in the best interests of the Corporation, and (b) approved the execution and delivery by the Corporation of the Arrangement Agreement, and (c) recommends that Shareholders vote their Shares in favour of the Arrangement Resolution.

The Board unanimously recommends that the Shareholders vote "FOR" the Arrangement Resolution.

The Board based its recommendation upon the totality of the information presented to and considered by it in light of the Boards' knowledge of the business, affairs, operations, assets, liabilities, financial

condition or results of operations of ecobee and its subsidiaries taken as a whole and after taking into account the advice of its professional advisors and the advice and input of management of ecobee.

Each director and executive officer of ecobee intends to vote all of his or her Shares in favour of the Arrangement Resolution and each has entered into a Support Agreement with the Purchaser.

Reason for Recommendation

In making its determinations and arriving at its recommendation, the Board considered and relied upon a number of substantive factors, carefully considered all aspects of the Arrangement, and considered a variety of uncertainties, risks and other potentially negative factors concerning the Arrangement and the Arrangement Agreement.

Strategic Review and Consideration of Strategic Alternatives. The Arrangement is the result of a robust, strategic review process carried out by ecobee and overseen by the Board, which process included a review of, among other things, potential alternatives to maximize shareholder value. ecobee conducted a review of various strategic alternatives, including evaluating third-party interest in a potential transaction involving ecobee and entering into a sale arrangement with other interested parties. In furtherance of the foregoing, ecobee took into consideration the potential rewards, risks and uncertainties associated with these and other alternatives. Following a consideration of the strategic alternatives available to ecobee, the Board concluded that the Arrangement is the most favourable alternative for ecobee to pursue.

Strategic Partnership and Increased Financial Resources. The Board considered its capital needs and the fact that ecobee would require additional funding to finance its business and operations. The Board also considered the risk that any such funding may not be obtained on terms satisfactory to ecobee. If completed, ecobee will benefit from access to support and potential synergies from the existing Generac business.

Value and Immediate Liquidity. The Arrangement provides Securityholders with consideration comprised of both cash and Generac Common Stock, which trade publicly on the NYSE. The shares of Generac Common Stock to be issued to the Securityholders as Consideration Shares pursuant to the Arrangement are highly liquid and will be immediately freely tradable, subject to securities laws applicable to "affiliates". The Arrangement therefore provides shareholders with immediate liquidity and value.

Interests of Stakeholders. The Board considered that the Arrangement will have a positive impact on the Corporation's employees, customers, suppliers and governments as the Arrangement will provide capital to the Corporation and the business will continue to operate with its current employees as a standalone business operating from its current facilities which the Board believes is in the long term best interests of the Corporation.

Compelling Value Relative to Alternatives. The value offered to Securityholders under the Arrangement is attractive relative to the value that might be realized by Securityholders through other alternatives considered to be reasonably available to ecobee, including remaining a stand-alone private company.

Arm's-Length Negotiations. The Arrangement is the result of arm's-length negotiations between ecobee, on the one hand, and the Purchaser and the Parent, on the other. The Board took an active role in overseeing and providing guidance and instructions to management and ecobee's advisors in respect of the strategic review process and the negotiations concerning the Arrangement. In addition, certain shareholders participated directly in the negotiations through their legal counsel.

Shareholder Approval Required. The Arrangement must be approved (i) by an affirmative vote of at least two-thirds (66⅔%) of the votes cast in respect of the Arrangement Resolution at the Meeting by Shareholders present in person (or virtually) or represented by proxy, voting together as a single class; or (ii) by all of the Shareholders signing the Arrangement Resolution in lieu of the Meeting;

Significant Shareholder Support. Certain Shareholders who, as of the Record Date, beneficially own or exercise control or direction over, in the aggregate, ●% of the outstanding Shares, have entered into Support Agreements under which they have agreed, on the terms and conditions specified therein, to vote their Shares in favour of the Arrangement Resolution, demonstrating significant shareholder support for the Arrangement.

Credible Purchaser; Limited Conditions to Closing. The Purchaser is a company controlled by the Parent, a highly credible and reputable company with the financial capacity to complete the Arrangement. The Purchaser's obligation to complete the Arrangement is subject only to a limited number of customary conditions and is not subject to any financing-related conditions.

Financial, Legal and Other Advice. Extensive financial, legal and other advice was provided to ecobee and the Board. This advice included detailed financial advice from highly qualified and experienced financial advisors.

Determination of Fairness by the Court. Completion of the Arrangement is conditional upon receipt of the Final Order. The Court will consider, during the hearing for the Final Order, the procedural and substantive fairness of the terms and conditions of the Arrangement.

Support Agreements

Certain Shareholders have entered into a Support Agreement with the Purchaser in the form attached to the Arrangement Agreement in connection with the Arrangement pursuant to which, among other things, such Shareholders have agreed to vote the Shares owned by them FOR the Arrangement Resolution. Such Shareholders, collectively, beneficially own, directly or indirectly, or exercise control or direction over, in the aggregate, [●] Shares as at [**date**], which represent approximately [●]% of the outstanding Shares.

Vote Required to Approve the Arrangement

At the Meeting, Shareholders will be asked to approve the Arrangement Resolution at Appendix 2 of this Circular.

In order to be effective, the Arrangement Resolution must be passed by (a) the affirmative vote of not less than 66⅔% of the votes cast by the Shareholders present in person or represented by proxy at the Meeting (with each Shareholder being entitled to one vote for each Share held) voting together as a single class, or (b) a written consent signed in advance of the time of the Meeting by Shareholders

holding 100% of the issued and outstanding Shares, in which case the Arrangement Resolution will pass and the Meeting will not be held.

Under the Drag Along, each Shareholder is obliged to approve the Arrangement Resolution.

Arrangement Mechanics

The Arrangement will be completed by way of a plan of arrangement, a statutory procedure under Section 192 of the CBCA that allows a corporation to carry out transactions with the approval of its shareholders and the Court, where it is not practical for a corporation to effect an arrangement under any other provisions of the CBCA. The Plan of Arrangement will provide for, among other things, the acquisition, by the Purchaser from the Shareholders, of all of the issued and outstanding shares of the Corporation. See "*Plan of Arrangement*" below for further details.

Parent Loan to the Corporation

The Corporation has entered into a Commitment Letter dated as of September 13, 2021 with Parent pursuant to which Parent has agreed to loan US$30 million to ecobee by way of Convertible Promissory Note (the "**Generac Note**"). The loan proceeds are intended to be used by ecobee to fund its working capital requirements and to protect ecobee from a liquidity issue if the Arrangement were to be delayed or fail to close. The US$30 million principal amount of the Generac Note was funded, and the Generac Note was issued, on November [●], 2021. The Generac Note will be included in the calculation of the Corporation's indebtedness at closing.

Tax Considerations

SECURITYHOLDERS SHOULD BE AWARE THAT THE DISPOSITION OF ECOBEE SHARES FOR CASH AND GENERAC COMMON STOCK UNDER THE ARRANGEMENT WILL BE A TAXABLE TRANSACTION FOR CANADIAN FEDERAL INCOME TAX PURPOSES AND SECURITYHOLDERS MAY NOT RECEIVE SUFFICIENT CASH AS PART OF THE ARRANGEMENT TO SATISFY ANY TAX LIABILITY THAT ARISES PURSUANT TO THE ARRANGEMENT. FOR A SUMMARY OF CERTAIN OF THE MATERIAL CANADIAN FEDERAL INCOME TAX CONSEQUENCES OF THE ARRANGEMENT APPLICABLE TO SECURITYHOLDERS, SEE *"CERTAIN CANADIAN FEDERAL INCOME TAX CONSIDERATIONS OF THE ARRANGEMENT FOR SECURITYHOLDERS"*. SUCH SUMMARY IS OF A GENERAL NATURE ONLY AND IS NOT, AND IS NOT INTENDED TO BE, AND SHOULD NOT BE CONSTRUED TO BE, LEGAL OR TAX ADVICE TO ANY PARTICULAR SECURITYHOLDER, AND NO REPRESENTATIONS CONCERNING THE TAX CONSEQUENCES TO ANY PARTICULAR SECURITYHOLDER ARE MADE. THE TAX CONSEQUENCES OF ACQUIRING, HOLDING AND DISPOSING OF ECOBEE SHARES WILL VARY ACCORDING TO THE SHAREHOLDER'S PARTICULAR CIRCUMSTANCES. SECURITYHOLDERS SHOULD CONSULT THEIR OWN TAX

ADVISORS AS TO THE TAX CONSEQUENCES OF THE ARRANGEMENT TO THEM WITH RESPECT TO THEIR PARTICULAR CIRCUMSTANCES.

Pre-Closing Reorganization

Certain Shareholders of ecobee who are residents of Canada for purposes of the *Income Tax Act* (Canada) (the "**Tax Act**") have an opportunity to participate in certain transactions which may enable them to reduce the capital gain that they might otherwise realize for purposes of the Tax Act in connection with the Arrangement (the "**Pre-Closing Reorganization**"). This section briefly describes these transactions.

To participate in the Pre-Closing Reorganization, a Shareholder must be a resident of Canada for purposes of the Tax Act. **Option holders who exercise Options for ecobee Shares and become a Shareholder after the date hereof and prior to the Arrangement (and do not otherwise hold any ecobee Shares) will not benefit from participating in the Pre-Closing Reorganization. Any such Option holders should consult their own tax advisors.**

The Pre-Closing Reorganization will occur pursuant to the Arrangement. As part of the Pre-Closing Reorganization, ecobee will make a designation under paragraph 111(4)(e) of the Tax Act in respect of the taxation year of ecobee ending immediately before the Effective Date in accordance with the terms of the Arrangement Agreement. That designation will give rise to a capital gain under the Tax Act, one-half of which will be added to ecobee's "capital dividend account" (as such term is defined in the Tax Act).

Dividends that are designated by ecobee to be "capital dividends" for purposes of the Tax Act are generally received tax-free by Shareholders who are residents of Canada, provided that the amount of such dividend does not exceed ecobee's "capital dividend account" balance at the time that the dividend is paid. Capital dividends paid to Shareholders who are not residents of Canada within the meaning of the Tax Act (or Shareholders that are partnerships with non-Canadian resident members) are subject to withholding tax under Part XIII of the Tax Act in the same way as taxable dividends paid by ecobee. As such, as part of the Pre-Closing Reorganization, ecobee will not pay any capital dividends in respect of classes of shares in the capital of ecobee that are held by Shareholders who are not resident in Canada for purposes of the Tax Act (or Shareholders that are partnerships with non-Canadian resident members).

In order to allow Shareholders who are residents of Canada and who elect to participate in the Pre-Closing Reorganization to benefit from ecobee's "capital dividend account" balance (such electing Shareholders are referred to as "**Reorganization Participants**"), holders of Common Shares and Preferred Shares who are non-residents of Canada for purposes of the Tax Act (or partnerships with non-Canadian resident members) or who otherwise do not elect to participate in the Pre-Closing Reorganization (collectively, the "**Non-Participating Shareholders**") will exchange all of their Common Shares and Preferred Shares for a new class of Class Y Preferred Shares of ecobee, in accordance with the Plan of Arrangement. If such exchange occurs, the Common Shares and Preferred Shares held by the Non-Participating Shareholders prior to the exchange will be cancelled. This share exchange is anticipated to occur on a tax-deferred basis for Canadian federal income tax purposes.

Reorganization Participants who hold Preferred Shares will convert all of their Preferred Shares for additional Common Shares. This share exchange is anticipated to occur on a tax-deferred basis for Canadian federal income tax purposes.

ecobee will then pay a dividend on its Common Shares (which will be held exclusively by Reorganization Participants), which will be designated as a "capital dividend" for purposes of the Tax Act (the "**Capital Dividend**"). The Capital Dividend will be satisfied in full by way of the issuance of promissory notes by ecobee to the Reorganization Participants (the "**CDA Notes**").

Each Reorganization Participant will then make a contribution of capital in respect of their Common Shares in an amount equal to the principal amount of their respective CDA Note (the "**Capital Contribution**"). The obligation to satisfy such Capital Contribution will be set-off against the CDA Note, with the result that the adjusted cost base of the Common Shares held by each such Reorganization Participant will increase by an amount equal to the Capital Contribution made by such Reorganization Participant (provided that the adjusted cost base of a Reorganization Participant's Common Shares cannot increase to an amount in excess of the fair market value of such Common Shares on the Effective Date) and the CDA Notes will each be respectively cancelled.

Following the Capital Contributions, the Non-Participating Shareholders will exchange their Class Y Preferred Shares for a new class of Class B Common Shares of ecobee. This share exchange is anticipated to occur on a tax-deferred basis for Canadian federal income tax purposes.

The Pre-Closing Reorganization is described in the Plan of Arrangement (see "*Plan of Arrangement*" below). Securityholders wishing to participate in the Pre-Closing Reorganization will be required to submit a declaration of interest to ecobee in writing prior to the Effective Date as described in the Plan of Arrangement and to complete an election form described in further detail below.

Pursuant to Section 8.02(f) of the Arrangement Agreement, the Reorganization Participants (other than CDP Investissements Inc.) will be required to indemnify the Purchaser, *pro rata* with other Reorganization Participants, for any out-of-pocket expense, third-party claim or taxes incurred by ecobee in connection with, or as a direct or indirect result of, the Pre-Closing Reorganization, and any tax liability of the Purchaser, its affiliates or ecobee that is incurred in a post-closing tax period resulting from ecobee claiming SRED Credits (as defined in the Arrangement Agreement) in a pre-closing tax period, if applicable, in each case other than taxes that are reflected as accrued tax liabilities in the closing working capital or otherwise taken into account as a reduction in the calculation of the consideration to be paid by the Purchaser.

ecobee's "capital dividend account" balance arising from the designations under paragraph 111(4)(e) of the Tax Act described above is expected to be approximately CAD$80,000,000. The aggregate amount of the Capital Dividend shall not exceed ecobee's "capital dividend account" balance at the time that the Capital Dividend is paid. Each Shareholder electing to participate in the Pre-Closing Reorganization will be required, when submitting a declaration of interest to ecobee, to authorize ecobee to make an election under subsection 184(3) of the Tax Act if it is subsequently determined that the amount of the Capital Dividend exceeded ecobee's "capital dividend account" balance for purposes of the Tax Act at the time that the Capital Dividend is paid. If any such election is made, each Reorganization Participant who received the Capital Dividend will be deemed to have received a taxable dividend for purposes of the Tax Act equal to the Reorganization Participant's shares of the amount by which the amount of the Capital Dividend exceeded ecobee's "capital dividend account" balance for purposes of the Tax Act.

Shareholders who do not elect to participate in the Pre-Closing Reorganization will not indemnify the Purchaser in respect of the Pre-Closing Reorganization.

ARRANGEMENT AGREEMENT

The following description of certain provisions of the Arrangement Agreement is a summary only, is not comprehensive and is qualified in its entirety by reference to the full text of the Arrangement Agreement which is attached hereto as Appendix 4 to this Circular.

Closing Purchase Price and Adjustments

Subject to certain customary adjustments, the purchase price to be paid at closing is US$200 million in cash and approximately [1,002,378] Consideration Shares with an aggregate value of $450 million, based upon the volume-weighted average price of the Consideration Shares over the 20 trading days ended October 29, 2021, being $448.9326 per share. The transaction value is based on (and will be adjusted to reflect) a cash free, debt free basis with a working capital target of US$2 million.

The amount available to be paid to Securityholders at closing will be reduced by various loan repayments, expenses, and escrows as noted in the Waterfall in Appendix 6 and also described below. The estimated net cash available for distribution to Securityholders from the US$200 million of cash to be received, after deducting the obligations to be paid on closing, is expected to be approximately US$[176.49] million, or US$[1.54] per share on a fully diluted basis (excluding the Convertible Notes). These are estimated amounts and the actual amount that Securityholders will receive on closing could differ.

Each Securityholder (other than a holder of Convertible Notes) will receive the same proportions of cash and shares except: (a) Shareholders entitled to a fraction of a share will be paid, unless otherwise determined by Generac Holdings, that fraction amount in cash based on $448.9326 (which is the Generac Share Value (as defined in “Number and Value of Consideration Shares Issuable” below) of the Consideration Shares to be paid at closing); and (b) in repayment of the Daylight Loans described below, a proportionate amount of cash and Consideration Shares otherwise payable to a Securityholder will be used to repay any Daylight Loan in connection with the unexercised Options and/or Warrants. As described below, holders of Convertible Notes will receive a cash amount equal to two times (2x) the aggregate outstanding principal amount thereon plus one times (1x) the accrued but unpaid interest thereon.

In addition, the amount payable on closing will be based on certain estimates of the Corporation's working capital and certain transaction expenses. Those amounts will be finalized post-closing and adjustments will be made as provided in the Arrangement Agreement.

The final purchase price payable on closing will be determined after closing and any adjustment will be made by cash payments from the party owing the deficiency. In the case of amounts payable by the Securityholders, the adjustment will be made from the Purchase Price Adjustment Escrow Fund (see "*Indemnification Obligations and Escrow Funds*" below), and if that is not sufficient, one of the other escrow funds and/or the recovery by offset of amounts otherwise payable by Purchaser or Parent pursuant to the Arrangement Agreement. In no event will Securityholders be required to fund a deficiency in the calculation of the purchase price from their personal funds.

The Earnout will be paid a number of months after the end of each of the two annual Earnout periods, if earned.

Earnout

As a component of the purchase price, the Shareholders will have the opportunity to receive up to a maximum of US$120 million of additional consideration payable in the form of Generac Common Stock.

The Earnout consideration will be calculated based on two metrics: Connected Homes and Eco+ ARR. Those metrics will be compared as of two measurement dates: June 30, 2022 and June 30, 2023 (each, an "**Earnout Measurement Date**") against agreed targets. The number of shares of Generac Common Stock to be issued as Earnout consideration will be calculated using the volume-weighted average closing price of a share of Generac Common Stock on the NYSE over a period of twenty trading days ending on the related Earnout Measurement Date. The Arrangement Agreement contains a process to finalize and pay the Earnout annually.

Subject to certain exceptions set out in the Arrangement Agreement, the Purchaser has agreed to fund ecobee to an agreed budget during the Earnout period, and not to intentionally take or omit to take any action for the purpose of avoiding or reducing the Earnout.

If prior to June 30, 2023 there are certain fundamental changes (such as a change of control) of Generac Holdings as described in the Arrangement Agreement, the Earnout will accelerate based on a formula set out in the Arrangement Agreement.

Treatment of Shareholders

Effective on completion of the Arrangement, Shareholders will have sold their shares to Purchaser. Each Shareholder's right to receive their consideration (which will be paid to Shareholders on closing or as soon as possible after closing) will be conditioned on such Shareholder's prior completion, execution and delivery of a letter of transmittal, in substantially the form accessible at the online portal: **[insert link to online portal]** (a "**Letter of Transmittal**"), provision of the information required at the online portal and such other materials as described under the heading "Mechanics of Payment of Consideration" below. Shareholders that wish to receive a hard copy of the Letter of Transmittal may request one from the Exchange Agent by email at **[insert appropriate Computershare email]**. See "*Exchange Agent*" below.

Treatment of Option Holders

Pursuant to the terms of the Corporation's stock option plan, all Options accelerate and vest on a change of control, including the Arrangement. The Arrangement provides that all Options that have not been exercised prior to the Effective Time will be deemed to have been exercised, with the Purchaser lending the exercise price to the Option holders and such loan being repaid on the same day from the sale proceeds to be received by the Option holder on closing by way of set-off (the "**Daylight Loan**"). The Daylight Loan will be repaid by a proportionate amount of cash and Generac Common Stock otherwise payable to the Option holder. The Option holder will not physically receive the Daylight Loan in cash. Rather, the Daylight Loan proceeds will be paid by the Purchaser to the Corporation on the Option holder's behalf to exercise the Options held by the Option holder. The net result of the Daylight Loan approach is that the proceeds to be received by the Option holder from the Arrangement will be reduced by the aggregate amount of the Option holder's exercise price.

Alternatively, should an Option holder wish to exercise such holder's Options prior to closing and pay the exercise price personally, the Option holder will be entitled to exercise his or her Options by submitting the exercise form and paying the exercise price up to five business days prior to the "Effective Date", being the date that the Arrangement becomes effective, or such later date as the Corporation may determine. Option holders who do not exercise their Options by paying the exercise price by the deadline will be deemed to have elected to exercise by receiving a Daylight Loan. Note that upon the exercise by such holder of his or her Options, the holder thereof will become a Shareholder of the Corporation and, if the Arrangement is not completed for any reason, will continue to be a Shareholder of the Corporation and will not revert to being an Option holder.

For Option holders who are resident in, or otherwise employed and subject to tax in the U.S. or the UK, the amount of proceeds to be received will be net of applicable employee withholding taxes.

Treatment of Warrant Holders

Pursuant to the Arrangement, all warrants that have not been exercised prior to the Effective Time will be exercised in full, with the Purchaser loaning the exercise price on the same basis using Daylight Loans. Energy Impact Fund LP has agreed to forgo the continued earning of additional performance warrants in return for an agreed number of warrants based on assessment by ecobee management of what would likely have vested during the balance of the performance period.

Treatment of Convertible Note Holders

Pursuant to the Arrangement, the holders of the Convertible Notes will receive, in accordance with the term of such Convertible Notes, a cash amount equal to two times (2x) the aggregate outstanding principal amount thereon plus one times (1x) the accrued but unpaid interest thereunder, less any withholding tax applicable in respect thereof, which will be withheld and remitted in accordance with the Arrangement Agreement. Convertible Notes issued in Canadian currency will be paid in US currency on closing. The exchange rate will be determined as provided under "Currency Conversion" (below).

Currency Conversion

The cash consideration to be paid by the Purchaser will be in U.S. dollars. Determinations of amounts payable to Securityholders with respect to securities denominated in Canadian dollars (such as the Daylight Loans) or with respect to which the exercise price is denominated in Canadian dollars, the Canadian dollar amount will be notionally converted to U.S. dollars at the daily average exchange rate published by the Bank of Canada with respect to the date that is five (5) business days prior to the Effective Date.

Support Agreement

As a condition to receiving the purchase consideration, each Securityholder will be required to sign or otherwise become a party to a Support Agreement in the form attached to the Arrangement Agreement. The Support Agreement includes, among other covenants, a release to be given by the Securityholder, and a confidentiality obligation. In addition, certain Securityholders who are employees or former employees, as listed in a Schedule to the Support Agreement, are subject to non-competition and other restrictive covenants. Shareholders who are subject to the non-competition requirement have been contacted by ecobee.

Mechanics of Payment of Consideration

Parent will appoint Computershare Trust Company, N.A. or another institutional exchange agent reasonably acceptable to the Corporation (the "**Exchange Agent**") to act as the exchange agent to facilitate payment of the purchase price to Shareholders. The fees and expenses of the Exchange Agent will be borne by the Purchaser.

The right of each Shareholder (including each Option holder and Warrant holder) to receive the purchase price is conditional on such Shareholder's completion, execution and delivery of a properly completed Letter of Transmittal together with:

- a Joinder to the Support Agreement,
- any original share certificates,
- affidavits and indemnity of lost share certificate,
- tax forms, and
- other documents or information required thereby

all in accordance with the Plan of Arrangement. Each Securityholder will also be required to submit to the Exchange Agent's online portal payment instructions and instructions for delivery of share certificates.

At this time, most share certificates are being held by the Corporation. If a Shareholder would like to confirm whether the Corporation is holding the Shareholder's certificate, the Shareholder should contact Philip Cheng at philip.c@ecobee.com with the subject line "Share Certificate".

Upon completion of the Arrangement, all outstanding Shares of ecobee will be transferred to the Purchaser, whether or not a Shareholder has delivered a duly completed Letter of Transmittal and related documents.

Covenants

The Arrangement Agreement contains customary negative and affirmative covenants of the Corporation and the Purchaser.

Representation and Warranties

The Arrangement Agreement contains customary representations and warranties made by each of the Corporation on the one hand, and the Parent and the Purchaser on the other. The representations and warranties are qualified by certain disclosures provided by the Corporation to the Purchaser.

Conditions to Obligations

The Arrangement is subject to the fulfilment, at or prior to the Effective Date, of customary conditions, including that the 30-day waiting period under the US federal anti-trust legislation (competition law) has expired.

Interim Period Covenants

The Corporation has agreed to operate its business in accordance with certain restrictions during the period between signing and closing which covenants are intended to preserve the value of the business for the Purchaser.

No Solicitation of Other Bids

The Corporation has agreed not to solicit other competing offers to acquire the company or any material part of it prior to closing.

Termination

The Arrangement Agreement may be terminated under certain circumstances, including in the event of a default by a party in the performance of its obligations which default is not remedied within a specified period. No termination of the Arrangement Agreement will relieve any party from a wilful breach of the Arrangement Agreement.

Survival

Subject to the limitations and other provisions of the Arrangement Agreement, the representations and warranties contained in the Arrangement Agreement will survive the closing for 12 months from the closing date, except that the Fundamental Representations (as defined in the Arrangement Agreement) will survive for three (3) years.

All covenants and agreements of the parties to be performed subsequent to the closing will survive the closing in accordance with their terms or for the period explicitly specified in the Arrangement Agreement, Support Agreement or other Ancillary Document (as defined in the Arrangement Agreement) in which the covenant is provided.

None of the covenants and agreements of the parties in the Arrangement Agreement to be performed prior to the closing will survive closing.

Indemnification Obligations and Escrow Funds

In general, Shareholders (including Option holders and Warrant holders since their Options or Warrant will be exercised as part of the Arrangement such that they will become Shareholders) will be responsible up to their *pro rata* share of the purchase price that they receive to indemnify the Purchaser and its related parties for breaches of representations and warranties given by ecobee in the Arrangement Agreement.

In addition, all Shareholders are responsible to the Purchaser for any losses arising from any breach by the Shareholder of their obligations under the Support Agreement, subject to a cap equal to the amount received by the Shareholder.

In no case will the aggregate liability of a Shareholder pursuant to the Arrangement Agreement and the Support Agreement exceed the amount actually paid to such Shareholder pursuant to the Arrangement Agreement in respect of such Shareholder's Shares.

The following escrow funds and reserve fund will be established on closing as security for those indemnification obligations:

- Purchase Price Adjustment Escrow Fund of US$3 million,
- General Indemnification Escrow Fund of US$3.25 million,
- Special Indemnification Escrow Fund of US$10 million and
- Securityholder Representative Fund of US$500,000.

The escrow amounts will be held pursuant to an Escrow Agreement with JP Morgan Chase Bank, N.A. (the "**Escrow Agent**"), an independent third party escrow agent. The fees and expenses of the Escrow Agent will be borne by the Shareholders.

The balance of the Purchase Price Adjustment Escrow Fund will be released *pro rata* to Shareholders to the extent available after the purchase price adjustment process has been completed.

The General Indemnification Escrow Fund will expire on the third anniversary of closing and the remaining funds will be released *pro rata* to Shareholders to the extent there are no claims outstanding against those funds at such time.

The Special Indemnification Escrow Fund will expire on the third anniversary of closing and the remaining funds will be released *pro rata* to Shareholders to the extent there are no claims outstanding against those funds at such time.

The Purchase Price Adjustment Escrow Fund is to be used to address issues in the calculation of working capital and other purchase price adjustments at closing. If the US$3 million provided is not sufficient, the Purchaser is entitled to claim against the General Indemnification Escrow Fund, the Special Indemnification Escrow Fund or the Earnout. The Purchaser is able to elect its means of recourse, but will not have any further recourse to satisfy its claims.

In the case that the Purchaser is able prove a claim of a breach of a fundamental representation (such as representations by the Corporation with respect to organization, authority, capitalization, taxes, employee benefits and brokers, as more particularly set out in the Arrangement Agreement), the Purchaser is entitled to recovery from the first dollar of loss, and the Purchaser will be permitted to satisfy its claim by either electing to receive payment from the General Indemnification Escrow Fund, from the Special Indemnification Escrow Fund or set-off against the Earnout. The Purchaser is able to elect its recourse. Furthermore, the Purchaser must exhaust the foregoing sources prior to seeking to recover from Shareholders (but must use commercially reasonable efforts to recover under the US$65 million R&W Policy (described below), if applicable, with such insurance proceeds actually received reducing the loss recoverable under the Arrangement Agreement).

In the case of a non-fundamental representation and warranty breach, the Purchaser must bear the loss of the first US$1.625 million. If the claim is larger, the Purchaser must seek recovery from the General Indemnification Escrow Fund. The Purchaser will have no further recourse against Shareholders beyond this for claims that are not fundamental representations but may claim against the US$65 million R&W Policy if applicable.

The Purchaser's sole recourse for any special intellectual property litigation and certain identified tax matters indemnity claims arising out of matters set forth on Schedule 8.02(g) attached to the Arrangement Agreement will be to seek recovery from the Special Indemnification Escrow Fund.

For other enumerated indemnifications that are listed from Section 8.02(b)-8.02(f) in the Arrangement Agreement, the Purchaser can seek recovery from the first dollar of loss, against the General Indemnification Escrow Fund, the Special Indemnification Escrow Fund, or set-off against the Earnout. The Purchaser is able to elect its recourse. The Purchaser must exhaust the foregoing sources prior to seeking recovery from Shareholders (but must use commercially reasonable efforts to recover under the US$65 million R&W Policy (described below), if applicable, with such insurance proceeds actually received reducing the loss recoverable under the Arrangement Agreement).

The Securityholder Representative Fund is to be used to pay the expenses of and fees of the Securityholder Representative. See "*Securityholder Representative*" below.

Representation and Warranty Insurance

The Purchaser has purchased representations and warranties insurance policies (collectively, the "**R&W Policy**") from Chubb and other insurers that provides up to US$65 million of coverage. Except for certain specific matters that are covered by the Special Indemnification Escrow Fund and the working capital and purchase price adjustments covered by the Purchase Price Adjustment Escrow Fund, the R&W Policy is intended to be the Purchaser's primary source of recovery for breaches of representations and warranties. There is a US$4.85 million deductible on the R&W Policy, meaning that the insurers would not be obligated to make a payment until the aggregate covered losses exceeds US$4.85 million, at which point payment would only be made to the extent of losses in excess of US$4.85 million.

Securityholder Representative

Appointment of the Securityholder Representative and Advisory Committee

Shareholder Representative Services LLC ("**SRS**") will act as the Securityholder Representative with respect to the Arrangement. SRS will act on instructions provided by an Advisory Committee comprised of Energy Impact Fund LP, David Brennan (the former ecobee Chief Financial Officer and an Option holder), and Eugene Siklos of Thomvest LP.

The Shareholders will severally, on a *pro rata* basis, indemnify the Securityholder Representative and the Advisory Committee members except to the extent that the indemnified person fails to meet the standard of care set out in the Arrangement Agreement. The Securityholder Representative and the Advisory Committee are entitled to recover any amounts owed to them in such capacity by deducting from amounts otherwise payable to Shareholders under the Arrangement Agreement.

Authority of the Securityholder Representative and Advisory Committee

The Securityholder Representative will act as each Shareholder's representative and attorney-in-fact, act on behalf of such Shareholder with respect to the Arrangement Agreement and the Escrow Agreement, take any and all actions and make any decisions required or permitted to be taken by the Securityholder Representative pursuant to the Arrangement Agreement or the Escrow Agreement, as directed by the Advisory Committee. The Arrangement Agreement sets out further details on the powers of the

Securityholder Representative and the Advisory Committee. The Securityholder Representative will not have the power or authority to execute any amendment, waiver, document or other instrument that would adversely affect, in any material respect, the rights, obligations or liability of a specific Shareholder (as opposed to Shareholders generally) without the prior written consent of such Shareholder.

Amendment of Arrangement Agreement and Support Agreement

Prior to closing, the Arrangement Agreement may only be amended with the written consent of the Purchaser and the Corporation. After closing, the Arrangement Agreement may only be amended with the consent of the Purchaser and the Securityholder Representative.

The Support Agreement may only be amended with the written consent of the Purchaser and each of the affected Shareholders.

No Dissent Rights

The Board has determined that the Drag Along in Section 7.5 of the USA applies to the Arrangement. The Drag Along requires the compulsory cooperation of shareholders in the Arrangement, including by voting in favour of the Arrangement Resolution, and expressly prohibits a Shareholder from exercising the Shareholder's dissent rights under the CBCA in respect of the Arrangement. In light of the foregoing, the Corporation does not believe that dissent rights in favour of the Securityholders are required under the CBCA or appropriate in the circumstances. Accordingly, the Interim Order does not grant Securityholders dissent rights.

Certain Canadian Federal Income Tax Considerations of the Arrangement for Securityholders

The following is, as of the date hereof, a summary of the principal Canadian federal income tax considerations under the Tax Act in respect of the Arrangement (excluding tax considerations in respect of the Pre-Closing Reorganization) that are generally applicable to a beneficial owner of ecobee Shares who at all relevant times and for purposes of the Tax Act (a) deals at arm's length with ecobee, the Purchaser and Parent; (b) is not and will not be affiliated with ecobee, the Purchaser or Parent; (c) disposes of ecobee Shares pursuant to the Arrangement; and (d) holds ecobee Shares and will hold Generac Common Stock received pursuant to the Arrangement as capital property (each such owner a "**Holder**"). Refer to "Pre-Closing Reorganization" for a summary of certain material Canadian federal income tax considerations in respect of the Pre-Closing Reorganization.

The ecobee Shares and Generac Common Stock generally will be considered capital property to a Holder for purposes of the Tax Act unless the Holder holds such shares in the course of carrying on a business or as part of an adventure or concern in the nature of trade.

This summary is not applicable to Option holders, Warrant holders or Convertible Note holders, and the tax considerations relevant to such holders are not discussed herein. Any such persons referenced above should consult their own tax advisor with respect to the tax consequences of the Arrangement.

In addition, this summary is not applicable to a Holder: (a) that is a "financial institution" (as defined in the Tax Act for the purposes of the "mark-to-market rules"); (b) who makes, or has made, an election under section 261 of the Tax Act to determine its "Canadian tax results" (as defined in the Tax Act) in a

currency other than Canadian currency; (c) who acquired ecobee shares under an employee stock option plan or other equity based employment compensation arrangement; (d) that has entered into or will enter into a "derivative forward agreement", as defined in the Tax Act with respect to ecobee Shares or Generac Common Stock; or (e) if Parent is at any time a "foreign affiliate" (as defined in the Tax Act) of such Holder or of another corporation that does not deal at arm's length with the Holder for the purposes of the Tax Act. **Such Holders should consult their own tax advisors.**

This summary is based on the current provisions of the Tax Act in force as of the date hereof, the regulations thereunder, and an understanding of the current published administrative policies of the Canada Revenue Agency (the "**CRA**") publicly available prior to the date hereof. This summary also takes into account all specific proposals to amend the Tax Act that have been publicly announced by or on behalf of the Minister of Finance (Canada) prior to the date hereof (the "**Proposed Amendments**") and assumes that the Proposed Amendments will be enacted in the form proposed. No assurance can be given that the Proposed Amendments will be enacted in the form proposed, or at all. Except for the Proposed Amendments, this summary does not otherwise take into account or anticipate any other changes in Law, whether by judicial, governmental or legislative decision or action or changes in the administrative policies of the CRA, nor does it take into account provincial, territorial or foreign income tax legislation or considerations, which may differ from the Canadian federal income tax considerations discussed below.

This summary is of a general nature only and is not exhaustive of all possible Canadian federal income tax considerations. This summary is not, and should not be construed as, legal, business or tax advice to any particular Holder and no representation with respect to the tax consequences to any particular Holder is made. Accordingly, all Holders should consult their own tax advisors regarding the Canadian federal income tax consequences of the Arrangement applicable to their particular circumstances, and any other consequences to them of such transactions under Canadian federal, provincial, local and foreign tax laws.

Currency Conversion

Subject to certain exceptions that are not discussed herein, for the purposes of the Tax Act, all amounts relating to the acquisition, holding or disposition of securities (including dividends, adjusted cost base and proceeds of disposition) must be expressed in Canadian dollars using the relevant rate of exchange required under the Tax Act.

Holders Resident in Canada

This portion of the summary is generally applicable to a Holder who, at all relevant times, for purposes of the application of the Tax Act and any applicable income tax treaty: (i) is, or is deemed to be, resident in Canada; and (ii) is not exempt from tax under Part I of the Tax Act (a "**Resident Holder**").

Certain Resident Holders whose ecobee Shares might not otherwise qualify as capital property may, in certain circumstances, be eligible to make an irrevocable election in accordance with subsection 39(4) of the Tax Act to have their ecobee Shares (but not Generac Common Stock), and every other "Canadian security" (as defined in the Tax Act) owned by such Resident Holder in the taxation year in which the election is made and in all subsequent taxation years, be deemed to be capital property. Resident Holders should consult their own tax advisors as to whether they hold or will hold their ecobee Shares and

Generac Common Stock as capital property and whether such election can or should be made in respect of their ecobee Shares.

Disposition of ecobee Shares Pursuant to the Arrangement

A Resident Holder who disposes of ecobee Shares to the Purchaser under the Arrangement will generally realize a capital gain (or a capital loss) to the extent that the Resident Holder's proceeds of disposition exceed (or are less than) the aggregate of the Resident Holder's adjusted cost base of the ecobee Share immediately before the time of disposition and any reasonable costs of disposition. See "*Taxation of Capital Gains and Capital Losses*".

A Resident Holder's proceeds of disposition will include the amount of cash and the fair market value of the Generac Common Stock received on the Effective Date. **Each Resident Holder is strongly advised to consult their own tax advisors regarding the calculation of their adjusted cost base and proceeds of disposition and the timing of the taxation of any capital gain realized by a Resident Holder, including with respect to the impact that the Earnout and Earnout payments will have on such amounts and such timing.** See "*Taxation of Earnout*".

The cost to a Resident Holder of each share of Generac Common Stock acquired under the Arrangement or the Earnout will be equal to the fair market value of such Generac Common Stock at the time of acquisition. For the purpose of determining the adjusted cost base of a share of Generac Common Stock to a Resident Holder, when a share of Generac Common Stock is acquired, the cost of the newly acquired Generac Common Stock will be averaged with the adjusted cost base of all identical ordinary shares of Generac Holdings owned by the Resident Holder as capital property immediately before that acquisition.

Taxation of Earnout

A Resident Holder is strongly encouraged to consult their own tax advisors regarding the Canadian federal income tax consequences of the Earnout and the receipt of any Earnout payments, including the manner and timing of the taxation of such amounts and whether any capital gains reserve or CRA administrative concession afforded to the receipt of Earnout payments is available.

Dividends on Generac Common Stock

A Resident Holder will be required to include in computing income for a taxation year the amount of dividends, if any, received or deemed to be received in respect of Generac Common Stock, including amounts withheld for foreign withholding tax, if any. For individuals (including a trust), such dividends will not be subject to the gross-up and dividend tax credit rules under the Tax Act normally applicable to taxable dividends received by an individual from a taxable Canadian corporation. A Resident Holder that is a corporation will generally not be entitled to deduct the amount of such dividends in computing its taxable income.

Subject to the detailed rules in the Tax Act, a Resident Holder may be entitled to a foreign tax credit or deduction for any foreign withholding tax paid with respect to dividends received by the Resident Holder on the Generac Common Stock. Resident Holders should consult their own tax advisors with respect to the availability of a foreign tax credit or deduction having regard to their own particular circumstances.

Dispositions of Generac Common Stock

A Resident Holder that disposes or is deemed to dispose of a share of Generac Common Stock in a taxation year will realize a capital gain (or a capital loss) equal to the amount by which the proceeds of disposition of the share of Generac Common Stock exceeds (or is exceeded by) the aggregate of the Resident Holder's adjusted cost base of such share of Generac Common Stock immediately before the disposition and any reasonable costs of disposition. The Resident Holder will be required to include any resulting taxable capital gain in income, or be entitled to deduct any resulting allowable capital loss, generally in accordance with the usual rules applicable to capital gains and capital losses. See "*Taxation of Capital Gains and Capital Losses*".

Taxation of Capital Gains and Capital Losses

Generally, a Resident Holder will be required to include in computing income for a taxation year one-half of the amount of any capital gain (a "**taxable capital gain**") realized in that year. A Resident Holder must deduct one half of the amount of any capital loss (an "**allowable capital loss**") realized in a taxation year from taxable capital gains realized by the Resident Holder in that taxation year. Allowable capital losses in excess of taxable capital gains for a taxation year may be carried back to any of the three preceding taxation years or carried forward to any subsequent taxation year and deducted against net taxable capital gains realized in such years, subject to the detailed rules contained in the Tax Act.

A capital loss realized on the disposition of ecobee Shares by a Resident Holder may, to the extent and under the circumstances specified by the Tax Act, be reduced by the amount of dividends received or deemed to have been received by the Resident Holder on such shares (or on a share for which such share is substituted or exchanged), including any capital dividends paid by ecobee as part of the Pre-Closing Reorganization. Similar rules may apply where shares are owned by a partnership or trust of which a Resident Holder is a member or beneficiary. Resident Holders to whom these rules may be relevant, including Resident Holders who participate in the Pre-Closing Reorganization, should consult their own advisors.

Resident Holders should also note the comments under "*Alternative Minimum Tax*" and "*Additional Refundable Tax on Canadian-Controlled Private Corporations*".

Alternative Minimum Tax

A capital gain realized by a Resident Holder who is an individual (including certain trusts) may give rise to liability for alternative minimum tax under the Tax Act.

Additional Refundable Tax on Canadian-Controlled Private Corporations

A Resident Holder that is throughout its taxation year a "Canadian-controlled private corporation" (as defined in the Tax Act) may be required to pay an additional tax (refundable in certain circumstances) on certain investment income, which includes taxable capital gains, dividends or deemed dividends not deductible in computing taxable income and interest.

Foreign Property Information Reporting

Generally, a Resident Holder that is a "specified Canadian entity" (as defined in the Tax Act) for a taxation year or a fiscal period and whose total "cost amount" of "specified foreign property" (as such terms are defined in the Tax Act), including the Generac Common Stock, at any time in the year or fiscal period exceeds C$100,000 will be required to file an information return with the CRA for the year or period disclosing prescribed information. Subject to certain exceptions, a Resident Holder generally will be a specified Canadian entity. The Generac Common Stock will be "specified foreign property" of a Resident Holder for these purposes. Resident Holders should consult their own tax advisors regarding compliance with these reporting requirements.

Holders Not Resident in Canada

The following portion of the summary is generally applicable to a Holder who, at all relevant times, for purposes of the Tax Act and any applicable income tax treaty, is neither resident nor deemed to be resident in Canada, and does not use or hold, and is not deemed to use or hold, ecobee Shares in connection with carrying on a business in Canada (a "**Non-Resident Holder**"). This part of the summary is not applicable to Non-Resident Holders that are insurers carrying on an insurance business in Canada and elsewhere.

Disposition of ecobee Shares Pursuant to the Arrangement

A Non-Resident Holder will not be subject to tax under the Tax Act on any capital gain realized on the disposition of ecobee Shares under the Arrangement unless the ecobee Shares are "taxable Canadian property" and are not "treaty-protected property", each as defined in the Tax Act, to the Non-Resident Holder.

Generally, an ecobee Share will not be taxable Canadian property of a Non-Resident Holder at a particular time provided that, at all times during the 60-month period immediately preceding that time more than 50% of the fair market value of the share was not derived directly or indirectly from one or any combination of real or immovable property situated in Canada, "Canadian resource properties" or "timber resource properties" (both as defined in the Tax Act), and options in respect of, or interests in, or for civil law rights in, any such properties (whether or not such property exists).

Notwithstanding the foregoing, in certain other circumstances an ecobee Share could be deemed to be taxable Canadian property for the purposes of the Tax Act. Non-Resident Holders should consult their own tax advisors in this regard.

Even if the ecobee Shares are taxable Canadian property to a Non-Resident Holder, a taxable capital gain resulting from the disposition of the ecobee Shares will not be included in computing the Non-Resident Holder's taxable income earned in Canada for the purposes of the Tax Act if, at the time of the disposition, the ecobee Shares constitute treaty protected property, of the Non-Resident Holder for purposes of the Tax Act. ecobee Shares will generally be considered treaty-protected property of a Non-Resident Holder for purposes of the Tax Act at the time of the disposition if the gain from their disposition would, because of an applicable income tax treaty between Canada and the country in which the Non-Resident Holder is resident for purposes of such treaty and in respect of which the Non-Resident Holder is entitled to receive benefits thereunder, be exempt from tax under the Tax Act.

In the event that the ecobee Shares constitute taxable Canadian property and are not treaty-protected property of a particular Non-Resident Holder, the Non-Resident Holder will realize a capital gain (or capital loss) generally in the circumstances as described under "*Holders Resident in Canada – Disposition of ecobee Shares Pursuant to the Arrangement*" and "*Holders Resident in Canada – Taxation of Capital Gains and Capital Losses*". A Non-Resident Holder who disposes of taxable Canadian property that is not treaty-protected property may have to file a Canadian income tax return for the year in which the disposition occurs, regardless of whether the Non-Resident Holder is liable for Canadian tax on any gain realized as a result. Any such Non-Resident Holders should consult their own tax advisors.

Taxation of Earnout

A Non-Resident Holder should consult their own tax advisors regarding the tax consequences of the Earnout and the receipt of any Earnout payments, including any applicable Canadian withholding tax consequences associated therewith.

Dividends on Generac Common Stock

Dividends paid on Generac Common Stock to a Non-Resident Holder will not be subject to Canadian withholding tax or other income tax under the Tax Act.

Dispositions of Generac Common Stock

No tax will be payable under the Tax Act by a Non-Resident Holder of Generac Common Stock on any capital gain realized on the disposition or deemed disposition of Generac Common Stock unless such Generac Common Stock are or are deemed to be "taxable Canadian property", as discussed above, to the Non-Resident Holder at the time of disposition or deemed disposition and do not constitute "treaty-protected property", as defined in the Tax Act.

Plan of Arrangement

The following is a summary of certain terms of the Plan of Arrangement. A full copy of the Plan of Arrangement is attached at Appendix 3.

All Shareholders Bound By Support Agreements.

Except as provided in any written agreement between the Purchaser and a Securityholder, each Securityholder will be deemed to be a party to the Support Agreement effective on the earlier of: (i) the date of adoption of the Arrangement Resolution; and (ii) the date the Securityholder executed the Support Agreement.

The Securityholder will be subject to all the terms and conditions contained therein applicable to a Supporting Securityholder (as defined in the Support Agreement), including, without limitation, Article 3 of the Support Agreement, and by extension, the indemnification obligations under Article 8 of the Arrangement Agreement.

Maximum Liability

The Plan of Arrangement provides, for the avoidance of doubt, that in no case will the aggregate liability of a Securityholder pursuant to the Arrangement Agreement, the Support Agreement and other ancillary documents exceed the amount actually paid to such Securityholder pursuant to the Arrangement Agreement in respect of such Securityholder's ecobee shares.

Steps in Plan of Arrangement

On the Effective Date, the following steps will be implemented in the following order:

(1) The USA will be terminated and all rights and obligations of the parties and any other former parties thereto will be released, discharged and terminated.

(2) The articles of incorporation of ecobee will be amended to alter the terms and conditions of the Existing Common Shares and provide for the creation of a new class of Class B Common Shares (as defined in the Plan of Arrangement), an unlimited number of which will be authorized, and a new class of Class Y Preferred Shares (as defined in the Plan of Arrangement), an unlimited number of which will be authorized, with Existing Common Shares, Class B Common Shares and Class Y Preferred Shares having the terms and conditions attached thereto as set forth in Exhibit A to the Plan of Arrangement. "**Existing Common Share**" means the shares designated as Common Shares in the capital of the company (other than the Class B Common Shares).

(3) Each Existing Common Share that is not a Reorganization Share will be exchanged for one Class Y Preferred Share, and all such Existing Common Shares so exchanged will be cancelled. "**Reorganization Share**" means each Share held by all Reorganization Participants. "**Reorganization Participant**" means a Shareholder who is a resident of Canada for purposes of the Tax Act and who has submitted a declaration of interest to ecobee in writing prior to the date that is five business days prior to the completion of the Arrangement stating that such Shareholder wishes to participate in the Pre-Closing Reorganization (as defined in the Arrangement Agreement).

(4) Each Preferred Share that is not a Reorganization Share will be exchanged for that number of Class Y Preferred Shares equal to the number of Existing Common Shares that would be issuable upon conversion of such Preferred Share in accordance with the terms of such Preferred Share, and all such Preferred Shares so exchanged will be cancelled.

(5) Each Preferred Share that is a Reorganization Share will be converted into that number of Existing Common Shares required by the terms of such Preferred Share, and all such Preferred Shares so converted will be cancelled.

(6) ecobee will declare, out of its "capital dividend account" (within the meaning of the Tax Act), a dividend in the amount set out in Exhibit B to the Plan of Arrangement (the "**Capital Dividend**") on the outstanding Existing Common Shares, and will make an election under subsection 83(2) of the Tax Act in respect of the full amount of such Capital Dividend.

(7) ecobee will satisfy the Capital Dividend by the issuance of a non-interest bearing demand promissory note to each Reorganization Participant in an amount corresponding to such Reorganization Participant's pro rata share of the Existing Common Shares, which will be calculated by dividing (i) the

number of Existing Common Shares held by such Reorganization Participant, by (ii) the total number of Existing Common Shares outstanding at the relevant time (collectively, the "**CDA Notes**").

(8) Each Reorganization Participant will make a capital contribution to ecobee on the Existing Common Shares held by such Reorganization Participant in an amount equal to the principal amount of such Reorganization Participant's respective CDA Note, and each such Reorganization Participant's obligation to make such capital contribution will be satisfied in full by set-off against the principal amount of the CDA Note owing to such Reorganization Participant by ecobee, which CDA Notes will be repaid in full and cancelled, and ecobee will add an amount equal to the principal amount of the CDA Notes to the stated capital account in respect of the Existing Common Shares, and the fair market value of each Reorganization Share will be increased by an amount equal to the principal amount of the respective CDA Note so contributed by the Reorganization Participant as a capital contribution.

(9) Each Class Y Preferred Share will be exchanged for one Class B Common Share, and all such Class Y Preferred Shares so exchanged will be cancelled.

(10) Notwithstanding the terms of the ecobee Stock Option Plan (as defined in the Plan of Arrangement) or any vesting or exercise provisions to which a holder of an Option might otherwise be subject (whether by contract, the conditions of a grant, applicable Law (as defined in the Plan of Arrangement), or otherwise), each Option issued and outstanding immediately prior to the completion of the Arrangement will be deemed to be unconditionally vested and exercisable, and will be amended to provide that upon exercise thereof, the holder of such Option will acquire one Class B Common Share in lieu of each Existing Common Share that would be issuable upon exercise of such Option in accordance with its terms prior to the Effective Time.

(11) The Purchaser will make a Daylight Loan to each holder that has not exercised his, her or its Options prior to the exercise cut-off time (each, a "**Non-Exercising Optionholder**").

(12) Each Non-Exercising Optionholder will be deemed to have exercised all Options held by such holder, and will be deemed to direct the Purchaser to, and the Purchaser will be deemed to, pay the principal amount of the Daylight Loan in respect of such holder to ecobee in satisfaction of the exercise price thereof and each holder of Options will be deemed to have received that number of Class B Common Shares equal to the number of Existing Common Shares that would be issuable upon exercise of such Option.

(13) The Purchaser will make a Daylight Loan to each holder of the Warrants that has not exercised its Warrants prior to the exercise cut-off time (each, a "**Non-Exercising Warrantholder**").

(14) Each Non-Exercising Warrantholder will be deemed to have exercised all Warrants held by such holder, and in connection therewith, will be deemed to direct the Purchaser to, and Purchaser will be deemed to, pay the principal amount of the Daylight Loan in respect of such holder to ecobee in satisfaction of the exercise price thereof and each holder of Warrants will be deemed to have received that number of Class B Common Shares equal to the number of Common Shares that would be issuable upon exercise of such Warrant.

(15) With respect to each Option and Warrant deemed to be exercised in accordance with steps (12) and (14), the following will be deemed to have occurred:

(i) each holder thereof will cease to be a holder of such Option or Warrant and such holder's name will be removed from each applicable register;

(ii) all such Options, ecobee's Stock Option Plan, the Warrants and all agreements relating to the Options and Warrants will be terminated and will be of no further force and effect; and

(iii) each such holder will thereafter have only the right to receive the consideration, if any, to which such holder is entitled pursuant to step (16).

(16) Each Share outstanding immediately prior to this step (16) will be deemed to be assigned and transferred by the holder thereof to the Purchaser free and clear of all encumbrances in exchange for

(i) in respect of Shares:

(A) issued and outstanding immediately prior to step (10), the consideration payable on closing for a Common Share;

(B) issued pursuant to step (12), the consideration payable on closing for closing for a Common Share less a proportionate amount of the cash and Consideration Shares (each valued at $448.9326, being the applicable Generac Share Value) otherwise payable on closing to such Non-Exercising Optionholder equal to the principal amount of such Non-Exercising Optionholder's Daylight Loan; and

(C) issued pursuant to step (14), the consideration payable on closing for a Common Share less a proportionate amount of the cash and Consideration Shares (each valued at $448.9326, being the applicable Generac Share Value) otherwise payable on closing to such Non-Exercising Warrantholder in an amount equal to the principal amount of such Non-Exercising Warrantholder's Daylight Loan; and

(ii) the right to receive any consideration that may become payable in respect of each such Share in the future as provided in the Arrangement Agreement and the Escrow Agreement (including any escrow releases and any Earnout payments).

(17) With respect to each Share deemed to be assigned and transferred in accordance with step (16), the following will be deemed to have occurred:

(i) each such Shareholder will cease to be the registered holder and beneficial owner of such Shares and to have any rights as a Shareholder other than the right to be paid the applicable purchase price consideration in accordance with the Plan of Arrangement;

(ii) each such Shareholder's name will be removed from ecobee's registers;

(iii) the Purchaser will be deemed to be the transferee of all such Shares (free and clear of any encumbrances) and will be entered in ecobee's registers;

(iv) each Non-Exercising Optionholder's Daylight Loan will be satisfied by set-off against the consideration otherwise payable by the Purchaser in respect of the Shares issued pursuant to step (12), to be effected on a pro rata basis based on the total value of cash and Generac Common

Stock (each valued at $448.9326, being the applicable Generac Share Value) that would otherwise be delivered on closing by the Purchaser in respect of the Shares issued upon exercise of such Options; and

(v) each Non-Exercising Warrantholder's Daylight Loan will be satisfied by set-off against the consideration otherwise payable by the Purchaser in respect of the Shares issued pursuant to step (14), to be effected on a pro rata basis based on the total value of cash and Generac Common Stock (each valued at $448.9326, being the applicable Generac Share Value) that would otherwise be delivered on closing by the Purchaser in respect of the Shares issued upon exercise of such Warrant.

(18) The Purchaser will advance a loan to ecobee to repay the Convertible Notes and each Convertible Note outstanding prior to closing will be deemed to be assigned and transferred by such holder to ecobee in exchange for a cash payment from ecobee equal to two times (2x) the aggregate outstanding principal amount thereof, plus one times (1x) the accrued but unpaid interest thereunder.

(19) With respect to each Convertible Note deemed to be assigned and transferred in accordance with step (18), the following will be deemed to have occurred:

(i) each holder thereof will cease to be a holder of such Convertible Note and such holder's name will be removed from ecobee's register for Convertible Notes;

(ii) all such Convertible Notes and all agreements relating to the Convertible Notes will be terminated and will be of no further force and effect; and

(iii) each such holder will thereafter have only the right to receive the consideration to which such holder is entitled pursuant to step (18).

(20) The directors and officers of the Corporation shall cease to be the directors and officers of the Corporation, and shall be replaced by the nominees designated by the Purchaser.

Amendments to Plan of Arrangement

The Plan of Arrangement provides that it may be amended as follows:

(a) The Corporation and the Purchaser may amend, modify and/or supplement the Plan of Arrangement at any time and from time to time prior to closing provided that each such amendment, modification and/or supplement must (i) be set out in writing, (ii) be approved by the Corporation and the Purchaser, each acting reasonably, (iii) filed with the Court and, if the Meeting is held and such amendment, modification and/or supplement is made following the Meeting, approved by the Court, unless such amendment, modification and/or supplement concerns a matter which, in the reasonable opinion of the Purchaser and the Corporation, is of an administrative nature, and (iv) communicated to Securityholders, if and as required by the Court.

(b) If the Meeting is held, any amendment, modification or supplement to the Plan of Arrangement may be proposed by the Corporation and the Purchaser at any time prior to the Meeting (provided that the Corporation and the Purchaser, each acting reasonably, as applicable, will have consented thereto) with or without any other prior notice or communication, and if so

proposed and accepted by the persons voting at the Meeting (other than as may be required under the Interim Order), will become part of the Plan of Arrangement for all purposes.

(c) Any amendment, modification or supplement to the Plan of Arrangement that is approved or directed by the Court will be effective only if (i) it is consented to by each of the Corporation and the Purchaser (in each case, acting reasonably), and (ii) if required by the Court, it is consented to by Securityholders, voting in the manner directed by the Court.

(d) Any amendment, modification or supplement to the Plan of Arrangement may be made following closing unilaterally by the Purchaser, provided that it concerns a matter which, in the reasonable opinion of the Purchaser, is of an administrative nature required to better give effect to the implementation of the Plan of Arrangement and is not adverse to the financial or economic interests of any former Securityholder.

ABOUT GENERAC HOLDINGS AND THE GENERAC COMMON STOCK

Each of Parent and Purchaser is an indirect wholly owned subsidiary of Generac Holdings, which will be the issuer of the Consideration Shares. Generac Holdings is a U.S. public company, incorporated in Delaware and listed on the New York Stock Exchange. Generac Holdings and its subsidiaries are sometimes collectively referred to herein as "**Generac**."

Generac is a leading energy technology company that provides advanced power grid software solutions, backup and prime power systems for home and industrial applications, solar + battery storage solutions, virtual power plant platforms and engine- and battery-powered tools and equipment. Founded in 1959, Parent introduced the first affordable backup generator and later created the category of automatic home standby generator — a market in which nearly eight of ten generators sold is a Generac. Generac is committed to sustainable, cleaner energy products poised to revolutionize the 21st century electrical grid.

Generac Holdings' principal executive offices are located at S45 W29290 Highway 59, Waukesha, Wisconsin, 53189 and its telephone number is (262) 544-4811. Its website is www.generac.com. The information on Generac's websites, other than that specifically incorporated by reference below, is not part of this Circular.

Where You Can Find Additional Information about Generac Holdings and the Generac Common Stock

As a U.S. public company, Generac Holdings files reports and other information with the U.S. Securities and Exchange Commission (the "**SEC**"). These reports and information may be obtained free of charge by contacting Generac Holdings or by accessing them on the SEC's "EDGAR" website, located at www.sec.gov/EDGAR, or on Generac's investor relations website, located at http://investors.Generac.com. The information on these websites, other than that specifically incorporated by reference below, is not part of this Circular.

The following documents of Generac Holdings, as filed with the SEC (and excluding any documents or portions thereof that are deemed to be furnished rather than filed under SEC rules), are specifically incorporated by reference into and form an integral part of this Circular:

1. Generac Holdings' Annual Report on Form 10-K for the fiscal year ended December 31, 2020, filed with the SEC on February 23, 2021, including the information that was specifically incorporated therein by reference to Generac Holdings' definitive proxy statement filed on April 29, 2021.

2. Generac Holdings' Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2021, June 30, 2021 and September 30, 2021, filed with the SEC on May 4, 2021, August 3, 2021, and November [●], 2021.

3. Generac Holdings' Current Reports on Form 8-K filed on May 28, 2021, June 21, 2021, and November [●], 2021.

4. The description of Generac Stock contained in the Generac Holdings' Registration Statement on Form S-1, as amended (Reg. No. 333-162590), which description is incorporated by reference into the Form 8-A filed with the SEC on February 8, 2010, pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and any amendment or report filed for the purpose of further updating such description.

5. All reports and other documents filed by Generac Holdings on or after the date of this Circular and prior to the adoption of the Arrangement Resolution.

Any statement contained in a document incorporated, or deemed to be incorporated, by reference herein shall be deemed to be modified or superseded to the extent that a statement contained herein or incorporated herein by reference or in any other subsequently filed document that also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Circular.

These documents contain important information about Generac and the Generac Common Stock, which represents a significant portion of the consideration payable pursuant to the Arrangement. Corporation Securityholders are therefore urged to carefully review and consider this information, particularly the risk factors included therein.

Generac Common Stock Highlights

Description of Capital Stock – The Consideration Shares are shares of Generac Common Stock. For a description of the material terms of Generac Holdings' capital stock, see Exhibit 4.2 to its most recent Form 10-K.

Dividend Policy – Generac Holdings does not have plans to pay dividends on Generac Common Stock in the foreseeable future. For additional information on Generac Holdings' dividend policy, see Item 5 of its most recent Form 10-K (page 17).

Stock Exchange Listing – Generac Common Stock is listed on the New York Stock Exchange under the symbol GNRC. It is a condition to the Arrangement that any Consideration Shares issuable at closing be approved for listing on the NYSE, subject to official notice of issuance.

Transfer Agent and Registrar – Generac Holdings' transfer agent is Computershare Trust Company, N.A.

Generac Risk Factors

Generac will continue to face the risks that it currently faces with respect to its affairs, business and operations, and future prospects. Such risk factors are set forth in Item 1A of its most recent Form 10-K (page 8), as the same may be updated by any subsequent SEC filings incorporated by reference herein. In addition, by virtue of its acquisition of the Corporation, Generac may be subject to new, additional or heightened risks, including those risks that the Corporation itself currently faces but also risks related to the acquisition itself and the subsequent integration of the Corporation. Accordingly, your attention is drawn to the risk factor, on page 12 of the Form 10-K, entitled "*We may not realize all of the anticipated benefits of our acquisitions or those benefits may take longer to realize than expected. We may also encounter significant unexpected difficulties in integrating acquired businesses.*"

Number and Value of Consideration Shares Issuable

The Arrangement Agreement provides for Consideration Shares to be paid based on certain nominal values, but the number of shares issuable will be determined by reference to the contractually defined Generac Share Value.

The "Generac Share Value" for Consideration Shares will be as follows, regardless of the actual value or trading price thereof at the time of their delivery to Corporation Securityholders (or any other time):

- for Consideration Shares payable upon closing, $448.9326 (which the parties have fixed based upon the volume-weighted average closing price of Generac Common Stock on the NYSE over a period of twenty trading days ending on October 29, 2021, the last trading day prior to execution of the Arrangement Agreement),

- for Consideration Shares payable as Earnout consideration with respect to the June 30, 2022 Earnout Measurement Date, the volume-weighted average closing price of Generac Common Stock on the New York Stock Exchange (or such other stock exchange where Generac Common Stock is primarily listed) over a period of twenty trading days ending on June 30, 2022, and

- for Consideration Shares payable as Earnout consideration with respect to the June 30, 2023 Earnout Measurement Date, the volume-weighted average closing price of Generac Common Stock on the New York Stock Exchange (or such other stock exchange where Generac Common Stock is primarily listed) over a period of twenty trading days ending on June 30, 2023.

The trading price for shares of Generac Common Stock varies, and the actual value of the Consideration Shares at the time they are received by Corporation Securityholders (or any other time) may be more or less than the nominal values referred to in the Arrangement Agreement and this Circular (and that difference may be material). During the 52 weeks preceding execution of the Arrangement Agreement, the per-share trading price of Generac Common Stock ranged from [$202.56 to $510.53]. The closing per-share trading price of Generac Common Stock was $[●] on November 1, 2021 (the date the

Arrangement Agreement was signed) and $[●] on November [●], 2021 (the latest practicable trading date prior to the mailing of this Circular).

The aggregate number of Consideration Shares to be issued at closing (before taking into account withholding to satisfy tax obligations or the payment of cash in lieu of fractional shares) is fixed at [1,002,378] shares, regardless of the intrinsic value or trading price of such Consideration Shares at the time of payment (or any other time). The number of Consideration Shares that may be payable as Earnout consideration (if any at all are payable) is not fixed and is not yet knowable, because any such Consideration Shares will be determined in the future using the price formulas described above, regardless of the intrinsic value or trading price of such Consideration Shares at the time of payment (or any other time). For this same reason, Corporation Securityholders will not benefit with respect to such Consideration Shares from any appreciation in the volume-weighted average closing price of Generac Common Stock prior to the applicable Earnout Measurement Date.

Upon completion of the transaction, employees of the Corporation will become subject to the Code of Ethics and Business Conduct of Generac Holdings and its Insider Trading Policy referred to therein. Among other things, the Insider Trading Policy provides for certain "blackout periods" during which Generac employees will be restricted from buying or selling shares of Generac Common Stock. These blackout periods may prevent persons subject to it from selling Consideration Shares at an otherwise opportune time.

RISK FACTORS RELATING TO THE ARRANGEMENT

In evaluating whether to approve the Arrangement Resolution, the Shareholders should carefully consider the following risk factors and the risk factors included in the SEC reports of Generac Holdings incorporated by reference into this Circular. See "*Generac Risk Factors*." These risk factors should be considered in conjunction with the other information contained in or incorporated by reference into this Circular. Additional risks and uncertainties, including those currently unknown to or considered immaterial by ecobee may also adversely affect the Arrangement. The following risk factors are not a definitive list of all risk factors associated with the Arrangement.

Conditions Precedent and Required Regulatory and Third Party Approvals

The completion of the Arrangement in the form contemplated by the Plan of Arrangement is subject to a number of conditions precedent, some of which are outside the control of the Corporation, including, without limitation, the Final Order. There can be no certainty, nor can the Corporation provide any assurance, that these conditions will be satisfied or, if satisfied, when they will be satisfied.

If any of the required regulatory and third party approvals cannot be obtained on terms satisfactory to the Board or at all, the Plan of Arrangement may have to be amended in order to mitigate against the negative consequence of the failure to obtain any such approval. Alternatively, in the event that the Plan of Arrangement cannot be amended so as to mitigate against the negative consequences of the failure to obtain a required regulatory or third party approval, the Arrangement may not proceed at all. Accordingly, there can be no assurance that the Corporation will complete the Arrangement on the basis described in this Circular or at all.

Following the Arrangement the trading price of the Generac Common Stock could fluctuate

Generac Common Stock are listed on the NYSE. While the value of the Generac Common Stock to be issued at closing has been fixed for purposes of the Arrangement, there is no assurance as to the value that holders of Generac Common Stock received in the Arrangement will realize. See "*Number and Value of Consideration Shares Issuable*." In particular, the trading price of Generac Common Stock may increase or decrease in response to a number of events and factors, including, without limitation:

- current events affecting the economic situation in Canada, the United States and elsewhere, including other regions where the Parent or Generac Holdings conducts business;
- regulatory and/or government actions;
- changes in financial estimates and recommendations by securities analysts;
- the economics of current and future projects of ecobee, the Parent and Generac Holdings;
- the operating and share price performance of other companies, including those that investors may deem comparable; and
- the effect of the issuance and potential issuance of the Consideration Shares and any future issuance of additional equity securities by Generac Holdings.

Following completion of the Arrangement, Generac Holdings may enter into additional strategic transactions and issue additional equity securities

In the ordinary course of business, Generac Holdings regularly considers and evaluates strategic opportunities including additional acquisitions or investments. Following completion of the Arrangement, Generac Holdings or one of its affiliates may enter into additional strategic transactions, which may require the issuance of additional equity securities by Generac Holdings. Any such strategic transaction could be material to Generac Holdings' business, including by, among other things, exposing Generac Holdings to new geographic, political, operating, financial, geological and other risks, and could result in a material increase in the number of the outstanding shares of Generac Common Stock or the aggregate amount of outstanding debt, which may adversely affect the price of the Generac Common Stock.

The Parent and Generac Holdings are incorporated under the laws of a foreign jurisdiction

Each of the Parent and Generac Holdings is incorporated under the laws of a foreign jurisdiction and all of the directors and executive officers of the Parent and Generac Holdings reside outside of Canada. Some or all of the assets of these persons, the Parent and Generac Holdings may be located outside Canada. It may not be possible for investors to effect service of process within Canada upon the Parent, Generac Holdings or any of the directors and executive officers referred to above. Securityholders are advised that it may not be possible to enforce judgments obtained in Canada against any person or company that is incorporated, continued or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada.

The rights of Securityholders under the laws of the State of Delaware differ from the rights of Securityholders under the laws of Canada

If the Arrangement is completed, Securityholders will become holders of Generac Common Stock. Their rights as holders of Generac Common Stock will be governed by the laws of the State of Delaware. Such rights may differ from the rights of shareholders under the CBCA and the enforcement of such rights may involve different considerations and may be more difficult than would be the case if the corporation was governed under the CBCA. See "*Comparison of Rights of the Corporation Shareholders and Generac Stockholders*" for a general comparison of shareholder rights for corporations under the CBCA compared to the State of Delaware.

Arrangement may not be completed in the event that, among other things, on or after the date the Arrangement Agreement was entered into, a Material Adverse Effect occurs

The completion of the Arrangement is subject to the condition that, among other things, on or after June 30, 2021, there shall not have occurred a Material Adverse Effect (as defined in the Arrangement Agreement). Although a Material Adverse Effect excludes certain events, including events in some cases that are beyond the control of the Corporation, there can be no assurance that a Material Adverse Effect will not occur prior to the Effective Date. If such a Material Adverse Effect occurs, the Arrangement Agreement could be terminated by the Purchaser.

Securityholders are subject to certain indemnification obligations under the Arrangement Agreement

Pursuant to the Arrangement Agreement, the Securityholders shall be required to indemnify and hold harmless (on a several and not joint basis) the Purchaser and its affiliates (collectively, the "**Purchaser Indemnitees**") against any and all losses they may suffer or incur as a result of or in connection with a breach of a representation and warranty or covenant of the Corporation contained in the Arrangement Agreement and certain other specified indemnities. On the Effective Date, US$13,250,000 of the consideration payable pursuant to the Arrangement will be placed into escrow with an escrow agent pursuant to the Escrow Agreement, to be held for the purpose of securing any payment obligations of Securityholders under the Arrangement Agreement. Notwithstanding the foregoing, the Securityholders will have no liability to the Purchaser Indemnities until the aggregate amount of losses exceeds US $1,675,000 (the "**Deductible**"), except for cases of fraud or breaches of Fundamental Representations (as defined in the Arrangement Agreement), in which case the Deductible will not apply.

The consideration payable pursuant to the Arrangement is subject to adjustment

The Arrangement Agreement contains adjustment provisions customary for a transaction of this nature. The amount payable on closing will be based on certain estimates of the Corporation's working capital and certain transaction expenses. Those amounts will be finalized post-closing and adjustments will be made as provided in the Arrangement Agreement. In the case of amounts payable by the Securityholders, the adjustment will be made from the Purchase Price Adjustment Escrow Fund (see "*Indemnification Obligations and Escrow Funds*" above), and if that is not sufficient, one of the other escrow funds or the Earnout. In no event will Securityholders be required to fund a deficiency in the calculation of the purchase price from their personal funds. See "*Arrangement Agreement – Purchase Price and Adjustments*."

In addition, as a component of the purchase price, the Shareholders will have the opportunity to receive up to a maximum of US$120 million of additional consideration payable in Generac Common Stock using a 20 day volume weighted average closing price. The Earnout consideration will be calculated based on two metrics: Connected Homes and Eco+ ARR. Those metrics will be compared as of two measurement dates: June 30, 2022 and June 30, 2023. The Arrangement Agreement contains a process to finalize and pay the Earnout annually. See "*Arrangement Agreement – Earnout*." It is possible that none of the consideration in respect of the Earnout will be paid.

The disposition of ecobee Shares by a Shareholder under the Arrangement will be a taxable transaction for Canadian federal and certain other income tax purposes.

The disposition of the ecobee Shares under the Arrangement will be a taxable disposition for Canadian federal and certain other income tax purposes. Securityholders should carefully review the more detailed information under "Certain Canadian Federal Income Tax Considerations of the Arrangement for Securityholders" and should consult their own advisors.

The Securityholders' Representative has broad authority to act on behalf of the Securityholders in respect of certain matters

The Corporation has engaged Shareholder Representative Services LLC as Securityholder Representative, and, effective at the Effective Time, the Securityholder Representative shall have been appointed pursuant to the Final Order as the mandatary of the Securityholders and to act on their behalf as the Securityholder Representative from and after the Effective Time, with full and exclusive power and authority, including power of substitution, in the name of and for and on behalf of the Securityholders or in the name of the Securityholder Representative to (i) represent the collective position of the Securityholders in discussions with the Purchaser, (ii) take any and all actions on Securityholders' behalf with respect to the transactions, including settlement, compromise and resolution, with respect to all matters arising under the Arrangement Agreement and any "Closing Document" as defined in the Arrangement Agreement (and as otherwise authorized or permitted in the Arrangement Agreement), (iii) to send and receive all notices, consents, wire transfer payment instructions for Shareholders, certificates, agreements, waivers, elections, accountings, reports and other communications in connection with the foregoing, (iv) defend against any claim for indemnification by any Purchaser Indemnitee, (v) receive service of process in connection with all claims under the Arrangement Agreement, the Plan of Arrangement and the Escrow Agreement at the address set forth therein, (vi) provide instructions under the Escrow Agreement, and (vii) make all decisions relating to the determination of adjustments to consideration under Section 2.08 of the Arrangement Agreement. The Securityholders are required to indemnify, defend and hold harmless the Securityholder Representative from and against any and all losses, liabilities, damages, claims, penalties, fines, forfeitures, actions, fees, costs and expenses (including the fees and expenses of counsel and experts and all expense of document location, duplication and shipment) arising out of or in connection with the Securityholder Representative's execution and performance of the Arrangement Agreement and any agreements ancillary thereto.

Termination of the Arrangement Agreement in Certain Circumstances

Each of the Corporation and the Purchaser has the right, in certain circumstances, in addition to termination rights relating to the failure to satisfy the conditions of closing, to terminate the Arrangement Agreement. Accordingly, there can be no certainty, nor can the Corporation provide any assurance, that

the Arrangement Agreement will not be terminated by either of the Corporation or the Purchaser prior to the completion of the Arrangement.

The anticipated benefits of the Arrangement may not be realized.

Management believes that the Arrangement will provide certain benefits to the Corporation, including those set forth under the heading "Special Business – Reason for Recommendation". Achieving the benefits of the Arrangement depends in part on successfully consolidating functions, integrating and leveraging operations, procedures and personnel in a timely and efficient manner, as well as the Corporation's ability to share knowledge and realize revenues, synergies and other growth opportunities following its acquisition by the Purchaser. The integration process may result in the disruption of ongoing business, customer and employee relationships that may adversely affect the Corporation's ability to achieve the anticipated benefits of the Arrangement. A variety of factors may also adversely affect the ability of the anticipated benefits of the Arrangement to materialize or to occur within the time periods anticipated by the Corporation. In addition, the overall integration of the two companies may result in unanticipated operational problems, costs, expenses, liabilities, customer loss and business disruption (including, without limitation, difficulties in maintaining relationships with employees, customers, clients or suppliers) and, consequently, the failure to realize, in whole or in part, the anticipated benefits of the Arrangement.

There may not be another attractive take-over, merger or business combination

If the Arrangement is not completed, there can be no assurance that the Corporation will be able to find another party or parties willing to acquire the Corporation at an equivalent or more attractive price than the price to be paid by the Purchaser and the Parent under the Arrangement.

COMPARISON OF RIGHTS OF THE CORPORATION SHAREHOLDERS AND GENERAC STOCKHOLDERS

General

The Corporation is a private company organized under the federal laws of Canada and, accordingly, the rights of its shareholders are currently governed principally by the CBCA, the Corporation's articles of incorporation, as amended (which we refer to as the "**Corporation's articles**"), the Corporation's by-laws, as amended (which we refer to collectively as the "**Corporation's by-laws**") and the Unanimous Shareholder Agreement. Generac Holdings is a public company incorporated in the State of Delaware, and the rights of Generac Holdings' stockholders are governed by the Delaware General Corporation Law ("**DGCL**") and the Generac Holdings' certificate of incorporation, as amended and restated (which we refer to as "**Generac's certificate of incorporation**"), and by-laws, as amended and restated (which we refer to as "**Generac's bylaws**") and securities laws in the United States applicable to publicly traded companies.

Material Differences Between the Rights of Shareholders of the Corporation and Stockholders of Generac Holdings

There are material differences between the rights of the Corporation shareholders under the CBCA, the Corporation's articles, the Corporation's by-laws and the USA and the existing rights of Generac

Holdings stockholders under the DGCL, Generac's certificate of incorporation and Generac's bylaws and applicable U.S. securities laws. You are encouraged to carefully read this entire Circular, the relevant provisions of the CBCA and the DGCL, the Corporation's articles, by-laws and the USA, Generac's certificate of incorporation and by-laws, and each other document referred to in this Circular for a more complete understanding of the differences between the rights of a Generac Holdings stockholder and the rights of a Corporation shareholder. Generac Holdings has filed with the SEC its certificate of incorporation and by-laws referenced in this summary of shareholder rights, and the Corporation's articles, by-laws and Unanimous Shareholder Agreement are available from the Corporation. You are encouraged to consult your own independent legal and other advisors for advice concerning your rights as a Corporation shareholder as compared to your rights as a Generac stockholder.

The following is a summary of the rights of Generac Holdings stockholders under the DGCL, Generac's certificate of incorporation and Generac's bylaws. The following summary is qualified in its entirety by reference to the DGCL, Generac's certificate of incorporation and by-laws and the various other documents referred to in this summary. References to a "holder" in the following summary are to the registered holder of the applicable shares.

Provision	Generac Holdings
Authorized Share Capital	The aggregate number of shares of stock that Generac Holdings has the authority to issue is 550 million, consisting of 500 million shares of its common stock, par value of $0.01 per share, and 50 million shares of its preferred stock, par value $0.01 per share.
Preferred Shares	Under Generac's certificate of incorporation, the board of directors is authorized, by resolution or resolutions, at any time and from time to time, to provide for the issuance of a share or shares of preferred stock in one or more series or classes and to fix for each such series or class the number of shares constituting such series or class and the designation of such series or class, the voting powers (if any), whether full or limited, of the shares of such series or class, and the powers, preferences, and relative, participating, optional or other special rights of the shares of each such series or class and the qualifications, limitations, and restrictions thereof and to cause to be filed with the Secretary of State of the State of Delaware a certificate of designation with respect thereto.
Variation of Rights Attaching to a Class or Series of Shares	Under Generac's certificate of incorporation, the board of directors is authorized, by resolution or resolutions, at any time and from time to time, to provide for the issuance of a share or shares of preferred stock in one or more series or classes and to fix for each such series or class the number of shares constituting such series or class and the designation of such series or class, the voting powers (if any), whether full or limited, of the shares of such series or class, and the powers, preferences, and relative, participating, optional or other special rights of the shares of each such series or class and the qualifications, limitations, and restrictions thereof and to cause to be filed with the Secretary of State of the State of Delaware a certificate of designation with respect thereto.
Consolidation and Division; Subdivision	Under the DGCL, the issued shares of Generac Common Stock may be combined into a smaller number of shares or split into a greater number of shares through an amendment to Generac's certificate of incorporation.
Reduction of Share Capital	Under the DGCL, Generac Holdings, by an affirmative vote of at least a majority of its board, may reduce its capital by reducing or eliminating the capital associated with shares of capital stock that have been retired, by applying some or all of the capital represented by shares purchased, redeemed, converted or exchanged or by transferring to surplus the capital associated with certain shares of its stock. No reduction of capital may be made unless the assets of Generac Holdings remaining after the reduction are sufficient to pay any debts for which payment has not otherwise been provided.

Provision	Generac Holdings
Distributions and Dividends; Repurchases and Redemptions	*Distributions/Dividends* Under the DGCL, Generac Holdings stockholders are entitled to receive dividends if, as and when declared by the its board. Generac Holdings' board may declare and pay a dividend to its stockholders out of surplus or, if there is no surplus, out of net profits for the year in which the dividend is declared or the immediately preceding fiscal year, or both, provided that such payment would not reduce capital below the amount of capital represented by all classes of outstanding stock having a preference as to the distribution of assets upon liquidation. A dividend may be paid in cash, in shares of common stock or in other property. *Repurchases/Redemptions* Under the DGCL, Generac Holdings may redeem or repurchase shares of its own common stock, except that generally it may not redeem or repurchase those shares if the capital of Generac Holdings is impaired at the time or would become impaired as a result of the redemption or repurchase of such shares. If Generac Holdings were to designate and issue shares of a series of preferred stock that is redeemable in accordance with its terms, such terms would govern the redemption of such shares. Repurchased and redeemed shares may be retired or held as treasury shares. Shares that have been repurchased but have not been retired may be resold by Generac Holdings for such consideration as its board may determine in its discretion. *Purchases by Subsidiaries* Under the DGCL, Generac Common Stock may be acquired by subsidiaries of Generac Holdings without stockholder approval. Shares of Generac Common Stock owned by a majority- owned subsidiary are neither entitled to vote nor counted as outstanding for quorum purposes.
Lien on Shares, Calls on Shares and Forfeiture of Shares	Under the DGCL, Generac Holdings may issue the whole or any part of its shares of common stock or preferred stock as partly paid and subject to call for the remainder of the consideration to be paid therefor. When the whole of the consideration payable for shares of Generac Holdings has not been paid in full, and the assets of Generac Holdings must be insufficient to satisfy the claims of creditors, each holder of shares not paid in full must be bound to pay the unpaid balance due for such shares.
Voting Rights	Each share of Generac Common Stock entitles the holder to one vote at all meetings of Generac Holdings stockholders; provided, however, the holders of Generac Common Stock have no voting power with respect to any amendment to the certificate of incorporation that relates solely to the terms of one or more outstanding series or class(es) of preferred stock if the holders of such affected series or class(es) of preferred stock are entitled, either separately or together with the holders of one or more other such series or class(es), to vote thereon pursuant to applicable law or the certificate of incorporation (including any certificate of designations relating to any series or class of preferred stock).
Number of Directors	Generac Holdings' bylaws provide its board shall include not less than one nor more than 15 members, the exact number of which shall (subject to the terms of any one or more series or classes of preferred stock) be fixed from time to time exclusively by resolution adopted by the affirmative vote of a majority of the entire board. The Generac Holdings board currently has ten directors.
Qualification of Directors	Generac Holdings' directors are typically nominated by its Nominating and Corporate Governance Committee. In selecting director candidates, the committee considers whether the candidates possess the required skill sets and fulfill the qualification requirements of directors approved by the board, including integrity, objectivity, sound judgment, leadership and diversity in all aspects of that term, including differences of perspective, professional experience, education, skills, and other individual qualities, such as gender, race, and ethnicity. Annually, the Nominating and Corporate Governance Committee of Generac Holdings assesses the composition of the board, including the committee's effectiveness in balancing the above considerations.

Provision	Generac Holdings
	Generac Holdings stockholders may also nominate individuals to stand for election to its board of directors, but only by following certain procedures specified in its bylaws. These include, among other things, submitting certain information to Generac Holdings' Secretary no later than an applicable deadline, which is generally the close of business on the 90th day, nor earlier than the close of business on the 120th day, prior to the first anniversary of the previous year's annual meeting of stockholders.
Citizenship and Residency of Directors	Not applicable.
Election of Directors	Directors are elected at the annual meeting of stockholders or at a special meeting called for such purpose and hold office until the annual meeting for the year in which his or her term expires or until his or her successor is elected and qualified. Directors of Generac Holdings are elected by the affirmative vote of a plurality of shares of common stock voting on the matter at the annual meeting
Cumulative Voting	Generac Holdings' certificate of incorporation does not provide for cumulative voting.
Vacancies	The Generac Holdings' board has the power to fill all vacancies and newly created directorships by a majority of the directors then in office.
Votes to Govern	Under Generac's bylaws, a majority of its board at a meeting duly assembled constitutes a quorum for the transaction of business except as otherwise provided by statute, Generac's certificate of incorporation or Generac's bylaws. The act of a majority of the directors present at a meeting at which a quorum is present will be the act of the board. In the absence of a quorum, a majority of the directors present may adjourn the meeting from time to time until a quorum be present, without notice other than by announcement at the meeting.
Duties of Directors	Under Delaware law, the directors of Generac Holdings owe a duty of care and a duty of loyalty. The duty of care requires that directors act on an informed basis after due consideration of the relevant materials and appropriate deliberation. The duty of care also requires that directors exercise care in overseeing and investigating the conduct of corporate employees. The duty of loyalty requires directors to act in what they reasonably believe to be the best interests of the company and its stockholders without any conflict of interest. A party challenging the propriety of a decision of a board of directors typically bears the burden of rebutting the applicability of the "business judgment rule" presumption, which presumes that directors acted in accordance with the duties of care and loyalty. Notwithstanding the foregoing, Delaware courts may subject directors' conduct to enhanced scrutiny of, among other matters, defensive actions taken in response to a threat to corporate control and approval of a transaction resulting in a sale of control of the corporation. Under Delaware law, a member of the board of directors, or a member of any committee designated by the board of directors, must, in the performance of such member's duties, be fully protected in relying in good faith upon the records of the corporation and upon such information, opinions, reports or statements presented to the corporation by any of the corporation's officers or employees, or committees of the board of directors, or by any other person as to matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the corporation.
Conflicts of Interest of Directors and Officers	Under Delaware law, a contract or transaction in which a director has an interest will not be voidable solely for this reason if (i) the material facts about such interested director's interest are disclosed or are known to the board of directors or an informed and properly functioning independent committee thereof, and a majority of disinterested directors or such committee in good faith authorizes the transaction by the affirmative vote of a majority of the disinterested directors, (ii) the material facts about such interested director's relationship or interest are disclosed or are known to the stockholders entitled to vote on such transaction, and the transaction is specifically approved in good faith by vote of the majority of shares entitled to vote thereon or (iii) the transaction is fair to the corporation as of the time it is authorized, approved or ratified. The mere fact that an interested director is present and voting on a transaction in which he or she

Provision	Generac Holdings
	is interested will not itself make the transaction void. Interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee that authorizes the contract or transaction. Under Delaware law, an interested director could be held liable for a transaction in which such director derived an improper personal benefit.
Shareholders' Disclosure of Interests in Shares	Neither the DGCL nor Generac's certificate of incorporation or bylaws impose an obligation with respect to disclosure by stockholders of their interests in Generac Holdings voting stock, except as part of a stockholders' nomination of a director or stockholder proposals to be made at an annual meeting. Under the U.S. Exchange Act, all beneficial owners of holders of 5% or greater of the outstanding shares of Generac Common Stock must report their holdings to the SEC on "Schedule 13G" if the holdings are passive and held not with an intent to acquire control and on "Schedule 13D" if the holdings are non-passive and held with an intent to acquire control.
Record Dates	Under Generac's bylaws, in order to determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the board of directors may fix, in advance, a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted by the board of directors, and which shall not be more than sixty nor fewer than ten days before the date of such meeting. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders applies to any adjournment of the meeting, provided, however, that the board of directors may fix a new record date for the adjourned meeting. In order that Generac Holdings may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights of the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating thereto.
Annual Meetings of Shareholders	Under the DGCL, an annual meeting of stockholders is required for the election of directors and for such other proper business as may be conducted thereat. The Delaware Court of Chancery may order a corporation to hold an annual meeting if a corporation has failed to hold an annual meeting for a period of 13 months after its last annual meeting. Generac's bylaws provide that the annual meeting of stockholders may be held within or without the State of Delaware, or, within the sole discretion of the board of directors, and subject to such guidelines and procedures as the board of directors may adopt, by means of remote communication and at such date and at such time, as may be fixed from time to time by resolution of the board of directors and set forth in the notice or waiver of notice of the meeting.
Meeting Notice Provisions	Under the DGCL and Generac's bylaws, written notice of annual and special meetings of Generac Holdings stockholders must be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting. Generac's bylaws provide that notice of an annual and special meeting of stockholders must be in writing and state the purpose for which the special meeting is called.
Notice of Shareholder Nominations and Proposals	Under Generac's bylaws, a stockholder wishing to nominate a director for election to the Generac Holdings board or to bring any other item of business before a meeting of stockholders must provide written notice, in proper form, within the following time periods: (i) *annual meetings*: no later than the close of business on the 90th day, nor earlier than the close of business on the 120th day, prior to the first anniversary of the previous year's annual

Provision	Generac Holdings
	meeting of stockholders, and in the event the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the 120th day prior to the date of such annual meeting and not later than the close of business on the later of the 90th day prior to the date of such annual meeting or, if the first public announcement of the date of such annual meeting is less than 100 days prior to the date of such annual meeting, the 10th day following the day on which public announcement of the date of such meeting is first made by GNRC. (ii) *special meetings*: not earlier than the close of business on the 120th day prior to such special meeting and not later than the close of business on the later of the 90th day prior to such special meeting or the 10th day following the date on which notice of the date of the special meeting was mailed or public disclosure of the date of the special meeting was made, whichever first occurs. A stockholder nomination must be accompanied by the information required by the bylaws with respect to a stockholder director nominee.
Calling Special Meetings of Shareholders	Per Generac's bylaws, special meetings of the stockholders of Generac Holdings, for any purpose or purposes, may be called at any time, but only by or at the direction of a majority of the directors then in office or the Chief Executive Officer of Generac Holdings. Such special meetings of the stockholders shall be held at such places, within or without the State of Delaware, or, within the sole discretion of the board of directors, and subject to such guidelines and procedures as the board of directors may adopt, by means of remote communication, as shall be specified in the respective notices or waivers of notice thereof. The ability of stockholders to call a special meeting of stockholders is specifically denied.
Shareholder Action by Written Consent	Generac's certificate of incorporation provides that no actions may be taken by waiver of written notice and consent by stockholders in lieu of meeting, unless the taking of such action by written consent has been expressly approved in advance by the board of directors, subject to certain exceptions that do not currently apply.
Quorum of Shareholders	Generac's bylaws provide that the presence at the annual meeting, in person or by proxy, of the holders of at least a majority of the number of shares of common stock issued and outstanding and entitled to vote as of the record date, is required to constitute a quorum to transact business at the annual meeting. Abstentions and broker non-votes will be counted toward the establishment of a quorum.
Adjournment of Shareholder Meetings	Generac's bylaws provide that if a quorum is not present or represented at any meeting of the stockholders, then the chairman of such meeting has the power to adjourn the meeting without a vote of the stockholders. At such adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed. When a meeting is adjourned to another time and/or place, unless Generac's bylaws otherwise require, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, Generac Holdings may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days or a new record date for stockholders entitled to vote is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting
Amendments to Articles or Certificate of Incorporation	Any amendment to Generac's certificate of incorporation must first be approved by a majority of its board of directors and (i) if required by law, thereafter be approved by a majority of the outstanding shares entitled to vote on the amendment or (ii) if related to provisions regarding the classification of the board of directors, the removal of directors, stockholder action by written consent, the ability to call special meetings of stockholders, indemnification, corporate

Provision	Generac Holdings
	opportunities or the amendment of Generac's bylaws or certificate of incorporation, thereafter be approved by $66^2/3\%$ of the outstanding shares entitled to vote on the amendment.
Amendments to By-laws	Generac's bylaws may be amended (x) by the affirmative vote of a majority of the directors then in office, subject to any limitations set forth in the bylaws, without further stockholder action or (y) by the affirmative vote of at least 66-2/3% of the outstanding shares entitled to vote on the amendment, without further action by the board of directors.
Rights of Inspection	Under Section 220 of the DGCL, a stockholder or its agent has a right to inspect Generac Holdings' stock ledger, a list of all of its stockholders and its other books and records during the usual hours of business upon written demand stating his purpose (which must be reasonably related to such person's interest as a stockholder). If Generac Holdings refuses to permit such inspection or refuses to reply to the request within five business days of the demand, the stockholder may apply to the Delaware Court of Chancery for an order to compel such inspection.
Shareholder Suits	Generally, Generac Holdings is subject to potential liability under the federal securities laws and under Delaware law. Under the DGCL, a stockholder may bring a derivative action on behalf of the corporation to enforce the rights of the corporation. Generally, a person may institute and maintain such a suit only if such person was a stockholder at the time of the transaction that is the subject of the suit or his or her shares thereafter devolved upon him or her by operation of law. The DGCL also requires that the derivative plaintiff make a demand on the directors of the corporation to assert the corporate claim before the suit may be prosecuted by the derivative plaintiff, unless such demand would be futile. In certain circumstances, class action lawsuits are available to stockholders. The DGCL does not provide for a remedy similar to the oppression remedy under the CBCA; however, stockholders are entitled to remedies for violation of a director's fiduciary duties under Delaware common law.
Enforcement of Civil Liabilities Against Foreign Persons	A judgment for the payment of money rendered by a court in the U.S. federal court or any state court based on civil liability generally would be enforceable elsewhere in the U.S.
Limitation of Personal Liability of Directors and Officers	Generac's certificate of incorporation provides that, to the fullest extent permitted by the DGCL, a director of Generac Holdings will not be personally liable to Generac Holdings or its stockholders for monetary damages for breach of fiduciary duty as a director.
Indemnification of Directors and Officers	Section 145 of the DGCL provides that a corporation may indemnify directors and officers as well as other employees and individuals against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, in which such person is made a party by reason of the fact that the person is or was a director, officer, employee or agent of the corporation (other than a derivative action), if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. A similar standard is applicable in the case of derivative actions, except that indemnification only extends to expenses (including attorneys' fees) incurred in connection with the defense or settlement of such action, and the statute requires court approval before there can be any indemnification where the person seeking indemnification has been found liable to the corporation. The statute provides that it is not exclusive of other indemnification that may be granted by Generac's bylaws, disinterested director vote, stockholder vote, agreement or otherwise. Generac's bylaws and certificate of incorporation provide that, to the full extent provided under Section 145 of the DGCL, Generac Holdings will indemnify each person who at any time is, or will have been, a director or officer of Generac Holdings, and is threatened to be or is made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that they are, or were, a director, officer or employee of Generac Holdings, or served at the request of Generac Holdings as a director, officer,

Provision	Generac Holdings
	employee or trustee of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with any such action, suit or proceeding.
Appraisal/Dissent Rights	Under the DGCL, a stockholder may dissent from, and receive payments in cash for, the fair value of his or her shares as appraised by the Delaware Court of Chancery in the event of certain mergers and consolidations. However, stockholders do not have appraisal rights if the shares of stock they hold, at the record date for determination of stockholders entitled to vote at the meeting of stockholders to act upon the merger or consolidation, or on the record date with respect to action by written consent, are either (i) listed on a national securities exchange or (ii) held of record by more than 2,000 holders. Further, no appraisal rights are available to stockholders of the surviving corporation if the merger did not require the vote of the stockholders of the surviving corporation. Notwithstanding the foregoing, appraisal rights are available if stockholders are required by the terms of the merger agreement to accept for their shares anything other than (a) shares of stock of the surviving corporation, (b) shares of stock of another corporation that will either be listed on a national securities exchange or held of record by more than 2,000 holders, (c) cash instead of fractional shares or (d) any combination of clauses (a)—(c). Appraisal rights are also available under the DGCL in certain other circumstances, including in certain parent-subsidiary corporation mergers and in certain circumstances where the certificate of incorporation so provides. Generac's certificate of incorporation does not provide for appraisal rights in any additional circumstance.
Approval of Extraordinary Transactions; Anti-Takeover Provisions	A sale, lease or exchange of all or substantially all of a corporation's assets, a merger or consolidation of a corporation with another corporation or a dissolution of a corporation generally requires the approval of the corporation's board of directors and, with limited exceptions, the affirmative vote of at least a majority of the shares of Generac Holdings voting stock outstanding as of the record date and entitled to vote. Generac Holdings has elected not to be governed by Section 203 of the DGCL, which would otherwise have imposed limitations on a business combination with an interested stockholder.
Compulsory Acquisitions	Not applicable.
Rights Upon Liquidation	Pursuant to the Generac's certificate of incorporation, in the event of any voluntary or involuntary liquidation, dissolution or winding up of our affairs, holders of Generac Common Stock would be entitled to share ratably in Generac Holdings' assets that are legally available for distribution to stockholders after payment of liabilities. If Generac Holdings has any preferred stock outstanding at such time, holders of the preferred stock may be entitled to distribution and/or liquidation preferences. In either such case, Generac Holdings must pay the applicable distribution to the holders of its preferred stock before it may pay distributions to the holders of Generac Common Stock.

DIRECTORS' APPROVAL

The contents of this Circular and its sending to shareholders of the Corporation have been approved by the directors of the Corporation.

BY ORDER OF THE BOARD OF DIRECTORS

"Stuart Lombard"

Stuart Lombard
Chief Executive Officer and Director

Toronto, Ontario
November [ ], 2021

APPENDIX 1
INTERIM ORDER

APPENDIX 2
ARRANGEMENT RESOLUTION

APPENDIX 3
PLAN OF ARRANGEMENT

APPENDIX 4

ARRANGEMENT AGREEMENT

[Note: Excluding Disclosure Schedule and Supplemental Disclosure Schedule]

APPENDIX 5
SUPPORT AGREEMENT

APPENDIX 6
WATERFALL

APPENDIX 7
NOTICE OF APPLICATION

THIS IS EXHIBIT "J" REFERRED TO IN THE AFFIDAVIT OF MICHAEL CARTER, SWORN BEFORE ME OVER VIDEO CONFERENCE THIS 8TH DAY OF NOVEMBER, 2021.

Commissioner For Taking Affidavits
Andrew Rintoul

Execution Copy

EXHIBIT A
TO THE ARRANGEMENT AGREEMENT

SUPPORT AND VOTING AGREEMENT

This Support and Voting Agreement (this "**Support Agreement**"), dated as of November 1, 2021, is by and among (i) the securityholders of the Company identified on the signature pages hereto (collectively, the "**Supporting Securityholders**"), each severally and not jointly, and (ii) 13462234 Canada Inc., a Canadian federal corporation ("**Purchaser**"). Certain Supporting Securityholders are party to this Support Agreement as of the date hereof, and additional Supporting Securityholders may hereafter become party to this Support Agreement by executing a counterpart signature page or joinder hereto.

BACKGROUND

A. Purchaser, Generac Power Systems, Inc., a Wisconsin corporation ("**Parent**"), ecobee Inc., a Canadian federal corporation ("**Company**"), and Shareholder Representative Services LLC, a Colorado limited liability company are, concurrently with the execution and delivery of this Support Agreement, entering into an Arrangement Agreement (the "**Arrangement Agreement**"), which provides for an arrangement of the Company under Section 192 of the *Canada Business Corporations Act*, the result of which shall be the acquisition of all of the outstanding common shares in the capital of the Company and certain other securities of the Company (the "**Arrangement**"). Capitalized terms used but not defined in this Support Agreement have the meanings provided in the Arrangement Agreement.

B. The Supporting Securityholders own Company Common Shares, Company Preferred Shares, Company Options and Company Derivatives (the "**Covered Interests**"), and will realize substantial benefits from the consummation of the Arrangement and other transactions contemplated by the Arrangement Agreement and the Ancillary Documents (collectively, the "**Transactions**").

C. The Supporting Securityholders set forth on Exhibit A (the "**Covenanting Securityholders**") are also current or former employees of the Company and have agreed to be subject to certain restrictive covenants as set forth herein, as a reasonable and necessary measure to protect and preserve the goodwill and value of the Company's Business (as defined in the Arrangement Agreement).

D. As a condition and material inducement to the willingness of Purchaser to enter into the Arrangement Agreement, Purchaser has required that each of the Supporting Securityholders agree to be bound by certain provisions of the Arrangement Agreement applicable to the Supporting Securityholders as further described herein, and to consummate the Transactions (including the Arrangement), and each of the Supporting Securityholders has agreed to enter into this Support Agreement.

ARTICLE 1
APPROVAL OF TRANSACTIONS

1.1 Approval of the Transactions. Each Supporting Securityholder acknowledges that it has had an opportunity to review the Arrangement Agreement, this Support Agreement and the Transactions and has had the opportunity to consult with its tax, financial and legal advisors, including in particular regarding the terms of the Arrangement Agreement providing for the consideration payable thereunder to be conditioned upon certain contingencies, to be subject to escrow, withholding, off-set, and other terms, and to be allocated among the Company Securityholders and between various types of consideration as specified in the Arrangement Agreement. Each Supporting Securityholder hereby consents and agrees to the execution of the Arrangement Agreement and the Ancillary Documents and the consummation of the Transactions. Each Supporting Securityholder acknowledges and agrees to be fully bound by the provisions of the Arrangement Agreement applicable to Company Securityholders (in the case of OCGC, subject to Section 1.6), including without limitation the indemnification and exculpation provisions in favor of the Securityholder Representative in Section 10.01 thereof. Each Supporting Securityholder acknowledges and agrees that the Transactions constitute a "Qualified DLE" under the Company Shareholders' Agreement, and hereby invokes and agrees that the Transactions are subject to the drag-along provisions in Section 7.5 of the Company Shareholders' Agreement. Except for such drag-along provisions, each Supporting Securityholder hereby waives any tag-along rights, rights of co-sale and redemption, rights of first refusal, purchase rights and options to purchase, all consent or notice rights and other similar rights arising under the Company Constating Documents or otherwise in connection with the Arrangement Agreement, the Ancillary Documents or the Transactions. Each Supporting Securityholder acknowledges that the Arrangement Agreement and the other documents referenced in the Arrangement Agreement may be amended in accordance with the terms and conditions set forth in the Arrangement Agreement and such other documents. Each Supporting Securityholder acknowledges, agrees and consents to all such changes to the Arrangement Agreement and such other documents referenced in the Arrangement Agreement so long as they are duly authorized and made in accordance with the terms and conditions set forth in the Arrangement Agreement or such other document (as applicable), including, without limitation, pursuant to any action by the Securityholder Representative.

1.2 Voting Agreement. Each Supporting Securityholder hereby covenants, undertakes and agrees, from the date of this Support Agreement until the termination of this Support Agreement in accordance with its terms, to vote or cause to be voted (or take other action with respect to) its Covered Interests (i) in favor of the approval, ratification and adoption of the Arrangement Resolution and any other matter necessary for the consummation of the Arrangement or the Transactions, and (ii) against any Acquisition Proposal or any proposal made in opposition to, or in competition with, consummation of the Arrangement or the Transactions. In furtherance thereof, to the extent such a Supporting Securityholder does not comply with its obligations pursuant to the preceding sentence, such Supporting Securityholder hereby irrevocably grants to and appoints Purchaser (and any designee thereof) as such Supporting Securityholder's proxy and attorney-in-fact (with full power of substitution), for and in the name, place and stead of such Shareholder, to represent, vote and otherwise act (by voting at any meeting of shareholders of the company or otherwise) with respect to such Supporting Securityholder's Covered Interests solely as and to the extent set forth in this Section 1.2 until the termination of this Support Agreement or

the Closing, to the same extent and with the same effect as such Supporting Securityholder might or could do under applicable law, rules and regulations. The proxy granted pursuant to this Section 1.2 is coupled with an interest and shall be irrevocable. Such Supporting Securityholder will take such further action and will execute such other instruments as may be necessary to effectuate the grant of this proxy.

1.3 Waiver of Dissent Rights. Each Supporting Securityholder hereby irrevocably and unconditionally (i) waives and agrees not to exercise any rights of appraisal, quasi appraisal or any dissenters' rights (or similar claims) that such Supporting Securityholder may have or could potentially have or acquire (whether under applicable Law or otherwise) with respect to any Covered Interests in connection with the execution and delivery of the Arrangement Agreement and the other documents referenced in the Arrangement Agreement or the consummation of the Arrangement and the other Transactions, including any rights to dissent and request an appraisal under applicable Law, (ii) withdraws all of such Supporting Securityholder's objections to the Arrangement and/or demands for appraisal of the fair value of shares of Covered Interests held by such Supporting Securityholder pursuant to any applicable Law or otherwise, and (iii) agrees not to bring, commence, institute, maintain, prosecute, participate in or voluntarily aid any action, claim, suit or cause of action, in law or in equity, in any court or before any Governmental Authority, which (1) challenges the validity of the Arrangement Agreement or the Arrangement or seeks to enjoin the consummation of the Arrangement or (2) alleges that the execution and delivery of this Support Agreement or any other documents contemplated by the Arrangement Agreement by such Supporting Securityholder, or the approval of the Arrangement Agreement or any other document contemplated by the Arrangement Agreement by the Company Board, is oppressive or unfair or breaches any fiduciary duty of the Company Board or any stockholder of the Company.

1.4 No Inconsistent Actions. Without limiting any other obligations under this Support Agreement or otherwise, each Supporting Securityholder (a) shall not take any action that would have the effect of making any representation and warranty of such Supporting Securityholder contained herein untrue or incorrect or preventing or disabling such Supporting Securityholder from performing any of his or her obligations under this Support Agreement, or encourage any other Supporting Securityholder to do the same, (b) shall comply with Section 5.05 (*No Solicitation of Other Bids*), Section 5.06 (*Actions to Closing*) and Section 5.08 (*Public Announcements*) in the Arrangement Agreement and (c) shall not, directly or indirectly, directly or indirectly, sell, transfer, pledge, encumber, assign or otherwise dispose of ("**Transfer**"), or enter into any contract, option or other arrangement or understanding with respect to the Transfer of, any Covered Interests without the prior written consent of Purchaser, other than the exercise of Company Derivatives.

1.5 Appointment of Securityholder Representative. Each Supporting Securityholder hereby confirms and ratifies the appointment of the Securityholder Representative as set forth in the Arrangement Agreement, and acknowledges the Securityholder Representative's authority as the representative, agent and true and lawful attorney-in-fact of such Supporting Securityholder as provided in the Arrangement Agreement or the Escrow Agreement.

1.6 OCGC. The parties acknowledge that Ontario Capital Growth Corporation ("**OCGC**") is an agency of the Crown established by the *Ontario Capital Growth Corporation*

Act, 2008, and in light of such status its obligations hereunder are subject to that certain OCGC Adjusted Payment Terms Agreement dated on or about the date hereof between OCGC and Purchaser.

ARTICLE 2
REPRESENTATIONS AND WARRANTIES

Each Supporting Securityholder represents and warrants to Purchaser and the Securityholder Representative as follows:

2.1 Ownership of Undersigned's Interests. Such Supporting Securityholder has good and valid title to, and is the sole legal and beneficial owner of, the Covered Interests owned by such Supporting Securityholder as set forth in the Company's books and records, free and clear of any Encumbrances other than pursuant to the Company Shareholders' Agreement and applicable securities Law, and other than Encumbrances that will be released at or prior to the Effective Time. Except as provided in the Company Shareholders' Agreement, such Supporting Securityholder's Covered Interests are not, and will not be, subject to any voting trust agreement, proxy, or other contract, agreement, commitment, understanding, or arrangement, including any such contract, agreement, commitment, understanding, or arrangement restricting or otherwise relating to voting or distribution rights with respect there to or disposition thereof, other than this Support Agreement, the Arrangement Agreement, and the Ancillary Documents.

2.2 Authority; Ability to Convey Title.

(a) Such Supporting Securityholder has full power and authority to enter into and perform its obligations under this Support Agreement and the Ancillary Documents to which it is a party and to consummate the Transactions to which it is a party. The execution, delivery and performance by such Supporting Securityholder of this Support Agreement and any Ancillary Document to which it is a party and the consummation by such Supporting Securityholder of the Transactions to which it is a party have been duly authorized by all requisite corporate action on the part of such Supporting Securityholder, if applicable, and this Support Agreement constitutes a legal and binding obligation of such Supporting Securityholder enforceable against it in accordance with its terms (subject to the Enforcement Limitation).

(b) Subject to obtaining the approvals required under the Arrangement Agreement, the execution, delivery, and performance by such Supporting Securityholder of this Support Agreement and the Ancillary Documents to which such Supporting Securityholder is a party and the consummation by such Supporting Securityholder of the Transactions to which it is a party will not:

(i) except as set out in Section 1.6, require such Supporting Securityholder or any of his or her Affiliates to obtain any consent of any Governmental Authority;

(ii) violate, conflict with, or result in the breach of any of the terms of any of the provisions of any note, bond, contract, agreement, or other instrument or obligation to which such Supporting Securityholder is a party or such Supporting Securityholder's Covered Interests is subject;

(iii) violate any applicable Law applicable to such Supporting Securityholder or such Supporting Securityholder's Covered Interests; or

(iv) result in the creation of any Encumbrance.

(c) No Action is pending or, to the knowledge of such Supporting Securityholder, threatened against or relating to such Supporting Securityholder to restrain or prevent the carrying out of the Transactions or that would be reasonably likely to adversely affect or prevent the Transactions or otherwise materially impair the ability of such Supporting Securityholder to perform his or her obligations under this Support Agreement and any other Ancillary Document executed by such Supporting Securityholder.

ARTICLE 3
CERTAIN AGREEMENTS

Each Supporting Securityholder acknowledges and agrees to, and shall comply with, the provisions of the Arrangement Agreement and Ancillary Documents that are expressly applicable to such Supporting Securityholder. Each Supporting Securityholder further agrees as follows:

3.1 Competing Acquisition Proposals. Such Supporting Securityholder acknowledges his, her or its obligations with respect to Acquisition Proposals under Section 5.05 of the Arrangement Agreement and agrees to comply with such obligations.

3.2 Confidentiality.

(a) Such Supporting Securityholder acknowledges and agrees that the Confidential Information (as defined below) is the property of the Company Group. Therefore, such Supporting Securityholder agrees that such Supporting Securityholder will not, directly or indirectly, disclose to any unauthorized persons or use for such person's own benefit or for the benefit of any third party any Confidential Information without Purchaser's prior written consent; provided, however, such Supporting Securityholder may disclose any Confidential Information (w) as is required by any Law (as defined in the Arrangement Agreement), subpoena or other legal process, or in response to any governmental inquiry, proceeding or investigation or pursuant to any direction, request or requirement (whether or not having the force of Law but if not having the force of Law being of a type with which institutional investors in the relevant jurisdiction are accustomed to comply) of any self-regulating organization or any governmental, fiscal, monetary or other authority (each of the foregoing a "**Legal Disclosure**"), and provided, further, that such Person shall promptly notify Purchaser of such Legal Disclosure and, if possible, prior to disclosure so that Purchaser may take appropriate action to safeguard such Confidential Information, or (x) to their professional advisors, including their attorneys and accountants, including in connection with a Legal Disclosure or for the purpose of preparing financial statements or tax returns, or (y) as reasonably necessary to perform or enforce this Support Agreement, the Arrangement Agreement or the Ancillary Documents or (z) with respect to any Supporting Securityholder that is a private equity or venture capital fund or other institutional investor, after the public announcement of the Transactions, any Confidential Information consisting of financial information relating to such Supporting Securityholder's investment, return on investment or other investment performance metrics customarily included in such Supporting

Securityholder's reports and analyses (provided that such information shall not disclose any financial terms of the Transactions, including the amounts of any Earnout Consideration actually earned or the details, other than those that have already been publicly disclosed other than by violation by such Supporting Securityholder of its obligations hereunder, except that such Supporting Securityholder may disclose, on a confidential basis, (i) in connection with any distribution of any Earnout Consideration to its limited partners or other equityholders, the fact that such distribution represents a payment or distribution in respect of Earnout Consideration, and (ii) following the earlier of (A) March 1, 2023 or March 1, 2024, as applicable, and (B) the date on which any such information has been publicly disclosed other than by violation by such Supporting Securityholder of its obligations hereunder, such Supporting Securityholder may disclose the amounts of the Earnout Consideration actually earned and the portion of the maximum Earnout Consideration that such payment represents).

(b) Nothing in this Support Agreement reduces any obligation a Supporting Securityholder may otherwise have, including obligations under any other Contract or under applicable Laws or orders relating to Trade Secrets, confidential information and unfair competition, nor shall anything herein be construed to limit or negate any common or statutory law regarding torts or Trade Secrets where it provides the Business or Purchaser with broader protection than that provided herein. Each Supporting Securityholder shall take all reasonable steps necessary to prevent unauthorized misappropriation or disclosure of the Trade Secrets of the Business and shall not use or disclose such trade secrets as long as they remain Trade Secrets.

(c) "**Confidential Information**" means information, whether or not a trade secret, owned by or developed for (pursuant to a confidential arrangement) the Company Group that relates to the Business as conducted by the Company Group, including, but not limited to, product information, business plans and strategies, forecasts, budgets, sales methods, formulas, formulations, analytical methodology, testing data, market and product plans, specifications, know-how, vendor agreements, existing or proposed bids, technical or engineering developments, existing or proposed research projects, financial or business projections, investments, marketing plans and strategies, pricing and cost information, negotiation strategies, training information and materials, employee compensation and other employee information, customer or potential customer lists, supplier data and information, customer purchasing history and information generated for customer engagements. Confidential Information also includes information received by the Company Group that the Company Group has an obligation to treat as confidential. Notwithstanding anything to the contrary in this Support Agreement, Confidential Information shall not include information (i) that is or becomes generally known to the public (without violation of this Support Agreement or any other obligation or duty of confidentiality by a Supporting Securityholder), (ii) that a third party obtains from a source other than the Supporting Securityholders if that source obtained that information lawfully and such source was under no obligation or duty of confidentially at the time the information was received by that source, (iii) is not within the definition of "Confidential Information" as defined in this Section 3.2, (iv) was communicated to a Supporting Securityholder by a third party free of any obligation of confidence, (v) was developed by a Supporting Securityholder independently from services performed in connection with the Business and without using any Confidential Information, or (vi) constitutes Residuals.

3.3 Restrictive Covenants. Each Covenanting Securityholder (which, for the avoidance of doubt, includes only those Supporting Securityholders identified on Exhibit A) agrees as follows:

(a) During the applicable restricted period set forth for such Covenanting Securityholder on Exhibit A (such Covenanting Securityholder's "**Restricted Period**"), such Covenanting Securityholder will not, directly or indirectly, in any capacity whatsoever, either individually or as agent, principal, partner, member, manager, owner, trustee, beneficiary, co-venturer, distributor, consultant, creditor or lender, on such person's own behalf or on behalf of any other corporation, limited liability company, partnership, proprietorship, firm, association or other business entity (other than on behalf of Purchaser, the Company Group or the Business):

(i) participate or engage, directly or indirectly (and including as an officer, employee, contractor or other service provider of another Person), in the business of developing and selling smart thermostats, room sensors, smart light switches, smart cameras and the related services of energy management and demand response services, as such is conducted by the Company Group as of the Effective Time, or a business competitive therewith, anywhere in North America (a "**Competitive Business**");

(ii) have a financial or other interest in any Person that directly or indirectly has a Competitive Business as a primary business focus; provided, however, that the passive ownership of less than a 5% interest in an entity whose securities are traded on a recognized stock exchange or traded in the over-the-counter market, even though that entity is a competitor of the Business, shall not be deemed in itself to be a breach of Section 3.3(a)(i) or this Section 3.3(a)(ii);

(iii) knowingly or intentionally make any disparaging remarks about the Business, Purchaser, any member of the Company Group, their respective Affiliates or any of their respective officers, directors, employees or shareholders;

(iv) solicit or accept any business on behalf of a Competitive Business from any customer or other business contact of the Company Group, the Purchaser or the Business, or advise any person or entity with respect to any such solicitation.

(b) During the Restricted Period, such Covenanting Securityholder will not, directly or indirectly, in any capacity, either individually or as agent, principal, partner, member, manager, owner, trustee, beneficiary, co-venturer, distributor, consultant, creditor or lender, on such Covenanting Securityholder's own behalf or on behalf of any other Person (other than on behalf of Purchaser, the Company Group or the Business), (i) solicit for employment or engagement, or hire, employ or engage, any Person who is an employee, officer or individual independent contractor of the Company Group or (ii) make an offer to, solicit or induce or attempt to make an offer to, solicit or induce any person who is an employee, officer, agent, customer or supplier of the Company Group or the Business, or any other person having a business relationship with the Purchaser, Company Group or the Business, to terminate, withdraw, curtail or cancel such relationship with any member of the Company Group or the Business or to breach any agreement with Purchaser, any member of the Company Group or the Business; provided, however, that (x) clause (i) shall not apply to any Person six months following their cessation of employment or

engagement by the Company Group without any encouragement or solicitation by or on behalf of any Covenanting Securityholder and (y) this Section 3.3(b) shall not prohibit publication of general solicitations not targeted at any or all of such Persons.

(c) Each Covenanting Securityholder acknowledges and agrees that: (i) Purchaser has required that such person make the covenants set forth in this Section 3.3 as a condition to the closing of the Transactions; (ii) the covenants contained herein are being entered into in connection with the sale of the Business and not in connection with employment or any other principal-agent relationship; (iii) the provisions of this Section 3.3 are reasonable and necessary to protect and preserve the Business to be acquired by Purchaser, (iv) the covenants set forth in this Section 3.3 may seriously constrain the Covenanting Securityholder's freedom to pursue alternative business activities in the Territory during the Restricted Period; and (vi) Purchaser would be irreparably damaged if any of the Covenanting Securityholders were to breach the covenants set forth in this Section 3.3.

(d) Each Covenanting Securityholder agrees that the covenants set forth in the subsections of this Section 3.3 are each reasonable with respect to its duration, geographical area, and scope.

(e) Should a determination nonetheless be made by a court at a later date that the character, duration or geographical scope of this Section 3.3 is unreasonable in light of the circumstances as they then exist, then it is the intention and the agreement of Purchaser and the Covenanting Securityholder that this Section 3.3 shall be construed in such a manner as to impose only those restrictions on the conduct of the Covenanting Securityholder that may be enforceable under applicable Law, to the fullest extent of such enforceability to assure Purchaser of the intended benefit of this Section 3.3.

(f) If, in any judicial proceeding, a court shall refuse to construe in the manner set out in Section 3.3(e) or otherwise refuse to enforce all of the separate covenants deemed included herein because, taken together, they are more extensive than necessary to assure Purchaser of the intended benefit of this Section 3.3, it is expressly understood and agreed among the parties hereto that those of such covenants that, if eliminated, would permit the remaining separate covenants to be enforced in such proceeding shall, for the purpose of such proceeding, be deemed eliminated from the provisions hereof.

(g) The parties hereby acknowledge and agree that the Covenanting Securityholder entering into this Support Agreement is an integral part of the Arrangement and that the restrictive covenants contained in this Section 3.3 are granted to maintain and preserve the fair market value of the shares in the capital of the Company being acquired by Purchaser pursuant to the Arrangement. The parties agree that no portion of the Arrangement Consideration to be paid by Purchaser to the Covenanting Securityholder pursuant to the Arrangement is received or receivable by the Covenanting Securityholder for granting the restrictive covenants contained in this Section 3.3 for purposes of the *Income Tax Act* (Canada).

3.4 Recourse for Supporting Securityholder's Obligations. Such Supporting Securityholder understands and agrees that the Company Securityholders, including such Supporting Securityholder, will have certain potential payment obligations pursuant to the

indemnification obligations under Article 8 of the Arrangement Agreement. Such Supporting Securityholder hereby agrees to Article 8 of the Arrangement Agreement and accepts the applicable obligations set forth therein. For the avoidance of doubt, (i) the aggregate liability of Supporting Securityholder under the Arrangement Agreement, including liability for a breach of representation, warranty or covenant or for a claim under an indemnity, shall be several (except to the extent of any escrow, holdback or set-off rights) and not joint and several, and shall not, under any circumstances, exceed the lesser of its Pro Rata Share and the amount actually paid to such Company Securityholder in respect of such Company Securityholder's Company Securities; (ii) the Supporting Securityholder shall be fully responsible for the inaccuracy of any representation or warranty set forth in Article 2 hereof made by, or breach of covenant set forth in this Support Agreement by, itself but shall not be liable for the inaccuracy of any representation or warranty made by, or breach of covenant by, any other Securityholder; and (iii) in no case shall the aggregate liability of a Supporting Securityholder pursuant to the Arrangement Agreement and the Ancillary Document exceed the amount actually paid to such Supporting Securityholder pursuant to the Arrangement Agreement in respect of such Supporting Securityholder's Company Securities.

3.5 Release.

(a) Effective as of the Effective Time, each Supporting Securityholder, on behalf of itself and its controlled Affiliates, heirs, legal representatives, successors and assigns (each a "**Releasor**"), hereby releases, acquits and forever discharges Purchaser to the fullest extent permitted by law, and agrees that Purchaser and its past and present officers, managers, directors, shareholders, partners, members, Affiliates (including, after the Effective Time, the Company Group), employees, agents, counsel and other representatives (each, a "**Purchaser Releasee**") are hereby relieved, released, acquitted and discharged to the fullest extent permitted by Law, from and against any and all actions, causes of action, suits, proceedings, executions, judgments, duties, debts, dues, accounts, bonds, contracts and covenants (whether express or implied), and claims and demands whatsoever, whether in law or in equity, which each Releasor may have against each Purchaser Releasee now or in the future, in each case, in respect of any cause, matter or thing relating to any of the Purchaser Releasees occurring or arising on or prior to the Closing Date, in each case, solely in their capacities as direct or indirect equityholders or investors in, or lenders to the Company Group (collectively "**Claims**") which such Supporting Securityholder or its Releasors ever had, now has, or may have (i) with respect to or for any decision, act, consent or instruction of the Securityholder Representative hereunder or under the Arrangement Agreement or any Ancillary Document or (ii) on or by reason of any action, event, circumstance, omission, matter or thing whatsoever occurring or existing on or prior to the Closing Date with respect to Purchaser or a Purchaser Releasee.

(b) Notwithstanding the foregoing, each Supporting Securityholder and its Releasors retain, and do not release, their rights and interests (i) under the express terms of the Arrangement Agreement, including the right to receive Arrangement Consideration (as finally determined to be payable, it being understood that Claims relating to the determination, calculation or allocation of the Arrangement Consideration may be brought solely by the Securityholder Representative and solely in accordance with the Arrangement Agreement), or (ii) with respect to any Supporting Securityholder that is an employee or other service provider of the Company Group, claims relating to such person's status as an employee, director or other service provider,

including obligations of Purchaser or the Company Group under the express terms of any Company Constating Document, employment agreement, indemnification agreement, retention agreement, benefit plan or otherwise with respect to such employment or service, including wages, benefits, indemnification, exculpation and advancement of expenses (in each case, to the extent such obligations are duly reflected in the Disclosure Letter or Financial Statements (if required to be reflected therein), are entered into on or after the date hereof by Purchaser or its Affiliates, or reflect accrual of wages and benefits in the ordinary course of business), but excluding any claims or rights relating to Company Options or any other securities of or interests in the Company Group, or (iii) any claim (unrelated to any equity holdings in the Company) held by a portfolio company of any Supporting Equityholder that is a private equity or venture capital fund or other institutional investor.

(c) Each Releasor agrees not to, and agrees to cause its respective controlled Affiliates and Subsidiaries not to, assert any Claim (other than the retained Claims set forth in Section 3.5(b)) against the Purchaser Releasees with respect to the foregoing, and with respect to such Claims, each Releasor hereby expressly waives any and all rights conferred upon him, her or it by any statute or rule of law which provides that a release does not extend to claims which the claimant does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him, her or it must have materially affected his, her or its settlement with the released party, including, without limitation, the following provisions of California Civil Code Section 1542: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THIS RELEASE, WHICH AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY." This Section 3.5 is for the benefit of the Purchaser Releasees and shall be enforceable by any of them directly against each Releasor.

ARTICLE 4
MISCELLANEOUS

4.1 Amendment and Modification. This Support Agreement may be amended, modified, or supplemented by an agreement in writing signed by each of Purchaser and the affected Supporting Securityholders. For the avoidance of doubt, the Arrangement Agreement and each other Ancillary Document may be amended, modified or supplemented in accordance with their respective terms.

4.2 Third Party Beneficiaries. Purchaser and the Supporting Securityholder acknowledge and agree that Purchaser is acting as trustee of, and holds the entitlements and benefits of the covenants contained in Sections 3.3, 3.4 and 3.5 in trust for, the other Purchaser Releasees. Shareholder Representative Services LLC is a third party beneficiary of this Support Agreement entitled to enforce the terms hereof.

4.3 Independent Legal Advice. The Supporting Securityholder acknowledges that the Support Securityholder (i) has obtained independent legal advice prior to entering into this Support Agreement, (ii) understands the duties and obligations of the Supporting Securityholder under this Support Agreement, and (iii) is executing this Support Agreement voluntarily.

4.4 Governing Law; Venue. This Support Agreement and the relationship between the parties shall be governed by and construed in accordance with the laws of the Provinces of Ontario and the federal laws of Canada applicable therein without giving effect to any choice or conflict of Law provision or rule (whether of such jurisdiction or any other jurisdiction). Any legal suit, action or proceeding arising out of or based upon this Support Agreement may be instituted in the Province of Ontario, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or any proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

4.5 WAIVER OF JURY TRIAL. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY ACTION OR PROCEEDING TO ENFORCE OR TO DEFEND ANY RIGHTS UNDER THIS SUPPORT AGREEMENT, THE ARRANGEMENT AGREEMENT OR ANY ANCILLARY DOCUMENT SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

4.6 Counterparts. This Support Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Support Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Support Agreement.

4.7 Entire Agreement. This Support Agreement, the Arrangement Agreement and the Transaction Documents constitute the sole and entire agreement of the parties to this Support Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. Sections 8.11 (No Other Representations and Warranties), 8.12 (Investigation; Non-Reliance) and 10.15 (Non-Recourse) of the Arrangement Agreement are incorporated herein, mutatis mutandis (with references to the Company being references to Company Securityholder(s), etc.).

4.8 Severability. If any term or provision of this Support Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Support Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Support Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

4.9 Equitable Remedies. The parties agree that money damages or other remedy at law would not be a sufficient or adequate remedy for any breach or violation of, or default under, this Support Agreement by them and that in addition to all other remedies available to them, each of them shall be entitled, to the fullest extent permitted by law, to an injunction restraining such

breach, violation, or default or threatened breach, violation, or default and to any other equitable relief, including specific performance, without bond or other security being required.

4.10 Termination. This Support Agreement shall terminate upon the valid and final termination of the Arrangement Agreement in accordance with its terms, but no such termination shall relieve a party of any liability for a breach of this Support Agreement prior to the effective date of such termination. This Support Agreement shall survive the consummation of the Closing under the Arrangement Agreement.

[*Signature Page Follows*]

IN WITNESS WHEREOF, each Supporting Securityholder has executed this Support Agreement as of the date first written above.

[Signature Pages Redacted]

Securityholder Name:	[redacted]
Securityholder Signature:	DocuSigned by: [redacted]

CONTACT INFORMATION

Mailing Address:	[redacted]
Email:	[redacted]
Telephone:	[redacted]
Fax:	[redacted]

IN WITNESS WHEREOF, Purchaser has executed this Support Agreement as of the date first written above.

[Signature Pages Redacted]

PURCHASER:

13462234 CANADA INC.

By: [redacted]
Name: Steve Goran
Title: President

Exhibit A

Covenanting Securityholders

Five-Year Covenanting Securityholders
The Restricted Period for the following Covenanting Securityholders is the period commencing on the date hereof and continuing until the fifth anniversary of the Closing.

[redacted]

Three-Year Covenanting Securityholders
The Restricted Period for the following Covenanting Securityholders is the period commencing on the date hereof and continuing until the third anniversary of the Closing.

[redacted]

THIS IS EXHIBIT "K" REFERRED TO IN THE AFFIDAVIT OF MICHAEL CARTER, SWORN BEFORE ME OVER VIDEO CONFERENCE THIS 8TH DAY OF NOVEMBER, 2021.

Commissioner For Taking Affidavits
Andrew Rintoul

[redacted]

Subject: FW: Project Honey - Consent Pursuant to Support Agreement for Just Management Corporation

From: Mason, Brandon C. <brandon.mason@faegredrinker.com>
Sent: Monday, November 08, 2021 10:44 AM
To: Fraiberg, Jeremy <JFraiberg@osler.com>; Irving, Shawn <SIrving@osler.com>; De Lellis, Michael <MDeLellis@osler.com>
Cc: Gilchrist, Donald <DGilchrist@osler.com>; Dacks, Jeremy <JDacks@osler.com>; Wasserman, Marc <MWasserman@osler.com>; Kristopher Hanc <HancK@bennettjones.com>; Atkinson, Aaron <AAtkinson@dwpv.com>; Rizvi, Zain <ZRizvi@dwpv.com>; Ricci, Derek <dricci@dwpv.com>; Pulles, Melanie G. <melanie.pulles@faegredrinker.com>; Nicolet, Vilena <vilena.nicolet@faegredrinker.com>; Scheder, Andrea T. <andrea.scheder@faegredrinker.com>
Subject: Project Honey - Consent Pursuant to Support Agreement for Just Management Corporation

As you requested and further to our separate exchange, this email confirms that (1) Faegre Drinker, as counsel to Purchaser, is duly authorized to hereby provide the consent below on behalf of Purchaser and (2) the consent below is being sent in escrow in anticipation of (and can be considered released upon) Just Management Corp. duly executing and delivering a counterpart to the Support Agreement and becoming bound thereby in accordance with the Support Agreement's terms.

Reference is made to that certain Support and Voting Agreement (the "Support Agreement"), dated as of November 1, 2021, by and among (i) the securityholders of ecobee Inc. (the "Company") party thereto (the "Supporting Securityholders") and (ii) 13462234 Canada Inc. ("Purchaser").

Pursuant to Section 1.4 of the Support Agreement, Purchaser hereby consents to:

(a) *Supporting Securityholder Just Management Corp. transferring any or all of its Covered Interests to Just Energy Group Inc. ("JEGI"), the parent corporation of such Supporting Securityholder at any time at least five Business Days prior to the Closing Date upon JEGI assuming all of the obligations of such Supporting Securityholder under the Support Agreement, notwithstanding Section 1.4(c) of the Support Agreement, and*
(b) *JEGI making such public announcements, filings and disclosures as it reasonably determines are required or advisable in connection with its obligations as a reporting issuer and filer in its CCAA Proceedings, notwithstanding Section 1.4(b) of the Support Agreement (provided that no such disclosure shall include material nonpublic information of Purchaser, ecobee or their Affiliates unless otherwise required by law, in which case JEGI shall use commercially reasonable efforts to provide Purchaser with advance notice thereof and an opportunity to seek confidential treatment thereof).*

Brandon C. Mason
Partner
brandon.mason@faegredrinker.com
Connect: vCard / LinkedIn

+1 612 766 7108 direct

Faegre Drinker Biddle & Reath LLP
2200 Wells Fargo Center, 90 South Seventh Street
Minneapolis, Minnesota 55402, USA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT,* R.S.C. 1985, C. C-36, AS AMENDED;

Court File No: CV-21-00658423-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JUST ENERGY GROUP INC. ET AL.

Applicants

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at: TORONTO

AFFIDAVIT OF MICHAEL CARTER

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Fax: (416) 862-6666

Counsel for the Applicants

3

Court File No. CV-21-00658423-00CL.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	**)**	WEDNESDAY, THE 10TH
	)	
JUSTICE KOEHNEN	**)**	DAY OF NOVEMBER, 2021

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JUST ENERGY GROUP INC., JUST ENERGY CORP., ONTARIO ENERGY COMMODITIES INC., UNIVERSAL ENERGY CORPORATION, JUST ENERGY FINANCE CANADA ULC, HUDSON ENERGY CANADA CORP., JUST MANAGEMENT CORP., JUST ENERGY FINANCE HOLDING INC., 11929747 CANADA INC., 12175592 CANADA INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC., 8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP., JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST ENERGY INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY SERVICES LLC, HUDSON ENERGY CORP., INTERACTIVE ENERGY GROUP LLC, HUDSON PARENT HOLDINGS LLC, DRAG MARKETING LLC, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. AND JUST ENERGY (FINANCE) HUNGARY ZRT. (each, an "**Applicant**", and collectively, the "**Applicants**")

ORDER

(Support Agreement & Other Relief)

THIS MOTION, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order, *inter alia*, (i) authorizing and empowering Just Management Corp. ("**JMC**") to enter into the Support Agreement, (ii) authorizing the Just Energy Entities to enter into the Wind-Up and Dissolution

Transactions, (iii) authorizing Just Energy to sell the ecobee Shares held by it, following the completion of the Wind-Up and Dissolution Transactions, to the Purchaser, and vesting in the Purchaser, Just Energy's right, title and interest in and to the ecobee Shares, and (iv) authorizing Just Energy to sell the Consideration Shares, and vesting in each or any third-party purchaser (each, a "**Third-Party Purchaser**"), Just Energy's right, title and interest in and to the Consideration Shares or any portion thereof (each as defined in the Affidavit of Michael Carter sworn November 8, 2021 (the "**Sixth Carter Affidavit**")), and other relief, was heard this day by judicial video conference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the Notice of Motion of the Applicants, the Sixth Carter Affidavit, including the exhibits thereto, the Supplement to the Fourth Report of FTI Consulting Canada Inc., in its capacity as monitor (the "**Monitor**"), filed, and on hearing the submissions of respective counsel for the Applicants, the Monitor, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of Emily Paplawski, affirmed November 8, 2021, filed:

SERVICE AND DEFINITIONS

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

2. **THIS COURT ORDERS** that all capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Sixth Carter Affidavit.

SUPPORT AGREEMENT

3. **THIS COURT ORDERS AND DECLARES** that JMC is authorized and empowered to enter into the Support Agreement, subject to such non-material or administrative amendments as may be acceptable to JMC, and to take or cause to be taken such steps and execute such additional documents as may be necessary or desirable for the performance of its obligations thereunder.

WIND-UP AND DISSOLUTION TRANSACTIONS

4. **THIS COURT ORDERS** that the Wind-Up and Dissolution Transactions are hereby approved, and the Just Energy Entities are authorized and empowered to take all such steps and actions, and to execute and deliver all such additional documents, as may be necessary or desirable to complete the Wind-Up and Dissolution Transactions.

5. **THIS COURT ORDERS** that completion of the Wind-Up and Dissolution Transactions is hereby deemed to be in compliance with sections 34 and 38 of the *Canada Business Corporations Act*, RSC 1985, c. C-44.

6. **THIS COURT ORDERS** that the Just Energy Entities are hereby authorized and directed to take all steps necessary to effect the dissolution of JMC in accordance with the Wind-Up and Dissolution Transactions.

7. **THIS COURT ORDERS** that following the completion of the Wind-Up and Dissolution Transactions, the style of cause of these CCAA proceedings shall be amended to delete JMC as an Applicant.

SALE OF ECOBEE SHARES

8. **THIS COURT ORDERS AND DECLARES** that at the time specified in the Plan of Arrangement attached to the articles of arrangement giving effect to the Arrangement, Just Energy is hereby authorized to sell and transfer all right, title and interest in and to the ecobee Shares to the Purchaser as provided for in the Arrangement.

9. **THIS COURT ORDERS AND DECLARES** that Just Energy is hereby authorized and directed to take such steps and execute such documents as may be necessary or desirable for the conveyance of the ecobee Shares to the Purchaser in accordance with the Arrangement.

10. **THIS COURT ORDERS AND DECLARES** that at the time specified in the Plan of Arrangement, all of Just Energy's right, title and interest in and to the ecobee Shares shall vest absolutely in the Purchaser free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"), including, without limiting the generality of the foregoing:

(a) the Administration Charge, the FA Charge, the Directors' Charge, the KERP Charge, the DIP Lenders' Charge, the Priority Commodity/ISO Charge, and the Cash Management Charge (each as defined in the Second Amended and Restated Order granted in these CCAA proceedings on May 26, 2021, as may be amended, restated and/or supplemented from time to time); and

(b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act*, RSO 1990, c. P.10 or any other personal property registry system;

(all of which are collectively referred to as the "**Encumbrances**"), and for greater certainty, this Court orders that following the delivery of the ecobee Shares to the Purchaser, all of the Claims and Encumbrances affecting or relating to the ecobee Shares shall be expunged and discharged as against the ecobee Shares.

11. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds received from the sale of the ecobee Shares (which, for certainty, shall be net of any adjustments and escrow/indemnity holdbacks against the net proceeds pursuant to the Transaction) shall stand in the place and stead of the ecobee Shares and that from and after the delivery of the ecobee Shares to the Purchaser, all Claims and Encumbrances shall attach to the net proceeds from the sale of the ecobee Shares with the same priority as they had with respect to the ecobee Shares immediately prior to the conveyance of the ecobee Shares to the Purchaser, as if such conveyance had not been completed; provided, however, that the use of all of the proceeds (including any portion thereof) received from the sale of the ecobee Shares shall be subject to compliance with the terms of the Definitive Documents (as defined in the Second Amended and Restated Initial Order granted in these CCAA proceedings on May 26, 2021 (the "**Second ARIO**")).

SALE OF CONSIDERATION SHARES

12. **THIS COURT ORDERS AND DECLARES** that following the closing of the Transaction, Just Energy is hereby permitted to sell the Consideration Shares, in consultation with

the Monitor, and that upon Just Energy completing the sale of any of the Consideration Shares to a Third-Party Purchaser and delivering the Consideration Shares to such Third-Party Purchaser, all of Just Energy's right, title and interest in and to the Consideration Shares shall vest absolutely in such Third-Party Purchaser free and clear of and from any and all Claims and Encumbrances, and for greater certainty, this Court orders that following the delivery of the Consideration Shares to a Third-Party Purchaser, all of the Claims and Encumbrances affecting or relating to the Consideration Shares shall be expunged and discharged as against the Consideration Shares.

13. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds received from the sale of the Consideration Shares shall stand in the place and stead of the Consideration Shares and that from and after the delivery of the Consideration Shares to a Third-Party Purchaser, all Claims and Encumbrances shall attach to the net proceeds from the sale of the Consideration Shares with the same priority as they had with respect to the Consideration Shares immediately prior to the conveyance of the Consideration Shares to such Third-Party Purchaser, as if such conveyance had not been completed; provided, however, that the use of all of the proceeds (including any portion thereof) received from the sale of the Consideration Shares shall be subject to compliance with the terms of the Definitive Documents (as defined in the Second ARIO).

GENERAL

14. **THIS COURT ORDERS** that, notwithstanding:

(a) the pendency of these proceedings;

(b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (the "**BIA**") in respect of any of

the Just Energy Entities and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of any of the Just Energy Entities;

the vesting of (i) the ecobee Shares in the Purchaser, and (ii) the Consideration Shares in a Third-Party Purchaser, pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Just Energy Entities and shall not be void or voidable by creditors of the Just Energy Entities, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

15. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

16. **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 of America, to give effect to this Order and to assist the Just Energy Entities, the Monitor and their respective 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 Just Energy Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Just Energy Entities and the Monitor and their respective agents in carrying out the terms of this Order.

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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

Court File No: CV-21-00658423-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JUST ENERGY GROUP INC., et al (collectively, the "**Applicants**")

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

ORDER
(Support Agreement & Other Relief)

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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JUST ENERGY GROUP INC. et al.**

Court File No: CV-21-00658423-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

MOTION RECORD OF THE APPLICANTS
(Motion for Approval of ecobee Inc. Support Agreement and Related Relief)

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