

**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**

**IN THE MATTER OF A PLAN OF ARRANGEMENT AND COMPROMISE OR
ARRANGEMENT OF SEARS CANADA INC., CORBEIL ELECTRIQUE INC., S.L.H.
TRANSPORT INC., THE CUT INC. SEARS CONTACT SERVICES INC., INITIUM
LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM
TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC.,
173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 1001171
CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531
CANADA INC., 16886 CANADA INC., AND 3339611 CANADA INC.**

**MOTION RECORD OF ALARIS INCOME GROWTH FUND PARTNERSHIP
(returnable February 15, 2018)**

Field LLP
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Calgary AB T2P 0X8

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Lawyer for Alaris Income Growth Fund Partnership

To: Service List

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TAB 1

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LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 16886 CANADA INC., AND
3339611 CANADA INC.**

**NOTICE OF MOTION
(Motion for a Declaration of Trust)**

Alaris Income Growth Fund Partnership ("**Alaris**"), will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on February 15, 2018, at 10:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

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

THE MOTION IS FOR:

1. An Order (the "**Trust Order**") substantially in the form attached at Tab 3 of the Motion Record, *inter alia*:
 - (a) if necessary, abridging the time for service of this Notice of Motion and the Motion Record and dispensing with service on any other person other than those served;
 - (b) Declaring the funds in the amount of \$837,500 (the "**Trust Funds**") received by Sears Canada Inc. ("**Sears**") in the Receivership proceedings of SHS Services Management Inc. et al ("**SHS**") to be held in trust on behalf of Alaris, or in the alternative deeming a constructive trust in respect of the Trust Funds in favour of Alaris;
 - (c) Directing Sears to immediately pay the Trust Funds to Alaris;

- (d) Directing that Sears provide an accounting for the Trust Funds;
- (e) Directing Sears to hold an amount equal to the Trust Funds in a segregated account pending determination of the merits of their Application;
- (f) Awarding costs on a solicitor and client basis to Alaris; and
- (g) Such other relief as to this Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

Background

2. Alaris and Sears are both secured creditors of SHS and parties to various agreements as described below.
3. Sears was 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 June 22, 2017, as amended and restated.

Trust Order

4. On October 31, 2013, Sears and Alaris (collectively referred to as the "**Parties**") entered into an Inter-Creditor Agreement ("**Inter-Creditor Agreement**"), whereby Sears and Alaris agreed that any proceeds of enforcement of their respective security agreements with SHS would be divided equally. The Inter-Creditor Agreement also provided that if either Party received funds from enforcement proceedings, that Party was required to hold 50% of such funds in trust for the other Party.
5. SHS was placed into receivership and bankruptcy. Sears and Alaris agreed (the "**Distribution Agreement**") that the net proceeds arising from the sale of various assets and the collection of accounts receivable by the Receiver of SHS, to which both Parties' security attached, would be first issued by the Receiver to Sears and that Sears would then send Alaris' share of the funds to Alaris within two (2) days.
6. The Parties also separately sued the guarantors of SHS on their guarantees. Each Party realized a settlement in respect thereof. An Enforcement Proceeds Allocation and Distribution Agreement (the "**Enforcement Proceeds Agreement**") was executed, under which a net amount was to be paid by Sears to Alaris.

7. The Distribution Agreement and Enforcement Proceeds Agreement are expressly stated to be subject to the Inter-Creditor Agreement.
8. In April, 2017, Sears received a total of \$1.5 million from the SHS Receivership in respect of funds which the parties agreed were to be divided between the Parties pursuant to the Inter-Creditor Agreement and Distribution Agreement, and \$800,000 from guarantors of SHS, which was subject to the Enforcement Proceeds Agreement and the Inter-Creditor Agreement. Half of these funds were to be held in trust for Alaris, subject to a netting of funds under the Enforcement Proceeds Agreement.
9. Commencing in April, 2017, Alaris requested that Sears pay the funds held in trust and due to Alaris under the above Agreements, Sears did not respond.
10. Sears entered into proceedings under the CCAA on June 22, 2017. When further demand was made by Alaris upon Sears for the funds owing under the Inter-Creditor Agreement and the Guarantee Distribution Agreement, Sears responded that the monies had not been kept separate and apart and had been comingled. As a result, Sears claims that the funds are no longer subject to a valid trust claim.
11. At all times, Sears was aware of its trust obligations to Alaris, and notwithstanding this knowledge, Sears deliberately comingled the Trust Funds.
12. Sears has been unjustly enriched by the amount of the Trust Funds due to its actions.
13. Such further and other grounds as counsel may advise and this Court may permit.

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

14. The Affidavit of Darren Driscoll sworn October 19, 2017; and
15. Such other material as counsel may advise and this Court may accept.

December 20, 2017

Field LLP

400, 444 – 7 Avenue S.W.

Calgary AB T2P 0X8

Lawyer: Douglas S. Nishimura

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Lawyer for Alaris Income Growth Fund Partnership

To: The Service List

COURT FILE NO. CV-17-11846-00CL

IN THE MATTER OF A PLAN OF ARRANGEMENT AND COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ELECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC. SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 1001171 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 16886 CANADA INC., AND 3339611 CANADA INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION
(Motion for a Declaration of Trust)

Field LLP

400, 444 – 7 Avenue S.W.
Calgary AB T2P 0X8

Lawyer: Douglas S. Nishimura

Telephone Number: (403) 260-8548

Fax Number: (403) 264-7084

Lawyer for Alaris Income Growth Fund Partnership

TAB 2

Court File No. CV-17-11846-00CL

**ONTARIO
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LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 16886 CANADA INC., AND
3339611 CANADA INC.**

**AFFIDAVIT OF DARREN DRISCOLL
(Sworn October 19th, 2017)**

I, DARREN DRISCOLL, of the City of Calgary, in the Province of Alberta, MAKE OATH AND SAY THAT:

1. I am the Chief Financial Officer of Alaris IGF Corp. and Alaris Royalty Corp. (the two partners of the Applicant, Alaris Income Growth Fund Partnership) ("**Alaris**") and as such, have knowledge of the matters hereinafter deposed to, except where stated to be based on information and belief, in which case I have stated the source of the information and believe it to be true.
2. I swear this Affidavit in support of a motion by Alaris for an Order declaring funds in the amount of \$837,500 (the "**Trust Funds**") received by Sears Canada Inc. ("**Sears**") in the Receivership proceedings of SHS Services Management Inc. et al ("**SHS**") to be held in trust on behalf of Alaris and directing Sears to pay the Trust Funds to Alaris, plus related relief.
3. SHS was a company which installed and serviced appliances sold by Sears to Sears' customers. SHS received loans for its operations from both Sears and Alaris, who cooperated extensively with each other in the financing process.
4. On October 31, 2013, Sears and Alaris (collectively referred to as the "**Parties**") entered into an Inter-Creditor Agreement ("**Inter-Creditor Agreement**"), whereby the Parties agreed that any proceeds of enforcement of their respective security agreements with SHS would be divided equally. The Inter-Creditor Agreement also provided that if either Party received funds from

enforcement proceedings, that Party was required to hold 50% of such funds in trust for the other Party. Attached hereto and marked as **Exhibit "A"** is a copy of the Inter-Creditor Agreement.

5. SHS was placed into receivership and bankruptcy. The Parties cooperated in this process, to the extent that Sears asked Alaris to be the applicant in the bankruptcy, action to avoid negative publicity for Sears in its dealings with any Sears customers and trade creditors affected by SHS's bankruptcy. During the receivership process, The Parties entered into an agreement aimed at carrying out the effect of the Inter-Creditor Agreement (the "**Distribution Agreement**") in the context of the Receivership. The Distribution Agreement provided that all net proceeds from the sale of various assets and collection of accounts receivable by the Receiver of SHS, to which both Parties' security attached (called "**Split Funds**") would be first sent by the Receiver to Sears. Sears would then send Alaris' share of the funds to Alaris within two (2) days. Funds against which Alaris' security did not attach (called the "**Non-Split Funds**") were not divided. The Receiver was to determine the calculation of the Split and Non-Split Funds. Attached hereto and marked as **Exhibit "B"** is a copy of the Distribution Agreement.
6. At no time did Sears deny the effect of the Inter-Creditor Agreement. The Distribution Agreement simply recognized and settled issues regarding "Split Funds" and "Non-Split Funds".
7. The Parties also both pursued the principals of SHS on their guarantees. Each Party agreed to a settlement with the guarantors Sears and Alaris entered into an Enforcement Proceeds Allocation and Distribution Agreement (the "**Enforcement Proceeds Agreement**"), under which a net amount arising from the two settlements was to be paid by Sears to Alaris. Attached hereto and marked as **Exhibit "C"** is a copy of the Enforcement Proceeds Agreement.
8. The Distribution Agreement and Enforcement Proceeds Agreement are expressly stated to be subject to the Inter-Creditor Agreement.
9. I am advised by counsel for Alaris that the Receiver of SHS has confirmed that Sears received a total of \$1.5 million from the SHS Receivership to date in respect of "Split Funds" to be divided between the Parties. The funds were sent via wire transfer on April 20, 2017. The Receiver confirms that Daniel Westreich, Sears' Vice President, Central Operations and Senior Corporate Counsel ("**Westreich**"), provided the Receiver with wire instructions and was notified of the payment. The Receiver's calculation of the Split and Non-Split Funds was never challenged by Sears or Alaris.
10. Following the distribution by the Receiver to Sears, I made several inquiries with Westreich, who was my counterpart at Sears with respect to this matter who I had dealt with for the entirety of the

dealings between Sears and Alaris with respect to SHS and who signed all three agreements referred to above on behalf of Sears. While most of my communications were by telephone, attached hereto and marked as **Exhibit "D"** is a copy of an email with respect to Alaris' allocation, which is typical of the type of communication between Sears and Alaris.

11. In addition, counsel for Alaris made inquiries with counsel for Sears as to when the net payment of \$87,500 due to Alaris under the Enforcement Proceeds Agreement would be made. It should be noted that Alaris originally included a trust condition with the delivery of the Enforcement Proceeds Agreement, however, Sears' counsel did not wish to agree to the condition and it was withdrawn. Attached hereto and marked as **Exhibit "E"** is a copy of this correspondence.
12. Responses by Sears and its counsel to the foregoing inquiries were continually delayed. Then, on June 22, 2017, Alaris learned that Sears had entered into proceedings under the *Companies' Creditors Arrangement Act* ("**CCAA**"). Counsel for Alaris immediately made inquiries with the law firm who had been dealing with the SHS matters on behalf of Sears. That law firm in turn advised counsel for Alaris to contact Sears CCAA counsel and the Monitor.
13. Attached hereto and marked as **Exhibits "F" to "I"**, are copies of letters exchanged between counsel for Alaris counsel for Sears. As maybe seen by the correspondence, Sears now takes the position that, notwithstanding the foregoing agreements, the proceeds of the SHS Receivership received by Sears are not held in trust for Alaris simply because those funds were co-mingled.
14. At all times, Westreich was aware of the Inter-Creditor Agreement and its provisions. He and I discussed the fact that funds received by Sears would be held on behalf of Alaris on many occasions. Accordingly, Westreich was fully aware that those funds should not have been put into Sears' general account for its own use. Notwithstanding this, based on Sears' assertion that the funds were not segregated after the Receiver sent them to Sears, it appears that he deliberately allowed the funds to be co-mingled.

SWORN BEFORE ME at the City of Calgary,)
 in the Province of Alberta, this 19th day of)
 October, 2017.)

A Notary Public for the Province of Alberta

MICHAEL DONALD ERVIN
 A Commissioner For Oaths/Notary Public
 in and for the Province of Alberta



DARREN DRISCOLL

EXHIBIT A

INTERCREDITOR AGREEMENT

THIS AGREEMENT is made October 31, 2013

AMONG:

SHS SERVICES LIMITED PARTNERSHIP
(the "Borrower")

AND:

SHS SERVICES MANAGEMENT INC.
(the "GP")

AND:

INSTALLATION SERVICES ORG. LTD.
(("ISO"))

AND:

PAUL VERHOEFF

AND:

STEPHEN VERHOEFF

AND:

SEARS CANADA INC.
(("Sears"))

AND:

ALARIS INCOME GROWTH PARTNERSHIP
(("Alaris"))

WHEREAS:

- A. Pursuant to a loan agreement dated as of the date hereof (the "Sears Loan Agreement") made between the Borrower, as borrower, and Sears, as lender, Sears has provided a loan to the Debtor in the principal amount of CAD\$2,000,000 (the "Sears Principal Amount").
- B. Pursuant to a loan agreement dated as of the date hereof (the "Alaris Loan Agreement" and, together with the Sears Loan Agreement, the "Loan Agreements") made between the Borrower, as borrower, and Alaris, as lender, Alaris has provided a

This is Exhibit A
 referred to in the Affidavit of
Darren Brisoli
 Sworn before me this 19th day of
October, 2013

[Signature]
 A Commissioner for Oaths in and for the Province of Alberta
MICHAEL DONALD ERVIN
 A Commissioner For Oaths/Notary Public
 in and for the Province of Alberta

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loan to the Debtor in the principal amount of CAD\$2,000,000 (the "**Alaris Principal Amount**").

- C. Pursuant to the Guarantees (as defined below), the Guarantors (as defined below) have provided guarantees in favour of each of Sears and Alaris in respect of the payment and performance of the obligations as set out in the Loan Agreements.
- D. Pursuant to the Security (as defined below), the Debtors (as defined below) have each encumbered (or will encumber) all of their respective present and future assets, property and undertaking (the "**Collateral**") separately in favour of each of Sears and Alaris to secure the payment and performance of the obligations as set out in the Loan Agreements and the Guarantees.
- E. Each of Sears and Alaris are prepared to share with each other any property (including proceeds) received by either of them pursuant to the exercise of either of their respective rights under the Security, the Guarantees and the Loan Agreements, as applicable, and the parties wish to outline the circumstances and manner in which such sharing will occur.

NOW THEREFORE WITNESS, in consideration of the mutual covenants contained herein and the advance of funds to the Borrower pursuant to the Loan Agreements and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

ARTICLE I DEFINITIONS

- 1.1 In this Agreement, unless there is something in the subject matter or context inconsistent therewith:
- (a) "**Alaris Loan Agreement**" has the meaning ascribed thereto in paragraph B of the recitals to this Agreement;
 - (b) "**Alaris Principal Amount**" has the meaning ascribed thereto in paragraph B of the recitals to this Agreement;
 - (c) "**Collateral**" has the meaning ascribed thereto in paragraph D of the recitals to this Agreement;
 - (d) "**Debtors**" means, collectively, the Borrower and the Guarantors and "**Debtor**" means any of them individually as the context requires;
 - (e) "**Guarantees**" means, collectively, the guarantees granted to the Secured Parties by the Guarantors described in Schedule A hereto, as the same may be amended, restated, replaced or otherwise modified from time to time in accordance with the terms of this Agreement;

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- (f) "Guarantors" means, collectively, the GP, ISO, Paul Verhoeff and Stephen Verhoeff and "Guarantor" means any of them individually as the context requires;
- (g) "Other Guarantees and Security" means, collectively, (i) all guarantees granted to Sears by the Guarantors to the extent that such guarantees are granted in respect of obligations other than in respect of the payment and performance of the obligations as set out in the Sears Loan Agreement and (ii) all security interests granted to Sears by the Debtors to the extent that such security interests secure the payment and performance of obligations other than the obligations as set out in the Sears Loan Agreement;
- (h) "Principal Amount" means, collectively, the Sears Principal Amount and the Alaris Principal Amount; and "Principal Amount" means any one of such amounts, as the case may be;
- (i) "Sears Loan Agreement" has the meaning ascribed thereto in paragraph A of the recitals to this Agreement;
- (j) "Sears Principal Amount" has the meaning ascribed thereto in paragraph A of the recitals to this Agreement;
- (k) "Secured Parties" means, collectively, Sears and Alaris, and "Secured Party" means any one of them; and
- (l) "Security" means the security interests granted to the Secured Parties by the Debtors pursuant to the security agreements described in Schedule A hereto, as the same may be amended, restated, replaced or otherwise modified from time to time in accordance with the terms of this Agreement.

ARTICLE 2
RANKING OF LOAN AGREEMENTS AND SECURITY;
SHARING OF PROCEEDS

- 2.1 The Secured Parties and the Debtors hereby agree that as among the Secured Parties:
 - (a) the Security held by each Secured Party shall rank *pari passu* (being the same level of priority and rateably based on the Secured Parties' respective aggregate Principal Amounts); and
 - (b) the indebtedness evidenced by the Loan Agreements and the Guarantees shall rank and be repaid by the Debtor at all times on a *pari passu* basis.
- 2.2 Any and all defaults under any one of the Loan Agreements shall be deemed to be a concurrent default under all of the Loan Agreements, upon which one or more of the Secured Parties shall be entitled, subject to Section 2.4 hereof, to exercise any and all of the remedies under the terms of the Loan Agreements.
- 2.3 If any of the Secured Parties elects to take steps to demand or otherwise enforce its rights arising under or pursuant to its respective Loan Agreement or the Guarantees or the Security

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held by it pursuant to its respective Loan Agreement (whether scheduled or unscheduled and whether at, before or after the scheduled maturity of any such indebtedness), any money or property realized by the Secured Party in so enforcing such Loan Agreement, Guarantees or Security shall be received in trust and held by it as trustee for the benefit of the Secured Parties and shall be segregated from other funds and property of the party having received such money or property. Any payment of money or any property received by the enforcement of such Loan Agreement, Guarantee or Security, as applicable, by a Secured Party shall be shared and shall be applied in payment rateably and proportionately amongst the Secured Parties according to their respective Principal Amount(s), and no Secured Party shall receive proceeds in excess of the amount to which such Secured Party is entitled pursuant to the obligations evidenced by its respective Loan Agreement. Notwithstanding the foregoing, if a Secured Party (or Secured Parties) advances or spends money for the purposes of enforcing any Loan Agreement, Guarantee or Security, then such Secured Party (or Secured Parties) shall be entitled to receive, in priority to the other Secured Parties, proceeds from the enforcement of such Loan Agreement, Guarantee or the Security up to the amount of the money reasonably advanced or spent for the purposes of enforcement, pro rata among the Secured Parties who advanced or spent money for the purposes of enforcement, based on the amount of money so advanced or spent.

- 2.4 All consents, waivers, enforcement, acceleration rights and other Secured Party decisions related to the enforcement of the Loan Agreements, the Guarantees and the Security shall be a unanimous decision of the Secured Parties, provided that if Alaris and Sears cannot agree whether to enforce any Loan Agreement, Guarantee or Security following a default, after the expiry of a period of 15 days after any such default, the Secured Party wishing to demand under its Loan Agreement and enforce its Guarantees and Security shall be entitled to proceed with such enforcement provided that all proceeds of any such enforcement shall be shared equally between the Secured Parties in accordance with the terms of this Agreement. The fifteen (15) day period can be shortened or waived by mutual agreement of the Secured Parties.
- 2.5 The parties hereto agree that it is their intention that the Alaris Collateral and the Sears Collateral be identical. In furtherance of the foregoing, the parties hereto agree, subject to the other provisions of this Agreement, upon request by either Secured Party, to cooperate in good faith from time to time in order to determine the specific items included in their respective Collateral and the steps taken to perfect their respective security interests thereon pursuant to the Security.
- 2.6 Each Secured Party may, accept as otherwise expressly provided herein, amend or release any of the Guarantees and the Security held by it, compromise or alter any of the Guarantees or Security held by it, grant time or other indulgences to the Debtors and otherwise deal with the Debtors and the Security held by it as such Secured Party may think fit, subject always to the provisions of this Agreement. Notwithstanding the foregoing, each Secured Party represents that the executed Guarantees and Security delivered to the other Secured Party on the date hereof are the only documents granting a guarantee or security over the Collateral granted in favour of such Secured Party (other than, in the case of Sears, the Other Guarantees and Security) and agrees not to amend the Loan Agreement, Guarantees or the Security held by it in effect on the date hereof without the consent of the other Secured Party.

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- 2.7 Each Secured Party agrees that (i) there is no subordination of payment under of either of the Sears Loan Agreement or the Alaris Loan Agreement and (ii) prior to the acceleration of the obligations under its Loan Agreement, each Secured Party shall be entitled to receive and retain all scheduled payments received from the Debtors which are made in accordance with the terms of such Secured Party's Loan Agreement. Any prepayment received by either Secured Party shall be shared on a *pari passu* basis with the other Secured Party, unless the Secured Parties otherwise agree.
- 2.8 The Security held by each Secured Party shall be treated as having equal priority and shall be an encumbrance on the Collateral and shall rank, in all respects, *pari passu* with each other as provided herein notwithstanding:
- (a) the dates of execution and delivery of the Loan Agreement or the dates of attachment, registration or the method of perfection, or the invalidity of, all or any part of the Guarantees or the Security;
 - (b) the dates upon which the Principal Amount was advanced by the Secured Party to the Borrower;
 - (c) the date of any default under the Loan Agreement or the taking of any enforcement proceedings, including possession, with respect to the Guarantees or the Security;
 - (d) the rules of priority established under applicable law;
 - (e) any defect in, or non-perfection, setting aside, or avoidance of, the Security of any Secured Party;
 - (f) the modification of the Sears Loan Agreement or the Alaris Loan Agreement as permitted by section 2.6 hereof;
 - (g) the exchange of a security interest in any Collateral for a security interest in other Collateral;
 - (h) the commencement of a proceeding under the *Bankruptcy and Insolvency Act*, the *Companies Creditors' Arrangement Act* or any similar legislation; or
 - (i) any other circumstance whatsoever, including a circumstance that might be a defense available to, or a discharge of, a Debtor in respect of an obligation to any of the Secured Creditors.
- 2.9 Each Secured Party's Principal Amount for the purposes of this Agreement shall be the then outstanding Principal Amount of such Secured Party net of any portion of such Principal Amount which has at the date of such calculation been paid or repaid to such Secured Party.
- 2.10 Each Secured Party agrees that each Secured Party shall be solely responsible for perfecting and maintaining the perfection of its Security. The foregoing provisions of this Agreement are intended solely to establish the *pari passu* status of the Security between the Secured Parties and shall not impose on either Secured Party any obligations in respect of the

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disposition of proceeds of enforcement on any Collateral that would conflict with prior perfected claims therein in favor of any other Person or any order or decree of any court or other governmental authority or any applicable law.

- 2.11 The Secured Parties shall be named as additional insureds and/or loss payees, as applicable, under any insurance policies maintained by any Debtor, with their interests reflected as set out in this Agreement. All Proceeds of such policy, award, or deed will be applied in the order provided in section 2.3.
- 2.12 Each Secured Party acknowledges that and agrees that it has received executed copies of the Loan Agreements, the Guarantees and the Security.
- 2.13 For certainty, this Agreement has no application to the Other Guarantees and Security.

ARTICLE 3 PAYMENT AND EFFECT OF AGREEMENT ON RIGHTS

- 3.1 Each of the Debtors and each of the Secured Parties hereby agree that, subject to Section 2.4, if an Event of Default occurs (as such term is defined in the Loan Agreements), then either Secured Party may declare all of the obligations arising pursuant to its Loan Agreement, as applicable, immediately due and payable, and thereupon the Secured Party may proceed to enforce payment and performance of such obligations in accordance with the terms hereof and exercise any or all of the rights and remedies contained in the Loan Agreement, the Guarantees and the Security, as applicable, or otherwise afforded by law, in equity or otherwise.
- 3.2 Nothing contained in this Agreement is intended to or shall impair the obligations of the Debtors to the Secured Parties, including the obligation to pay each of them the indebtedness under each of the Loan Agreements, as and when the same shall become due and payable in accordance with their respective terms and in accordance with Section 2.1(b) hereof.
- 3.3 Nothing in this Agreement shall prevent any Secured Party hereto from exercising any remedy otherwise permitted by applicable law upon default under the terms of its respective Loan Agreement, Guarantees or Security, as applicable, and each Secured Party shall retain the right to enforce the security interest(s) granted to it pursuant to its respective Security; provided that the provisions of this Agreement have been complied with by such Secured Party, and all subject to the ranking and priorities set out in Article 2 arising from the exercise of any such remedy.
- 3.4 This Agreement shall automatically terminate, without the requirement for any further action on the part of any of the parties hereto, upon the repayment in full to the Secured Parties of all obligations as set out in the Loan Agreements.
- 3.5 None of the Secured Parties shall challenge the validity, effectiveness, enforceability or perfection of the other's Guarantees or Security or participate in or co-operate with any third party in any action, suit or proceeding commenced by a third party for that purpose.

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- 3.6 Each Debtor irrevocably and unconditionally agrees that so long as any of Principal Amounts are outstanding, it will (i) make all payments under the Loan Agreements, the Guarantees or secured by the Security, as applicable, in accordance with the terms of this Agreement concerning the sharing of proceeds; (ii) consent to any exchange of information in respect of such Debtor between the Secured Parties; and (iii) stand possessed of the Collateral and maintain and deal with the Collateral in accordance with the priorities set out in this Agreement.

ARTICLE 4 COMMUNICATION

- 4.1 Each Debtor and each Secured Party agrees to furnish to one another, from time to time upon request, information and particulars as to the indebtedness and liability of such Debtor to the Secured Party under the Loan Agreements and the Guarantees and the details of the Security and any registrations made in respect thereof.

ARTICLE 5 GENERAL

5.1 Further Assurances

Each of the parties hereto shall forthwith and from time to time, at the request of any of the parties hereto, execute and do all deeds, documents, and things which may be reasonably required to give full effect to the terms hereof.

5.2 Successors and Assigns

This Agreement is binding upon and shall endure to the benefit of the parties hereto and their respective successors and assigns. A Secured Party shall not assign or transfer any of its rights in or under the Loan Agreements, the Guarantees or the Security held by such Secured Party or the indebtedness thereunder or secured thereby, as applicable, except to a transferee who has previously agreed with the other Secured Parties in writing to be bound by the provisions of this Agreement.

5.3 Notice

Notice to be given shall, save as otherwise specifically provided, be in writing addressed to the party for whom it is intended and shall not be deemed received until actual receipt by the other party except if sent by facsimile, in which case it shall be deemed received on the business day next following the date of transmission, and except if sent by email, in which case it shall be deemed received on the day that receipt is acknowledged. The mailing, email and facsimile addresses of the parties shall be:

- (i) as to the Borrower and the GP:

- 8 -

c/o SHS Services Management Inc.
133, 2634 - 45th Avenue SE
Calgary, AB T2B 3M1

Attn: Chief Executive Officer
Fax: 905-747-2405

with a copy to:

125 Commerce Valley Drive West, Suite 500
Markham, Ontario L3T 7W4
Attn: President
Fax: 905-747-2405

(ii) as to ISO:

with a copy to:

Installation Services Org. Ltd.
Unit H, 7003 - 5th Street SE
Calgary, Alberta T2H 2G2
Attn: Theresa Lea
Fax 403-255-2839

(iii) as to Paul Verhoeff:

c/o Installation Services Org. Ltd.
Unit H, 7003 - 5th Street SE
Calgary, Alberta T2H 2G2
Attn: Theresa Lea
Fax 403-255-2839

(iv) as to Stephen Verhoeff:

c/o Installation Services Org. Ltd.
Unit H, 7003 - 5th Street SE
Calgary, Alberta T2H 2G2
Attn: Theresa Lea
Fax 403-255-2839

(v) as to Sears:

Sears Canada Inc.
290 Yonge Street, Suite 700
Toronto, Ontario M5B 2C3
Attn: General Counsel
Fax: (416) 941-2321

- 9 -

with a copy to:

Torys LLP
4600, 525-8th Ave SW
Calgary, Alberta T2P 1G1
Attn: Elizabeth Burton
Fax: 403.776.3800

(vi) as to Alaris:

Suite 232 - 2031 33rd Avenue S.W.
Calgary, Alberta, T2T 1Z5
Attn: Darren Driscoll, Chief Financial Officer
Fax: (403) 228-0906

with a copy to:

Burnet, Duckworth & Palmer LLP
2400, 525-8th Ave SW
Calgary, Alberta T2P 1G1
Attn: Robert Betteridge
Fax: 403.260.0332

or any other mailing or facsimile addresses as the parties from time to time may notify the others.

5.4 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein, without regard to the conflict of laws principles of such jurisdiction.

5.5 Entire Agreement

This Agreement, together with the agreements and instruments referred to herein and constitute the entire agreement between the parties in respect of its subject matter. No amendment or modification of the terms hereof shall be effective unless made in writing and signed by all of the parties hereto. No waiver shall be effective unless made in writing. No failure to exercise and no delay in exercising any right or remedy shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude any other further exercise thereof or the exercise of any other right or remedy. For certainty, this Agreement does not replace or override the amended and restated postponement agreement dated as of the date hereof between the Borrower, the Secured Parties, the GP and ISO (as amended, restated, modified or supplemented from time to time) and such agreement shall remain in full force and effect in respect to the subject matter thereof.

- 10 -

5.6 Illegality

The illegality or unenforceability of any provision of this Agreement shall not in any way affect or impair the legality or enforceability of the remaining provisions hereof; such illegal or unenforceable provision shall be severed herefrom.

5.7 Headings

The inclusion of the headings in this Agreement is for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

5.8 Counterparts, Facsimile

This Agreement may be executed in several counterparts and each of which, so executed shall be deemed to be an original and such counterparts together shall be but one and the same instrument. A copy of this Agreement executed by any party and transmitted by facsimile or e-mail shall be binding upon the parties in the same manner as an original executed copy and delivered in person.

5.9 Independent Legal Advice

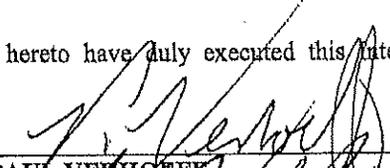
Each of the parties to this Agreement acknowledge that it has been advised to obtain independent legal advice with respect to entering into this Agreement, that it has obtained such independent legal advice or has expressly deemed not to seek such advice, and that the party is entering into this Agreement with full knowledge of the contents hereof, of the party's own free will and with full capacity and authority to do so.

[SIGNATURE PAGES TO FOLLOW]

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



Witness Gina Baccari



PAUL VERHOEFF

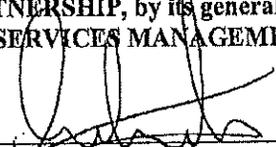


Witness Gina Baccari

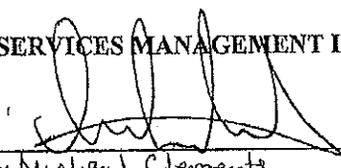


STEPHEN VERHOEFF

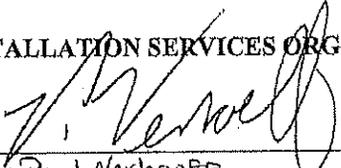
**SHS SERVICES LIMITED
PARTNERSHIP, by its general partner,
SHS SERVICES MANAGEMENT INC.**


By: _____
Name: Michael Clements
Title: CEO

SHS SERVICES MANAGEMENT INC.


By: _____
Name: Michael Clements
Title: CEO

INSTALLATION SERVICES ORG. LTD.


By: _____
Name: Paul Verhoeff
Title: Executive Chairman

SEARS CANADA INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

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

Witness _____ PAUL VERHOEFF

Witness _____ STEPHEN VERHOEFF

SHS SERVICES LIMITED
PARTNERSHIP, by its general partner,
SHS SERVICES MANAGEMENT INC.

By: _____
Name:
Title:

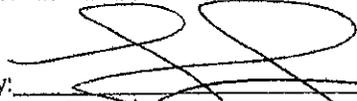
SHS SERVICES MANAGEMENT INC.

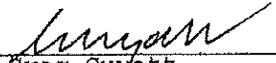
By: _____
Name:
Title:

INSTALLATION SERVICES ORG. LTD.

By: _____
Name:
Title:

SEARS CANADA INC.

By: 
Name: Terri Lowe
Title: Vice-President, Hometown Stores

By: 
Name: Greg Guyatt
Title: Vice-President, Corporate Controller

**ALARIS INCOME GROWTH FUND
PARTNERSHIP, by one of its partners,
ALARIS IGF CORP.**

By:  _____
Name: Stephen King
Title: President & Chief Executive Officer

SCHEDULE A

Guarantees:

1. joint and several limited guarantee dated as of September 30, 2013 granted by Paul Verhoeff and Stephen Verhoeff, limited to amount of Cdn \$1,000,000.00 in favour of Alaris;
2. limited guarantee dated as of September 30, 2013 granted by ISO limited to an aggregate amount of Cdn. \$750,000.00 in favour of Alaris;
3. guarantee dated as of September 30, 2013 granted by the GP in favour of Alaris;
4. joint and several limited guarantee dated as of September 30, 2013 granted by Paul Verhoeff and Stephen Verhoeff, limited to amount of Cdn \$1,000,000.00 in favour of Sears;
5. limited guarantee dated as of September 30, 2013 granted by ISO limited to an aggregate amount of Cdn. \$750,000.00 in favour of Sears; and
6. guarantee dated as of September 30, 2013 granted by the GP in favour of Sears;

Security:

7. general security agreement dated as of September 30, 2013 granted by the Borrower in favour of Alaris, providing a charge on all of the present and after-acquired assets, undertaking and property of the Borrower;
8. general security agreement dated as of September 30, 2013 granted by the GP in favour of Alaris, providing a charge on all of the present and after-acquired assets, undertaking and property of GP;
9. general security agreement dated as of September 30, 2013 hereof granted by ISO in favour of Alaris, providing a charge on all of the present and after-acquired assets, undertaking and property of ISO;
10. general security agreement dated as of September 30, 2013 granted by the Borrower in favour of Sears, providing a charge on all of the present and after-acquired assets, undertaking and property of the Borrower;
11. general security agreement dated as of September 30, 2013 granted by the GP in favour of Sears, providing a charge on all of the present and after-acquired assets, undertaking and property of GP;
12. general security agreement dated as of September 30, 2013 hereof granted by ISO in favour of Sears, providing a charge on all of the present and after-acquired assets, undertaking and property of ISO.

(i) in the case of the documents listed in (1)-(3) and (7)-(9) above, as confirmed and acknowledged by a confirmation and acknowledgement granted by the Borrower and each of the Guarantors in favour of Alaris confirming and acknowledging the continued effect of such documents and (ii) in

- 2 -

the case of the documents listed in (4)-(6) and (10)-(12) above, as confirmed and acknowledged by a confirmation and acknowledgement granted by the Borrower and each of the Guarantors in favour of Alaris confirming and acknowledging the continued effect of such documents.

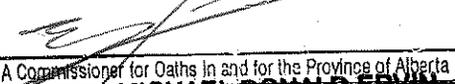
EXHIBIT B

DISTRIBUTION AGREEMENT

THIS AGREEMENT made as of the 7th day of October, 2014.

BETWEEN:

ALARIS INCOME GROWTH FUND PARTNERSHIP
("Alaris")

This is Exhibit <u>B</u>
referred to in the Affidavit of <u>Darwin D. Scott</u>
Sworn before me this <u>19th</u> day of <u>October</u> , 20 <u>14</u>

A Commissioner for Oaths in and for the Province of Alberta MICHAEL DONALD ERVIN A Commissioner For Oaths/Notary Public in and for the Province of Alberta

- and -

SEARS CANADA INC.
("Sears")

OF THE SECOND PART

WHEREAS each of Alaris and Sears provided a secured loan in the amount of \$2,000,000 (collectively, the "Loans") on or about October 31, 2013, to SHS Services Limited Partnership ("SHS LP"), and, pursuant to certain loan and security documentation, SHS LP and SHS Services Management Inc. ("SHS LP" and together with SHS LP, "SHS") provided security (the "Loan Security") to each of Alaris and Sears in respect of the Loans;

AND WHEREAS Alaris and Sears signed an Inter-Creditor Agreement dated October 31, 2013 (the "Inter-Creditor Agreement") in respect of the Loans;

AND WHEREAS Sears also has separate security ("Other Security") it holds for other debts of SHS that are not the subject of the Inter-Creditor Agreement;

AND WHEREAS an interim receivership was commenced in respect of SHS on December 13, 2013; which interim receivership was continued as a receivership pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* on January 9, 2014, with PricewaterhouseCoopers Inc. ("PwC") acting as receiver in respect of SHS (PwC, in such capacity, the "Receiver" and such receivership proceedings, collectively, the "Receivership");

AND WHEREAS a bankruptcy order was made in respect of SHS on July 30, 2014 and PwC was appointed as trustee in respect of SHS (PwC, in such capacity, the "Trustee" and such bankruptcy proceeding, the "Bankruptcy");

AND WHEREAS the Receiver, provided to Alaris and Sears, for discussion purposes, an Indicative Split Analysis on July 1, 2014 (the "Split Analysis"), a copy of which is attached as Schedule "A" hereto, designating, on a preliminary basis, SHS estate funds as "Split" or "No Split", which designations the parties hereto have agreed to apply, and correspond, to the Loan Security and the Other Security, respectively;

AND WHEREAS Sears and Alaris wish to set forth their agreement with respect to the distribution of funds delivered by the Receiver or Trustee to Sears in respect of its Loan Security and Other Security;

NOW THEREFORE WITNESS in consideration of the mutual covenants contained herein, pursuant to this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

1. In this Agreement, capitalized terms which are not otherwise defined herein shall have the meaning set forth in the Inter-Creditor Agreement.
2. This Agreement shall only become effective upon the date that: (a) the settlement agreement dated July 22, 2014, between SHS GP and Sears (the "**Settlement Agreement**"); and (b) the claims resolution and distribution order, are each approved by the Ontario Superior Court of Justice (Commercial List) substantially in the form submitted to such court for approval by the Receiver and Sears.
3. The parties hereto agree that the Debtors have defaulted under the Loans and Loan Security, that the parties' enforcement rights under Article 2 of the Inter-Creditor Agreement have been triggered and that each party has consented to the enforcement of the other party's Loan Security.
4. Subject to any amendments required pursuant to this Agreement, the Inter-Creditor Agreement remains in full force and effect.

Receipt and Disbursement of Funds

5. All funds disbursed by the Receiver or the Trustee to Sears in respect of its Loan Security and Other Security shall be subject to this Agreement (the "**Receivership Funds**"); provided, however, that Receivership Funds shall not include: (a) funds repaid by the Receiver or the Trustee to Alaris or Sears pursuant to any Receiver's Certificate; (b) funds paid by the Receiver or Trustee to Sears that are Administrative Priority Claims (as such term is defined in the Settlement Agreement); and (c) funds received from any person by Alaris or Sears outside the Receivership or Bankruptcy.
6. Within two (2) business days of receipt of any Receivership Funds by Sears, Sears shall provide notice (each such notice, a "**Notice**") to Alaris stating the amount and description of such Receivership Funds, and whether such Receivership Funds are designated as "Split" or "No Split" pursuant to the Split Analysis; provided, however, that, in the event that all, or any part, of the funds designated as "Funds held in reserve" pursuant to the Split Analysis are available to distribution to Sears, then such funds shall be considered as designated as "Split" funds for the purposes of this Agreement and any disbursements hereunder.
7. Within two (2) business days of receipt of any Receivership Funds by Sears that are designated as "Split" pursuant to the Split Analysis or hereunder, Sears shall pay 50% of such funds to Alaris by wire transfer in accordance with the wire transfer instructions set out on **Schedule "B"** hereto.
8. In the event that Alaris receives any funds disbursed by the Receiver or Trustee in respect of its Loan Security, such funds shall be subject to the same receipt and distribution requirements that are applicable to Receivership Funds.

Dispute Resolution

9. Subject to the dispute resolution mechanism described herein, the delivery of funds by Sears to Alaris pursuant to this Agreement, shall constitute full satisfaction of the obligations of Sears under the Inter-Creditor Agreement with respect to the Receivership Funds.

10. Alaris shall have a period of ten (10) business days from the date on which it receives a Notice in which to notify Sears that it disputes any designation of Receivership Funds by way of a notice of dispute (each such notice, a "Notice of Dispute"), and upon the expiry of such period, Alaris shall be deemed to have accepted such designation.
11. Any Notice of Dispute shall set out the reasons for the dispute.
12. Upon receipt by Sears of a Notice of Dispute, Alaris and Sears shall attempt to resolve the dispute by negotiation for a period of no less than thirty (30) days. In the event that such negotiations do not resolve the dispute to the mutual satisfaction of the parties hereto, then either party may provide notice to the other party that it intends to submit the dispute to an arbitrator, the identity of whom is to be mutually agreed upon by the parties, under an arbitration process to be mutually agreed upon by the parties and subject to the terms of this Agreement.
13. The arbitrator's award shall be given in writing and shall be final and binding on the parties, not subject to appeal, even on a question of law and shall deal with the question of costs, which costs shall include, without limitation, the arbitrator's fees and expenses, the provision of a reporter and transcripts, reasonable legal fees and reasonable costs of preparation.
14. For the purposes of this Agreement, the description of receipts and disbursements in the Split Analysis and the designation of such receipts and disbursements as "Split" or "No Split" shall be binding upon the parties. The only dispute permitted to be raised by Alaris shall be whether any Receivership Funds have been properly designated by Sears as "Split" or "No Split", with reference to the Split Analysis.

General

15. Each of the parties shall forthwith and from time to time, at the request of the other party execute and do all deeds, documents, and things which may be reasonably required to give full effect to the terms hereof.
16. This Agreement is binding upon and shall enure to the benefit of the parties hereto and their respective successors and assigns.
17. Notice to be given shall, save as otherwise specifically provided, be in writing addressed to the party for whom it is intended and shall not be deemed received until actual receipt by the other party except if sent by facsimile, which case it shall be deemed received on the business day next following the date of transmission, and except if sent by email, in which case it shall be deemed received on the day that receipt is acknowledged. The mailing, email and facsimile addresses of the parties shall be:

To Sears:

Sears Canada Inc.
290 Yonge Street, Suite 700
Toronto, ON
M5B 2C3

Attention: Daniel Westreich, Divisional Vice-President, Central Operations & Senior
Corporate Counsel
Fax No.: (416) 941-2321

Email: daniel.westreich@sears.ca

with a copy to:

Torys LLP
79 Wellington Street W.
30th Floor, Box 270
TD South Tower
Toronto, ON

M5K 1N2

Attention: Scott A. Bomhof / Adam M. Slavens
Fax No.: (416) 865.7380
Email: sbomhof@torys.com / aslavens@torys.com

To Alaris:

c/o Alaris Royalty Corp.
232, 2031 – 33rd Avenue S.W.
Calgary, AB T2T 1Z5

Attention: Darren Driscoll, Chief Financial Officer
Fax No.: 403-228-0906
Email: ddriscoll@alarisroyalty.com

or any other mailing or facsimile addresses as the parties from time to time may notify the others.

18. This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein, without regard to the conflict of laws principles of such jurisdiction.
19. This Agreement, together with the agreements and instruments referred to herein and constitute the entire agreement between the parties in respect of its subject matter. No amendment or modification of the terms hereof shall be effective unless made in writing and signed by all of the parties hereto: No waiver shall be effective unless made in writing. No failure to exercise and no delay in exercising any right or remedy shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude any other further exercise thereof or the exercise of any other right or remedy. For certainty, this Agreement does not replace or override the Inter-Creditor Agreement and such agreement shall remain in full force and effect in respect to the subject matter thereof.
20. The illegality or unenforceability of any provision of this Agreement shall not in any way affect or impair the legality or enforceability of the remaining provisions hereof; such illegal or unenforceable provision shall be severed herefrom.
21. The inclusion of the headings in this Agreement is for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
22. This Agreement may be executed in several counterparts and each of which, so executed shall be deemed to be an original and such counterparts together shall be but one and the same instrument.

A copy of this Agreement executed by any party and transmitted by facsimile or email shall be binding upon the parties in the same manner as an original executed copy and delivered in person.

23. Each of the parties to this Agreement acknowledge that it has been advised to obtain independent legal advice with respect to entering into this Agreement, that it has obtained such independent legal advice or has expressly deemed not to seek such advice, and that the party is entering into this Agreement with full knowledge of the contents hereof, of the party's own free will and with full capacity and authority to do so.

[THE REMAINDER OF THIS PAGE HAS BEEN LEFT INTENTIONALLY BLANK.
SIGNATURE PAGES FOLLOW.]

IN WITNESS WHEREOF the parties have executed this Agreement.

ALARIS INCOME GROWTH FUND PARTNERSHIP,
by one of its partners, Alaris IGF Corp.

Per:



Name: Darren Driscoll

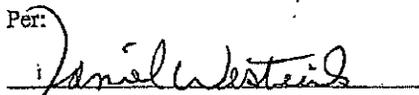
Title: Chief Financial Officer

I/we have authority to bind the partnership.

IN WITNESS WHEREOF the parties have executed this Agreement.

SEARS CANADA INC.

Per:

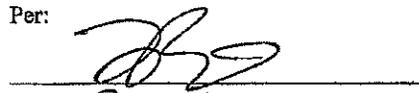


DANIEL WESTREICH
DIVISIONAL VICE PRESIDENT,
SENIOR CORPORATE COUNSEL

I/we have authority to bind the company.

SEARS CANADA INC.

Per:



Franco Perugini
Secretary

I/we have authority to bind the company.

Schedule "A"

Split Analysis

DRAFT - Without Prejudice - For Discussion Purposes Only

SFS Services Management Inc.
 Indicative Split Analysis
 July 1, 2014
 Note 1

	Split	No Split	Total	Notes
Receipts				
Hot water and HVAC rental portfolio sale				
Reliance Comfort Limited Partnership	3,876	-	3,876	2
Inventory and tangible fixed assets				
Century Services Inc.	706	-	706	3
Sales tax collected on receipts	-	604	604	4
Customer receipts	-	998	998	5
Miscellaneous receipts	-	39	39	
Total receipts	4,582	1,641	6,223	
Disbursements				
Receiver's fees and disbursements (includes legal counsel)	(1,032)	(418)	(1,450)	6
Payroll and source deductions	(401)	(100)	(502)	7
Seas BCA and Transition Service Agreement payments	(346)	(124)	(470)	8
Installer payments	-	(347)	(347)	9
Sales tax remittances (refunds)	-	(327)	(327)	
Sales tax paid on disbursements	-	(299)	(299)	
Monthly rent / lease payments	(233)	(58)	(291)	10
Centah	-	(188)	(188)	11
Telecommunications	(23)	(23)	(45)	12
Insurance	(17)	(17)	(34)	12
Utilities	(13)	(13)	(27)	12
Other expenses	(21)	(21)	(42)	12
Total disbursements	(2,086)	(1,934)	(4,020)	
Opening cash	-	1,205	1,205	13
Funds received under Receiver's Borrowings	-	688	688	14
Funds held in reserve	-	(706)	(706)	15
Total	-	1,187	1,187	
Net cash flow before Further Receipts and Disbursements	2,497	893	3,390	
Relevant additional receipts and disbursements post June 15, 2014 ("Further Receipts and Disbursements")				
Hot water and HVAC rental portfolio sale				
Hydrosolutions, L.P.	105	-	105	2
GST and QST related to Hydrosolutions, L.P. transaction	-	16	16	2
Inventory and tangible fixed assets				
Century Services Inc.	5	-	5	3
Window and door orders completed by third parties	-	40	40	16
Receiver's fees and disbursements (includes legal counsel) related to pre June 15 time [TO DISCUSS]	(100)	(100)	(200)	17
Accrued operating costs [TO DISCUSS]	(200)	(50)	(250)	18
Contingency [TO DISCUSS]	(50)	(50)	(100)	19
Total Further Receipts and Disbursements	(240)	(144)	(384)	
Net cash flow after Further Receipts and Disbursements	2,257	749	3,006	
Less: Specified priority obligations				
Receiver's borrowings	(688)	-	(688)	20
S. 81.4 obligations	(133)	-	(133)	21
S. 81.6 obligations	(43)	-	(43)	22
Pre-filing source deductions and workers' compensation	(36)	-	(36)	23
Total specified priority obligations	(900)	-	(900)	
Net cash flow after specified priority obligations	1,357	749	2,106	24

DRAFT - Without Prejudice - For Discussion Purposes Only

Notes

- 1 This analysis estimates potential recoveries as of June 15, 2014 in the receivership of SHS Services Management Inc. ("SHS" or the "Company") on both a (i) "Split" - the amount is to be shared 50/50 between Sears Canada Inc. ("Sears") and Alaris Income Growth Fund Partnership, or (ii) "No Split" - the amount is not shared and only Sears is the beneficiary due to having prior ranking security. The analysis does not include the lien claims and trust claims, these are assumed to be included in a settlement that is being negotiated with Sears and will be funded for separately.
- 2 Includes net sale proceeds received from the Reliance Comfort Limited Partnership sale, purchase price was \$3.9 million before certain purchase price adjustments which are regular for this type of transaction. Post June 15, 2014 receipts include sale proceeds from the Hydrosolutions, L.P. sale, purchase price is \$105k before certain purchase price adjustments which are regular for this type of transaction. The proceeds from both of these sales have been included in the Split column as they represent realizations from hard assets. Applicable sales taxes collected on both transactions have been included in the No Split column as they will be remitted to the appropriate government revenue bodies.
- 3 Century Services has liquidated the remaining inventory and fixed assets. As of June 15, 2014, approximately \$706K has been received from the auctioneer. Anticipated recoveries includes further amounts to be settled between the Receiver and Century Services which is estimated at \$5k. The proceeds have been included in the split column since they are realizations from hard assets (ie. inventory and fixed assets).
- 4 Customer receipts primarily include receipts related to the completion of certain orders in WIP, as well as from the collection of monthly hot water heater rentals. All of these receipts are allocated to No Split.
- 5 Miscellaneous receipts include, but are not limited to: certain refunds from various utility and service providers and interest income. All of these receipts are allocated to No Split.
- 6 Professional fees paid represent fees paid to the Receiver and its legal counsel for time incurred in the receivership up to February 21, 2014 and fees paid only to the Receiver for the period February 22, 2014 to March 31, 2014; fees for its legal counsel remain unpaid for this same period. Approximately 71% of these costs have been allocated to the Split category based on a relative estimate of the purposes for which costs were incurred.
- 7 Payroll costs include SHS staff retained by the Receiver to assist with: safeguarding hard assets (ie. inventory and fixed assets), the liquidation process and the completion of certain customer orders, in addition to regular receivership administration, among other things. 80% of these costs have been allocated to Split and the remaining 20% have been allocated to No Split.
- 8 Includes amounts payable to Sears pursuant to the Branded Concession Agreement, which includes: merchant fees and royalties, among others. These costs were allocated between Split and No Split based on the allocation of the gross proceeds in the line "Total Receipts" to attribute the relevant benefit of the Agreement to the sources of recoveries.
- 9 Installer payments relate to the completion of certain WIP orders, therefore all No Split.
- 10 Includes lease and rent payments pursuant to agreements that SHS had in place as at December 13, 2013 in connection with certain equipment and office/warehouse space. The Receiver maintained these agreements on an as needed basis to safeguard the inventory and fixed assets during the liquidation process and to continue on limited operations by completing certain orders in WIP, therefore allocated 80% to Split and 20% to No Split.
- 11 Centah is the call centre that SHS employed pre-Receivership, the call centre was continued post-Receivership to assist with responding to the large volume of customer inquiries the Receiver received. Relates to ongoing operations, therefore all No Split.
- 12 Telecommunication, Utilities, Insurance and Other Expenses all include various overhead costs incurred to facilitate the liquidation process of the inventory and fixed assets, and to complete certain WIP orders as part of continuing limited ongoing operations, as such these have all been split 50/50 between Split and No Split.
- 13 Opening cash represents funds held in the Company's bank accounts on December 13, 2013, so are allocated to the No Split category.
- 14 The Receiver made borrowings from Sears to fund the initial operating costs of the receivership.
- 15 The Receiver is holding \$706K of funds in a contingency reserve for deemed trust and priority claims which have been identified in the receivership. These have been fully removed from this analysis
- 16 Certain orders have been sold to third parties under an arrangement whereby the Receiver collects a percentage of the sales completed. To date, approximately \$8k has been collected from these third parties, a further \$40k is expected to be collected related to these sold orders. These receipts are all No Split.
- 17 Accrued professional fees include actual and estimated time of the Receiver and its counsel for the period April 1, 2014 to June 15, 2014. These amounts remain subject to adjustment and have arbitrarily been split between the two categories. This does not include an estimate of time/costs related to completion of a claims process, or other post June 15 matters.
- 18 Accrued operating costs consist of costs already incurred in the receivership up to June 15, 2014 which have not yet been paid, as well as an estimate of future costs to be incurred. Future costs include primarily payroll, Centah data maintenance, Avanti payroll provider, rent for temporary office space, etc. For this analysis it is estimated that these costs will cease in August 2014. 80% of these costs have been allocated to Split and the remaining 20% have been allocated to No Split.
- 19 Contingency included for other costs not identified in above analysis.
- 20 Recovery of Receiver's borrowings assumed to be made from proceeds of water heater rental and inventory sales in full.
- 21 The Receiver has reviewed the Company's payroll records and calculated the amount owing to the employees under s.81.4 of the BIA for outstanding wages, commissions, vacation pay and eligible expenses. These are recoverable from the sale of the Company's current assets, which are included in the Split category
- 22 Sunlife has submitted a claim for contributions which were credited to the former employees' pension plans, however, weren't remitted to Sunlife by SHS. In accordance with s.81.6 of the BIA, the full amount would be payable. For this analysis we have treated these amounts as coming from the sale of the Company's assets
- 23 The Receiver has reviewed the Company's payroll records to determine the amount owing to the CRA for pre-receivership source deductions. Certain provincial bodies have asserted a deemed trust claims for amounts outstanding under the relevant worker's compensation legislation. These amounts have been included in this analysis, however, may be reversed by a bankruptcy filing. For this analysis we have treated these amounts as coming from the sale of the Company's assets in the "Split" category.
- 24 Total does not include release (if any) from contingency reserve funds held

Schedule "B"**Wire Payment Instructions**

Alaris Income Growth Fund 232, 2031 33 Avenue SW Calgary, AB T2T 1Z5
HSBC Bank Canada 407 - 8 th Avenue SW Calgary, AB T2P 1E5
Bank: 016 Transit: 10029 Account: 0374715-001 Swift: HKBCCATT

EXHIBIT C

ENFORCEMENT PROCEEDS ALLOCATION AND DISTRIBUTION AGREEMENT

THIS AGREEMENT made as of the _____ day of June, 2017.

BETWEEN:

ALARIS INCOME GROWTH FUND PARTNERSHIP
("Alaris")

- and -

SEARS CANADA INC.
("Sears")

This is Exhibit <u>C</u>	
referred to in the Affidavit of	
<u>Darren Driscoll</u>	
Sworn before me this	day of
<u>October</u>	<u>20</u>
A Commissioner for Oaths in and for the Province of Alberta	

MICHAEL DONALD ERVIN
A Commissioner For Oaths/Notary Public
in and for the Province of Alberta

OF THE SECOND PART

WHEREAS each of Alaris and Sears provided a secured loan in the amount of \$2,000,000 (collectively, the "Loans") on or about October 31, 2013, to SHS Services Limited Partnership ("SHS LP"), and, pursuant to certain loan and security documentation (the "Loan Documentation"), SHS LP and SHS Services Management Inc. provided security (the "Loan Security") to each of Alaris and Sears in respect of the Loans;

AND WHEREAS Alaris and Sears signed an Inter-Creditor Agreement dated October 31, 2013 (the "Intercreditor Agreement") in respect of the Loans;

AND WHEREAS pursuant to the Intercreditor Agreement, Alaris and Sears agreed that any money or property realized by either of them in enforcing the Loan Documentation, the Loan Security and the guarantees granted in connection therewith shall be shared and shall be applied in payment rateably and proportionately among them according to their respective Loans (all such money or property as at the date hereof, the "Enforcement Proceeds");

AND WHEREAS, as of the date of this Agreement, (the "Effective Date") Alaris has realized Enforcement Proceeds in the amount of \$625,000;

AND WHEREAS, as of the Effective Date, Sears has realized Enforcement Proceeds in the amount of \$800,000;

AND WHEREAS Sears and Alaris wish to set forth their agreement with respect to the allocation and distribution of the Enforcement Proceeds currently held by the Parties;

NOW THEREFORE WITNESS in consideration of the mutual covenants contained herein, pursuant to this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

Allocation and Distribution

1. In full and final satisfaction of the obligations of both Parties under the Intercreditor Agreement with respect to the currently held Enforcement Proceeds, Sears shall pay \$87,500 (such funds, the

"Distributed Funds") to Alaris by wire transfer in accordance with the wire transfer instructions set out on **Schedule "A"** hereto within two (2) business days of the execution of this Agreement.

2. Forthwith upon receipt by Alaris of the Distributed Funds, Alaris shall provide Sears with an executed Acknowledgment and Receipt in the form attached as **Schedule "B"** hereto.
3. Subject to any amendments required pursuant to this Agreement, the Intercreditor Agreement and the Distribution Agreement made as of October 7, 2014, between Alaris and Sears (the "**Distribution Agreement**") each remains in full force and effect, with respect to Enforcement Proceeds realized after the Effective Date.

General

4. Each of the parties shall forthwith and from time to time, at the request of the other party execute and do all deeds, documents, and things which may be reasonably required to give full effect to the terms hereof.
5. This Agreement is binding upon and shall enure to the benefit of the parties hereto and their respective successors and assigns.
6. Notice to be given shall, save as otherwise specifically provided, be in writing addressed to the party for whom it is intended and shall not be deemed received until actual receipt by the other party except if sent by facsimile, which case it shall be deemed received on the business day next following the date of transmission, and except if sent by email, in which case it shall be deemed received on the day that receipt is acknowledged. The mailing, email and facsimile addresses of the parties shall be:

To Sears:

Sears Canada Inc.
290 Yonge Street, Suite 700
Toronto, ON
M5B 2C3

Attention: Daniel Westreich, Divisional Vice-President, Senior Corporate Counsel
Email: daniel.westreich@sears.ca

with a copy to:

Torys LLP
79 Wellington Street W.
30th Floor, Box 270
TD South Tower
Toronto, ON

M5K 1N2

Attention: Adam M. Slavens
Email: aslavens@torys.com

To Alaris:

c/o Alaris Royalty Corp.
232, 2031 - 33rd Avenue S.W.
Calgary, AB T2T 1Z5

Attention: Darren Driscoll, Chief Financial Officer
Email: ddriscoll@alarisroyalty.com

or any other mailing or facsimile addresses as the parties from time to time may notify the others.

7. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to the conflict of laws principles of such jurisdiction.
8. This Agreement, together with the agreements and instruments referred to herein and constitute the entire agreement between the parties in respect of its subject matter. No amendment or modification of the terms hereof shall be effective unless made in writing and signed by all of the parties hereto: No waiver shall be effective unless made in writing. No failure to exercise and no delay in exercising any right or remedy shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude any other further exercise thereof or the exercise of any other right or remedy. For certainty, this Agreement does not replace or override the Intercreditor Agreement and the Distribution Agreement and such agreements shall remain in full force and effect in respect to the subject matter thereof.
9. The illegality or unenforceability of any provision of this Agreement shall not in any way affect or impair the legality or enforceability of the remaining provisions hereof; such illegal or unenforceable provision shall be severed herefrom.
10. The inclusion of the headings in this Agreement is for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
11. This Agreement may be executed in several counterparts and each of which, so executed shall be deemed to be an original and such counterparts together shall be but one and the same instrument. A copy of this Agreement and the Acknowledgement and Receipt executed by any party and transmitted by email shall be binding upon the parties in the same manner as an original executed copy and delivered in person.
12. Each of the parties to this Agreement acknowledge that it has been advised to obtain independent legal advice with respect to entering into this Agreement, that it has obtained such independent legal advice or has expressly deemed not to seek such advice, and that the party is entering into this Agreement with full knowledge of the contents hereof, of the party's own free will and with full capacity and authority to do so.

[THE REMAINDER OF THIS PAGE HAS BEEN LEFT INTENTIONALLY BLANK.
SIGNATURE PAGES FOLLOW.]

IN WITNESS WHEREOF the parties have executed this Agreement.

ALARIS INCOME GROWTH FUND PARTNERSHIP,
by one of its partners, Alaris IGF Corp.

Per:



Name: Darren Driscoll
Title: Chief Financial Officer

I/we have authority to bind the partnership.

SEARS CANADA INC.

Per:

I/we have authority to bind the company.

SEARS CANADA INC.

Per:

I/we have authority to bind the company.

IN WITNESS WHEREOF the parties have executed this Agreement.

ALARIS INCOME GROWTH FUND PARTNERSHIP,
by one of its partners, Alaris IGF Corp.

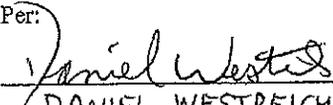
Per:

Name: Darren Driscoll
Title: Chief Financial Officer

I/we have authority to bind the partnership.

SEARS CANADA INC.

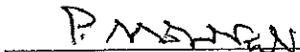
Per:


DANIEL WESTREICH
DIVISIONAL VICE-PRESIDENT, SENIOR CORPORATE COUNSEL

I/we have authority to bind the company.

SEARS CANADA INC.

Per:


P. MOUTAN
SECRETARY

I/we have authority to bind the company.

Schedule "A"

Wire Payment Instructions

Alaris Income Growth Fund 232, 2031 33 Avenue SW Calgary, AB T2T 1Z5
HSBC Bank Canada 407 - 8 th Avenue SW Calgary, AB T2P 1E5
Bank: 016 Transit: 10029 Account: 0374715-001 Swift: HKBCCATT

Schedule "B"

Acknowledgement and Receipt

ACKNOWLEDGEMENT AND RECEIPT**TO: SEARS CANADA INC. ("Sears")**

Capitalized terms which are not otherwise defined herein shall have the meanings set forth in the Enforcement Proceeds Allocation and Distribution Agreement dated as of June _____, 2017, between Alaris Income Growth Fund Partnership ("Alaris") and Sears (the "Enforcement Proceeds Agreement").

The undersigned, Alaris, hereby acknowledges: (a) receipt of \$87,500 in full and final satisfaction of all amounts owing by Sears to Alaris pursuant to the Intercreditor Agreement with respect to the Enforcement Proceeds; and (b) that all obligations of Sears pursuant to: (i) the Intercreditor Agreement with respect to the Enforcement Proceeds; and (ii) the Enforcement Proceeds Agreement, have been fully and finally satisfied.

DATED at _____ this _____ day of June, 2017.

**ALARIS INCOME GROWTH FUND
PARTNERSHIP,
by one of its partners, Alaris IGF Corp.**

Per: 

Name: Darren Driscoll
Title: Chief Financial Officer

I/we have authority to bind the partnership.

EXHIBIT D

Elvina Hussein

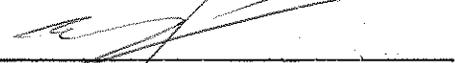
From: Douglas Nishimura
Subject: FW: SHS funds

From: Darren Driscoll
Sent: April 28, 2017 1:35 PM
To: 'Daniel Westreich' <dwestre@sears.ca>
Subject: RE: SHS funds

Great thanks! A good weekend to you as well.

Darren

From: Daniel Westreich [mailto:dwestre@sears.ca]
Sent: April 28, 2017 1:30 PM
To: Darren Driscoll
Subject: Re: SHS funds

This is Exhibit <u>D</u>
referred to in the Affidavit of <u>Darren Driscoll</u>
Sworn before me this <u>19th</u> day of <u>October</u> 20 <u>17</u>

A Commissioner for Oaths in and for the Province of Alberta

MICHAEL DONALD ERVIN
 A Commissioner For Oaths/Notary Public
 in and for the Province of Alberta

Hi Darren,

I've reached out to our counsel, Adam Slavens of Torys, to start the process of getting the paperwork and final reconciliation advice. He will also reach out to Doug.

Have a good weekend.

Daniel Westreich | Divisional Vice-President & Senior Corporate Counsel
 Sears Canada Inc.
 290 Yonge Street | Suite 700 | Toronto, ON | M5B 2C3
 416-941-4412 (W) | 416-941-2321 (F) | daniel.westreich@sears.ca

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On Thu, Apr 27, 2017 at 12:59 PM, Darren Driscoll <ddriscoll@alarisroyalty.com> wrote:

Hi Daniel,

We have a Q1 reporting date on May 8th and we'd really like to be able to say we've received most of what we have left on the books so it would be our preference to settle up to what has been paid til now and then do a final one once the books are closed.

Darren

From: Daniel Westreich [mailto:dwestre@sears.ca]
Sent: April 27, 2017 10:52 AM
To: Darren Driscoll
Subject: Re: SHS funds

Hi Darren,

I believe there is one final payout that we are to expect in the next few weeks. Would you like to hold off on doing our inter-creditor reconciliation until that final payment?

Thanks

Daniel Westreich | Divisional Vice-President & Senior Corporate Counsel

Sears Canada Inc.
290 Yonge Street | Suite 700 | Toronto, ON | M5B 2C3
416-941-4412 (W) | 416-941-2321 (F) | daniel.westreich@sears.ca

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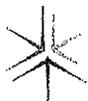
On Wed, Apr 26, 2017 at 1:41 PM, Darren Driscoll <ddriscoll@alarisroyalty.com> wrote:

Daniel,

I understand from Mica at PWC that they have distributed the majority of the funds to you last week. Have you got our wire information so you can send Alaris' portion our way? We can also square up on the two settlements as we've been holding \$312,500 in trust from ours.

Thanks,
Darren

EXHIBIT E



MILLER THOMSON
AVOCATS | LAWYERS

MILLER THOMSON LLP
700 - 9TH AVENUE S.W., SUITE 3000
CALGARY, AB T2P 3V4
CANADA

T 403.298.2400
F 403.262.0007

MILLERTHOMSON.COM

October 18, 2017

DELIVERED

Live Out There Inc.
c/o Registered Office
400, 444 – 7 Avenue SW
Calgary, AB T2P 0X8

Nicole T. Taylor-Smith
Direct Line: 403.298.2401
ntaylor-smith@millerthomson.com

Faith McNeil – Paralegal
Direct Line: 403.206.6313
fmcneil@millerthomson.com

File: 0226160.0001

Dear Sir/Madam:

**Re: In The Matter of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, As Amended
And In The Matter of Live Out There Inc.
Action No. 25-094830**

Further to the above referenced matter, as Respondent to Application we enclose for service upon you the following:

1. Originating Application by Amer Sports Canada Inc. carrying on Business as Arc'teryx Equipment for a Bankruptcy Order scheduled for November 7, 2017 at 2:00 p.m. at the Calgary Courts Centre, 601 – 5 Street Sw, Calgary before the Registrar in Bankruptcy - filed October 18, 2017;
2. Affidavit of Verification in Support of Application for Bankruptcy Order sworn by Rob Scott – filed October 18, 2017; and
3. Consent to Act As Trustee – Hudson & Company Insolvency Trustees Inc. – filed October 18, 2017.

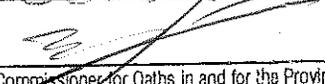
If you have any questions or concerns, or if you intend to appear at the application please contact the undersigned.

Yours truly,

MILLER THOMSON LLP

Per: 

Nicole T. Taylor-Smith
Partner
Enclosures
27375248.1

This is Exhibit	5
referred to in the Affidavit of	Daniel Dissell
Sworn before me this	19 th day of
	October 2017
 A Commissioner for Oaths in and for the Province of Alberta	



400 - 444 7 AVE SW
Calgary AB T2P 0X8
fieldlaw.com

CALGARY / EDMONTON / YELLOWKNIFE

Douglas S. Nishimura

T 403-260-8548

F 403-264-7084

dnishimura@fieldlaw.com

Assistant: Elvina Hussein

T 403-232-1797

ehussein@fieldlaw.com

Our File: 59024-1

June 16, 2017

VIA EMAIL (aslavens@torys.com)

Torys LLP
30th floor, 79 Wellington Street West
Toronto, ON M5K 1N2

Attention: Adam Slavens

**Re: SHS Services Management Inc. et al
Enforcement Proceeds Allocation and Distribution Agreement ("Agreement")**

Thank you for your email of June 15, 2017, together with the executed Agreement.

Enclosed please find the Agreement executed by our client, Alaris Income Growth Fund Partnership. The enclosed is sent to you in trust on the condition that no use be made of same until such time as you have undertaken to provide our office with Alaris' share of Distributed Funds in the amount of \$87,500 as outlined in Paragraph 1 of the Agreement.

We also confirm that we will now be releasing the balance of the Alaris Enforcement Proceeds in the amount of \$312,500 to our client.

Should you have any questions or concerns with respect to the above, please do not hesitate to contact our office.

Sincerely,

FIELD LLP

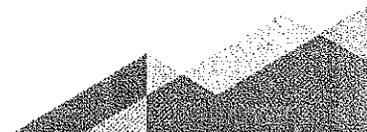
A handwritten signature in black ink, appearing to read "D. Nishimura". The signature is fluid and cursive, with a large loop at the end.

Douglas S. Nishimura
Partner

DSN/eh
Encl.

C3157894.DOCX;1

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Elvina Hussein

From: Slavens, Adam <aslavens@torys.com>
Sent: June-16-17 7:49 PM
To: Elvina Hussein
Cc: Douglas Nishimura
Subject: Re: SHS Services Management Inc. et al
Attachments: image001.gif; image1f91ed.JPG

Doug,

I do not understand the purpose of your letter. I have not provided, and will not be providing, any undertaking to you in connection with this matter. The agreement between the parties speaks for itself.

Adam

P. 416.865.7333 | F. 416.865.7380 | 1.800.505.8679
 79 Wellington St. W., 30th Floor, Box 270, TD South Tower Toronto, Ontario M5K 1N2 Canada |
www.torys.com<<http://www.torys.com>>
 [Torys LLP]<<http://www.torys.com>>

From: Elvina Hussein
 Sent: Friday, June 16, 2017 4:51 PM
 To: Slavens, Adam
 Cc: Douglas Nishimura
 Subject: SHS Services Management Inc. et al

Good afternoon. Please see attached.

Thank you

<<http://www.fieldlaw.com/>>[Field Law]<<http://www.fieldlaw.com/>><<http://www.fieldlaw.com/>>

Elvina Hussein | Legal Assistant
 T 403-232-1797 | F 403-264-7084 | ehussein@fieldlaw.com
 400 – 444 7 AVE SW, Calgary AB T2P 0X8

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Elvina Hussein

From: Slavens, Adam <aslavens@torys.com>
Sent: June-22-17 9:16 AM
To: Douglas Nishimura
Subject: RE: SHS

Hi Doug,

Daniel cannot confirm that the payment was made or that a separate trust account was set up. Going forward, you should contact Osler regarding this matter (mwasserman@osler.com).

Adam

P. 416.865.7333 | F. 416.865.7380 | 1.800.505.8679 -----Original Message-----
From: Slavens, Adam
Sent: June-21-17 11:18 AM
To: 'Douglas Nishimura' <DNishimura@fieldlaw.com>
Subject: RE: SHS

Torys is not holding any funds in trust. I will get back to you as soon as possible.

P. 416.865.7333

-----Original Message-----
From: Douglas Nishimura [<mailto:DNishimura@fieldlaw.com>]
Sent: June-21-17 10:57 AM
To: Slavens, Adam <aslavens@torys.com>
Subject: RE: SHS

I was under the impression you had the funds in trust, as we did. In any event, the original intercreditor agreement specifies that such funds are held in trust when received from SHS, so we would like confirmation asap.

Douglas S Nishimura
Partner

Field Law
T 403-260-8548
F 403-264-7084
dnishimura@fieldlaw.com
fieldlaw.com

"Field Law" is a registered trademark of Field LLP.

-----Original Message-----

From: Slavens, Adam [mailto:aslavens@torys.com]
Sent: Wednesday, June 21, 2017 8:55 AM
To: Douglas Nishimura
Subject: RE: SHS

Hi Doug, I have followed up with Sears and I will get back to you as soon as I can. Adam

P. 416.865.7333 | F. 416.865.7380 | 1.800.505.8679

Torys LLP
79 Wellington St. W., 30th Floor, Box 270, TD South Tower Toronto, Ontario M5K 1N2 Canada | www.torys.com

-----Original Message-----

From: Douglas Nishimura [mailto:DNishimura@fieldlaw.com]
Sent: June-21-17 10:01 AM
To: Slavens, Adam <aslavens@torys.com>
Subject: SHS

Adam, can you confirm transfer of funds?

Let me know right away.

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EXHIBIT F



400 - 444 7 AVE SW
Calgary AB T2P 0X8
fieldlaw.com

CALGARY / EDMONTON / YELLOWKNIFE

Douglas S. Nishimura
Partner
AB
T 403-260-8548
F 403-264-7084
dnishimura@fieldlaw.com
Our File: 59024-1

June 23, 2017

Osler, Hoskin & Harcourt LLP
6200, 100 King Street West
Toronto ON M5X 1B8

Attention: Marc Wasserman

This is Exhibit	referred to in the Affidavit of
Daniel Donnell	
Sworn before me this	19 th day of
October, 2017	
A Commissioner for Oaths In and for the Province of Alberta	

MICHAEL DONALD ERVIN
A Commissioner For Oaths/Notary Public
In and for the Province of Alberta

Re: **Alaris Income Growth Fund Partnership ("Alaris") and Sears Canada Inc. ("Sears")**

We act for Alaris with respect to matters concerning SHS Services Management Inc. et al ("SHS") and Sears. We have been advised to contact you by Adam Slavens at Torys, with whom we have been previously been communicating in this matter.

Sears and Alaris are parties to an Inter-Creditor Agreement dated October 31, 2013, a copy of which is attached for your reference. Under the Inter-Creditor Agreement, recoveries against SHS received by either party are to be divided equally. Recoveries held by one party are to be held in trust for the other party pending distribution.

SHS went into Receivership on January 9, 2014, and into bankruptcy effective August 11, 2014. PricewaterhouseCoopers Inc. is the Receiver and Trustee. Pursuant to distributions from the SHS estate, Sears received \$1,500,000, of which \$750,000 was acknowledged to be held in trust for Alaris. In addition, both Alaris and Sears took action against guarantors of the SHS debt and received recoveries as a result of settlements. Sears has acknowledged its obligation to remit funds it received to Alaris and Alaris has done likewise. Since the amount of the settlements differed, the parties agreed to simply net the amounts and Sears was to remit the outstanding net balance amount to Alaris pursuant to an Enforcement Proceeds Allocation and Distribution Agreement, a copy of which is also enclosed. These funds have not yet been paid by Sears as agreed.

Accordingly, Sears holds the total amount of \$837,500 in trust for Alaris. We hereby demand the immediate transfer of those funds to our account. The writer may be contacted to arrange the transfer.



If you wish to discuss the matter further, please contact the writer at your earliest convenience. Time is of the essence. I am also sure that Mr. Slavens can assist you in with any further details from Sears.

Sincerely,

FIELD LLP



Douglas S. Nishimura
Partner

DSN/eh
End.

Cc: *Client*
Torys LLP, Attention: Adam Slavens
PricewaterhouseCoopers Inc., Attention: Mica Arlette
FTI Consulting Inc., Attention: Paul Bishop/Grey Watson
Norton Rose Fulbright Canada LLP, Attention: Orestes Pasparakis

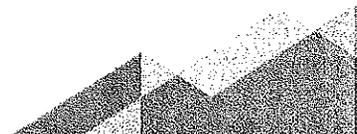


EXHIBIT G

Osler, Hoskin & Harcourt LLP
 Box 50, 1 First Canadian Place
 Toronto, Ontario, Canada M5X 1B8
 416.362.2111 MAIN
 416.862.6666 FACSIMILE

OSLER

Toronto

August 3, 2017

Montréal

Calgary

Ottawa

Vancouver

New York

Michael S. Shakra
 Direct Dial: 416.862-6643
 mshakra@osler.com
 Our Matter Number: 1179649

Without Prejudice

Sent By Electronic Mail

Field Law
 400 - 444 7 Avenue SW
 Calgary AB T2P 0X8

Attention: Douglas S. Nishimura

Dear Mr. Nishimura:

**Re: In the Matter of a Plan of Compromise or Arrangement of Sears Canada Inc.
 et al. (Court File No. CV-17-11846-00CL)**

We are counsel for Sears Canada Inc. ("SCI") *et al.* (collectively, the "Sears Canada Entities"). As you know, the Sears Canada Entities applied for and were granted protection from their creditors under the *Companies' Creditors Arrangement Act* (the "CCAA") pursuant to an Initial Order (the "Initial Order") of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated June 22, 2017 (the "Filing Date"). FTI Consulting Canada Inc. was appointed as Monitor in the CCAA proceedings. A copy of the Initial Order and other public information related to the CCAA proceedings can be found on the Monitor's website at: <http://cfcanada.fticonsulting.com/searscanada/>.

We are writing in response to your letter dated June 23, 2017, sent on behalf of Alaris Income Growth Fund Partnership ("Alaris"). As you know, SCI and Alaris are party to an: (i) Enforcement Proceeds Allocation and Distribution Agreement dated June, 2017; and (ii) Inter Creditor Agreement made as of October 31, 2013 (collectively, the "Agreements").

With respect to any amounts allegedly owing by SCI to Alaris pursuant to the Agreements (the "Alaris Funds"), none of the Alaris Funds were held in trust by SCI in a segregated account. The Alaris Funds were commingled with SCI's general operating funds and are no longer traceable. As a result of the commingling of the Alaris funds with SCI's general operating funds, SCI and the Monitor are of the view that Alaris Funds are no longer identifiable and are not subject to a valid trust claim.

As you may be aware, Paragraph 14 of the Initial Order grants a broad stay of proceedings against the Sears Canada Entities the ("Stay of Proceedings"). Furthermore paragraph 17 of the Initial Order prohibits any Person (as defined in the Initial Order) from exercising

This is Exhibit	9
referred to in the Affidavit of	Donald Ervin
Sworn before me this	19th day of
October	2017

A Commissioner for Oaths in and for the Province of Alberta
MICHAEL DONALD ERVIN
 A Commissioner For Oaths/Notary Public
 in and for the Province of Alberta

OSLER

Page 2

any rights or remedies against the Sears Canada Entities or their business or property during the Stay of Proceedings.

In light of the CCAA proceedings and pursuant to the Initial Order, the Sears Canada Entities are not in a position to pay any amounts allegedly owing to Alaris that relate to the period prior to the Filing Date. Creditors of the Sears Canada Entities will receive further details regarding any claims process conducted in the CCAA proceedings to identify and quantify claims against the Sears Canada Entities once approved by the Court. At such time, Alaris would have an opportunity to file a Proof of Claim with respect to any amounts it believes it may be owed by SCI.

Yours very truly,



Michael S. Shakra

- c. Michael De Lellis, *Osler, Hoskin & Harcourt LLP*
Jim Robinson, *FTI Consulting Canada Inc.*
Virginie Gauthier, *Norton Rose Fulbright Canada LLP*

EXHIBIT H



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Our File: 59024-1
Your File:

August 17, 2017

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

Attention: Michael S. Shakra

This is Exhibit #	13
referred to in the Affidavit of	Daniel D. Searls
Sworn before me this	19 th day of
October	2017
A Commissioner for Oaths in and for the Province of Alberta	

MICHAEL DONALD ERVIN
A Commissioner For Oaths/Notary Public
in and for the Province of Alberta

Re: **In the Matter of a Plan of Compromise or Arrangement of Sears Canada Inc. et al**
Court File No. CV-17-11846-00CL

As you are aware from our previous correspondence of June 23, 2017, we act for Alaris Income Growth Fund Partnership ("**Alaris**") with respect to its dealings with SHS Services Management Inc. et al ("**SHS**") and Sears Canada Inc. ("**Sears**") and the trust monies held by Sears as a result of the Inter-Creditor Agreement dated October 31, 2013 ("**Inter-Creditor Agreement**") and the subsequent Enforcement Proceeds Allocation and Distribution Agreement ("**Allocation and Distribution Agreement**"). I write in response to your letter of August 3, 2017. With respect, your statement of the law with respect to trust property is over broad and incorrect. My client continues to assert its claim of a trust and will seek appropriate remedies, as discussed below, if the situation is not resolved immediately.

In your letter, you essentially argue that the comingling of funds has destroyed any trust that previously existed. With respect, this assertion is incorrect. A comingling of funds, in itself, a breach of trust. While that action could affect the CCAA proceedings of Sears, it does not inherently defeat the trust claim. In *Air Canada v. M & L Travel Ltd.* (C.A.) [1993], 108 DLR (4th) 592 (ON CA), the Ontario Court of Appeal found that comingling of funds were a breach of trust. In *Re: Graphicshoppe Ltd.* [2004], CarswellOnt 5430, [2004] No. 5169, the Court noted at paragraph 18,

"... that the fact that a trustee has commingled funds does not per se destroy the trust under common law..."

At paragraph 19, the Court stated:

"...It is incorrect to say that comingling destroys a trust. If this were so, a wronged beneficiary could never assert a personal remedy against a breaching trustee."

As long as the trust funds have not been spent or have been replaced, trust funds can be recovered even if they have been comingled. See *Edmonton Pipe Industry Pension Plan Trust Fund (Trustees of) v. 350914 Alberta Ltd.* [2000], ABCA 146.



As Sears has always been aware of the trust and now, with Sears' CCAA counsel and the Monitor having been advised of the same, we expect and request that the funds held in trust for our client be removed from the general accounts of Sears and placed into a separate account for the benefit of Alaris. Further, we expect that until that action, Sears will not permit the funds in its general account to drop below the amount of our client's trust property. We ask for your immediate confirmation of the foregoing.

We note that it is incumbent on any CCAA applicant to act with due diligence and in good faith. The intentional comingling of funds and the refusal to restore trust funds to their proper status, constitutes a lack of good faith and could affect Sears CCAA proceedings if this situation is not remedied immediately. In this regard, we also note that Sears and Alaris corresponded regularly between April, 2017 and June, 2017, with respect to the funds received from SHS' Receiver and from guarantors. At that time, Sears delayed finalizing the Allocation and Distribution Agreement until shortly before the CCAA proceedings and refused to agree to any trust conditions regarding the execution thereof. Sears also delayed its distribution of Receivership funds at a time when it obviously knew that it would be entering into CCAA proceedings.

Finally, we note that Daniel Westreich, Divisional Vice President, Central Operations and Senior Corporate Counsel, was the individual who dealt with receipt of funds from the SHS Receivership. Mr. Westreich was, at all times, aware of the trust provisions in the Inter-Creditor Agreement between Sears and Alaris. Indeed, those trust provisions were the basis of the distribution process in the SHS Receivership proceedings (a fact which the Receiver of SHS can readily confirm). Mr. Westreich knowingly and actively permitted the breach of trust by Sears by failing to keep the funds received from the SHS Receivership separate and in trust for Alaris and as a result, he may be liable to Alaris personally. Our client is strongly considering including Mr. Westreich personally in any relief sought in this matter.

We require a response to the foregoing at earliest convenience and in any event, no later than 2 weeks from the date of this letter, failing which we will seek instructions to bring an application for relief in the CCAA proceedings.

Yours truly,

FIELD LLP



Douglas Nishimura

DSN/eh

Cc: *Norton Rose Fulbright Canada LLP, Attention: Orestes Pasparakis*



Osler, Hoskin & Harcourt LLP
 Box 50, 1 First Canadian Place
 Toronto, Ontario, Canada M5X 1B8
 416.362.2111 MAIN
 416.862.6666 FACSIMILE

OSLER

Toronto

September 6, 2017

Michael S. Shakra
 Direct Dial: 416.862-6643
 mshakra@osler.com
 Our Matter Number: 1179649

Montréal

Calgary

Sent By Electronic Mail

Ottawa

Field Law LLP
 400 - 444 7 Avenue SW
 Calgary, AB T2P 0X8

Vancouver

New York

Attention: Douglas S. Nishimura

Dear Mr. Nishimura:

**RE: In the Matter of a Plan of Compromise or Arrangement of Sears Canada Inc.
et al. (Court File No. CV-17-11846-00CL) (the "CCA Proceedings")**

We are writing in response to your letter dated August 17, 2017. We believe it is important to clarify the terms and agreements that govern various amounts that may be owing by Sears Canada Inc. ("SCI") to Alaris Income Growth Fund Partnership ("Alaris"). Your previous letters suggested that all such amounts were governed by the Intercreditor Agreement dated October 31, 2013 (the "**Intercreditor Agreement**") and an Enforcement Proceeds Allocation and Distribution Agreement entered into in June, 2017 (the "**Allocation and Distribution Agreement**"). However, we also understand that SCI and Alaris entered into a Distribution Agreement dated October 7, 2014 (the "**Distribution Agreement**"), which governs amounts that may be owing by SCI to Alaris. We have set out our analysis of the amounts that may be owing by SCI to Alaris below and understand that the Monitor, who is copied on this correspondence, agrees with this analysis.

The Intercreditor Agreement and Allocation and Distribution Agreement¹

Pursuant to its terms, the Intercreditor Agreement governs the allocation of funds between SCI and Alaris regarding the enforcement of the Loan Documentation, the Loan Security and related guarantees (the "**Enforcement Proceeds**") in connection with the Sears Principal Amount (\$2,000,000) and the Alaris Principal Amount (\$2,000,000) loaned to SHS Services Limited Partnership and SHS Services Management Inc. (collectively, "**SHS**").

SCI does not dispute the fact that, pursuant to the Intercreditor Agreement: (i) the Enforcement Proceeds were to be rateably shared by SCI and Alaris; and (ii) any

¹ Terms used in this section have the meanings ascribed to them in the Intercreditor Agreement and the Allocation and Distribution Agreement, as applicable.

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Page 2

Enforcement Proceeds owing by SCI to Alaris or by Alaris to SCI were to be received and held in trust and segregated for the benefit of the party to whom they were payable.

It is our understanding that SCI and Alaris realized \$800,000 and \$625,000, respectively, of Enforcement Proceeds from various guarantors under the Loan Documentation and Loan Security. This fact was memorialized in the recitals to the Allocation and Distribution Agreement, pursuant to which SCI and Alaris confirmed that “in full and final satisfaction of the obligations of both Parties under the Intercreditor Agreement with respect to the currently held Enforcement Proceeds, Sears shall pay \$87,500 (such funds, the “Distributed Funds”) to Alaris...”²

The Distribution Agreement³

Pursuant to section 5 of the Distribution Agreement, the Distribution Agreement governs the allocation of all funds distributed by the Receiver or Trustee of SHS to SCI in respect of its Loan Security and Other Security (the **“Receivership Funds”**), subject to certain exclusions. Notably, unlike the Intercreditor Agreement, the Distribution Agreement does not require SCI to segregate or hold any Receivership Funds in trust for the benefit of Alaris.

Pursuant to sections 6 to 8 of the Distribution Agreement, SCI and Alaris were to determine and designate all Receivership Funds received as “Split” or “No Split” funds. 50% of “Split” funds were to be paid by SCI to Alaris. We understand that SCI has received approximately \$1,500,000 in Receivership Funds from the Trustee of SHS, but that to date, no formal split analysis has been undertaken in respect of the Receivership Funds. Accordingly, the amount to be paid by SCI to Alaris pursuant to the Distribution Agreement, if any, remains unclear at this time.

Characterization of Funds Owing to Alaris⁴

Based on the operation of the Intercreditor Agreement and the Allocation and Distribution Agreement, Alaris’ trust claim is limited to the \$87,500 of Enforcement Proceeds (the **“Alaris Trust Amount”**). SCI has engaged in discussions with the DIP ABL Lenders and the DIP Term Lenders (collectively, the **“DIP Lenders”**) regarding the Alaris Trust Amount. The DIP Lenders are of the view that, pursuant to paragraph 50 of the Initial

² See section 1 of the Allocation and Distribution Agreement.

³ Terms used in this section have the meanings ascribed to them in the Distribution Agreement, as applicable.

⁴ Terms used in this section have the meanings ascribed to them in the Amended and Restated Initial Order dated June 22, 2017, in these CCAA Proceedings (the **“Initial Order”**).

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Page 3

Order, the court-ordered Charges in favour of the DIP Lenders rank in priority to all trust claims, including the trust claim asserted by Alaris in respect of the Alaris Trust Amount. Accordingly, the Alaris Trust Amount shall be held by SCI in a separate, segregated account pending a formal determination regarding creditor priorities and the distribution of funds from SCI's estate to its creditors.

With respect to the Distribution Agreement, any Receivership Funds that may be payable by SCI to Alaris thereunder were not required to be segregated and held in trust by SCI for the benefit of Alaris. Accordingly, any claims of Alaris for such amounts would be pre-filing unsecured claims against SCI, the quantum of which will only be determined once the required split analysis is completed. Alaris will have an opportunity to file a Proof of Claim with respect to any amounts it believes it may be owed to it by SCI in any claims process conducted in the CCAA Proceedings.

Allegations of Bad Faith and Breach of Trust

SCI denies all allegations of bad faith and breach trust on behalf of itself and Mr. Daniel Westreich. The suggestion that Mr. Westreich knowingly and actively permitted a breach of trust is unfounded and not supported by the facts. In particular, with respect to the Receivership Proceeds, there has never been an obligation to hold such funds in trust for Alaris and accordingly, no breach of trust could have taken place.

Yours very truly,



Michael S. Shakra

c.: Michael De Lellis, *Osler, Hoskin & Harcourt LLP*
Jim Robinson, *FTI Consulting Canada Inc.*
Virginie Gauthier, *Norton Rose Fulbright Canada LLP*
Alan Merskey, *Norton Rose Fulbright Canada LLP*
Daniel Westreich, *Sears Canada Inc.*

EXHIBIT I



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 Assistant: Eivlna Husseln
 T 403-232-1797
 ehusseln@fieldlaw.com
 Our File: 59024-1
 Your File:

September 15, 2017

VIA EMAIL: mshakra@osler.com

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

Attention: Michael S. Shakra

This is Exhibit	<u>5</u>
referred to in the Affidavit of	<u>Darrel D. Scott</u>
Sworn before me this	<u>19th</u> day of
	<u>October</u> , 20 <u>17</u>
 A Commissioner for Oaths in and for the Province of Alberta	

MICHAEL DONALD ERVIN
 A Commissioner For Oaths/Notary Public
 in and for the Province of Alberta

Re: Sears Canada Inc. ("Sears") – CCAA Proceedings and
 Alaris Income Growth Fund Partnership ("Alaris")

We write in response to your letter of September 6, 2017. Needless to say, this letter is disappointing to our client, who has reviewed the same. Sears' position is not in keeping with the level of trust and mutual co-operation under which the parties operated throughout the bankruptcy and receivership proceedings of SHS.

With respect, the suggestion in your letter that the Inter-Creditor Agreement dated October 31, 2013 ("Inter-Creditor Agreement") is somehow trumped by the Distribution Agreement dated October 7, 2014 is not in accordance with the contractual language, or the history of the parties involvement. Your letter also suggests that there is some significance to the fact that the trust arrangement in the Inter-Creditor Agreement was not explicitly referred to in the Enforcement Proceeds Allocation and Distribution Agreement entered into in June 2017. This is a fundamentally flawed premise. Both Agreements stem from and are subject to the Inter-Creditor Agreement. In fact, the whole rationale for these Agreements was the fact that the Inter-Creditor Agreement existed and to deal with that fact in the context of the SHS Receivership and the two guarantee actions. The Allocation and Distribution Agreement expressly states that it is subject to the Inter-Creditor Agreement provisions. We are fully prepared to adduce in evidence correspondence among Sears, the Receiver and our client that confirms this.

We fundamentally disagree that Alaris' trust claim is limited to \$87,500 of enforcement proceeds. The trust claim of Alaris is also for 50% of the "split" amounts distributed to Sears in the Receivership proceedings of SHS. This was always the agreement and is the very premise under which the Receivership was initiated. Accordingly, we demand that that amount be segregated along with the \$87,500 referred to in pages 2 and 3 of your letter. Failure to do so will result, not in a claim filed in the Proof of Claim process, but rather, in an application made forthwith in the CCAA proceedings. In such an application, the full details of the communications underlying the entire Receivership proceedings, the split of Receivership proceeds and the expectations of the parties shall be made clear. It will be obvious

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in the evidence that the obligations of Sears were well known to it, including its officer, Daniel Westreich.

We request that you provide us with a copy of the service list at your earliest convenience, so that we may initiate our application.

Yours truly,

FIELD LLP

A handwritten signature in black ink, appearing to read 'Douglas Nishimura', written over the printed name below.

Douglas Nishimura

DSN/eh/kh

cc: *client*



COURT FILE NO. CV-17-11846-00CL

IN THE MATTER OF A PLAN OF ARRANGEMENT AND COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ELECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC. SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 1001171 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 16886 CANADA INC., AND 3339611 CANADA INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF DARREN DRISCOLL
SWORN OCTOBER 19, 2017

Field LLP

400, 444 – 7 Avenue S.W.
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Lawyer: Douglas S. Nishimura

Telephone Number: (403) 260-8548

Fax Number: (403) 264-7084

Lawyer for Alaris Income Growth Fund Partnership

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR. JUSTICE HAINEY

THURSDAY, FEBRUARY 15, 2018

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

**IN THE MATTER OF A PLAN OF ARRANGEMENT AND COMPROMISE OR
ARRANGEMENT OF SEARS CANADA INC., CORBEIL ELECTRIQUE INC., S.L.H.
TRANSPORT INC., THE CUT INC. SEARS CONTACT SERVICES INC., INITIUM
LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND
SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC.,
2497089 ONTARIO INC., 6988741 CANADA INC., 1001171 CANADA INC., 1592580 ONTARIO
LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 16886 CANADA INC., AND
3339611 CANADA INC.**

**ORDER
(Declaration of Trust)**

THIS MOTION, made by Alaris Income Growth Fund Partnership ("**Alaris**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "**CCAA**") for an Order of direction with respect to certain funds currently held by Sears Canada Inc. ("**Sears**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of Alaris and on hearing the submissions of respective counsel for Alaris, the Monitor and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of Elvina Hussein sworn _____, filed:

SERVICE AND DEFINITIONS

1. This COURT ORDERS that the time for service of this Notice of Motion and the Motion Record here is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT DECLARES that the funds in the amount of \$837,500 (the "**Trust Funds**") received by Sears in the Receivership proceedings of SHS Services Management Inc. et al ("**SHS**") were received and held in trust on behalf of Alaris.

3. **THIS COURT ORDERS** that Sears forthwith pay the Trust Funds to Alaris.
 4. **THIS COURT ORDERS** that Sears provide an accounting for the Trust Funds.
 5. **THIS COURT ORDERS** that costs on a solicitor and client basis are hereby awarded to Alaris.
-

IN THE MATTER OF A PLAN OF ARRANGEMENT AND COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ELECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC. SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 1001171 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 16886 CANADA INC., AND 3339611 CANADA INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

ORDER
(Declaration of Trust)

Field LLP

400, 444 – 7 Avenue S.W.

Calgary AB T2P 0X8

Lawyer: Douglas S. Nishimura

Telephone Number: (403) 260-8548

Fax Number: (403) 264-7084

Lawyer for Alaris Income Growth Fund Partnership

IN THE MATTER OF A PLAN OF ARRANGEMENT AND COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ELECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC. SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 1001171 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 16886 CANADA INC., AND 3339611 CANADA INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

**MOTION RECORD OF ALARIS INCOME GROWTH FUND
PARTNERSHIP**

(returnable February 15, 2018)

Field LLP

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Lawyer for Alaris Income Growth Fund Partnership