

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SEARS CANADA INC.,
9370-2751 QUÉBEC INC., 191020 CANADA 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.,
10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041
ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA
INC., AND 3339611 CANADA INC.

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**RESPONDING MOTION RECORD OF THE APPLICANTS
(Alaris Income Growth Fund Partnership Motion for a Declaration of Trust returnable
February 15, 2018)**

January 22, 2018

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TAB 1

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

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF SEARS CANADA INC.,
9370-2751 QUÉBEC INC., 191020 CANADA 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., 10011711 CANADA INC., 1592580 ONTARIO
LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC.,
168886 CANADA INC., AND 3339611 CANADA INC.

APPLICANTS

AFFIDAVIT OF DANIEL WESTREICH
(Sworn January 22, 2018)

(Alaris Income Growth Fund Partnership Motion for a Declaration of Trust)

I, Daniel Westreich, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Divisional Vice-President and Senior Corporate Counsel of the Applicant Sears Canada Inc. (“**Sears Canada**”). As such, I have personal knowledge of the matters deposed to herein. Where I have relied on other sources for information, I have specifically referred to such sources and believe them to be true. In preparing this Affidavit, I have consulted with members of the senior management team of Sears Canada, legal, financial and other advisors of Sears Canada, and representatives of FTI Consulting Canada Inc. (the “**Monitor**”).

2. I swear this Affidavit in response to the motion brought by Alaris Income Growth Fund Partnership (“**Alaris**”) seeking an Order declaring funds in the amount of (i) \$87,500 (the “**Alaris Share of Settlement Funds**”) and (ii) \$750,000 (the “**Alaris Share of Receivership Funds**”)

received by Sears Canada to be held in trust on behalf of Alaris, and directing Sears Canada to pay the Alaris Share of Settlement Funds and the Alaris Share of Receivership Funds to Alaris.

3. Sears Canada does not dispute that the Alaris Share of Settlement Funds and a portion of the Alaris Share of Receivership Funds are payable to Alaris. The principal issue on this motion is whether both were to be held in trust or, as is Sears Canada's position, only the Alaris Share of Settlement Funds were to be held in trust.

SEARS CANADA OUTSOURCES ITS HOME SERVICES BUSINESS TO SHS

4. In or around March 2013, Sears Canada outsourced its home services business (the "**Sears Home Services Business**") to SHS Services Management Inc. ("**SHS**"), and entered into a licensing arrangement whereby SHS agreed to operate the Sears Home Services Business (the "**Outsourcing Transaction**") under a branded concession agreement and related agreements (collectively, the "**Outsourcing Agreements**"). Sears Canada and Alaris each loaned funds to SHS in relation to the Outsourcing Transaction. SHS's obligations to Sears Canada in relation to the Outsourcing Transaction were secured pursuant to a General Security Agreement and other security.

5. In or around September 2013, Sears Canada and Alaris advanced further loans to SHS in relation to the Outsourcing Transaction under two separate loan agreements (the "**Loan Agreements**") in the amount of \$2,000,000, respectively (collectively, \$4,000,000) (the "**Additional Loans**"). SHS granted security in respect of the Additional Loans which were also guaranteed by related entities and the principals of SHS under certain guarantees (the "**Guarantees**") and loan security documentation (the "**Security**") (collectively, with the Guarantees, the "**Loan Security**") (outlined in detail under Schedule "A" to the Intercreditor Agreement, defined below).

6. In connection with the issuance of the Additional Loans, Sears Canada and Alaris (as well as certain debtors and guarantors) entered into an Intercreditor Agreement dated October 31, 2013 (the “**Intercreditor Agreement**”) to address the sharing of any money or property realized by Sears Canada and/or Alaris related to the exercise and enforcement of their respective rights under the Loan Agreements, the Guarantees and the Security (the “**Enforcement Proceeds**”). The Intercreditor Agreement is attached hereto as Exhibit A to this Affidavit.

7. The Intercreditor Agreement provides, among other things, that (a) the Security held by each party shall rank *pari passu*; (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; (c) if either of Sears Canada or Alaris elects to take steps to demand or otherwise enforce its rights arising under or pursuant to its respective Loan Agreement or Guarantees or the Security, any Enforcement Proceeds collected by such party shall be received in trust and held by such party as trustee for the benefit of Sears Canada and Alaris and segregated from other funds and property of the party having received such Enforcement Proceeds; and (d) any Enforcement Proceeds will be shared and applied rateably and proportionately amongst Sears Canada and Alaris according to their respective principal amounts (i.e., any Enforcement Proceeds collected pursuant to the Intercreditor Agreement shall be split equally as between the two parties).

SHS ENTERS RECEIVERSHIP AND BANKRUPTCY PROCEEDINGS

8. SHS experienced poor financial results after taking over operation of the Sears Home Services Business, and ultimately applied for an interim receivership order on December 13, 2013, which interim receivership was continued as a receivership (the “**Receivership**”) pursuant to s.243(1) of the *Bankruptcy and Insolvency Act* on January 9, 2014. Alaris subsequently applied in July 2014 to lift the stay of proceedings in the Receivership for the sole purpose of bringing an

application for a bankruptcy order. A bankruptcy order was issued against SHS by the Court on July 30, 2014 (the “**Bankruptcy**”). PricewaterhouseCoopers Inc. (“**PwC**”) was appointed as Receiver under the Receivership (and subsequently Trustee under the Bankruptcy) of SHS. SHS’s principal secured creditors were Sears Canada and Alaris, and Darren Driscoll of Alaris and I were appointed as inspectors to the SHS estate.

9. As part of the Receivership and Bankruptcy proceedings, the Receiver and Trustee reviewed the security held by Sears Canada and Alaris in connection with the Outsourcing Transaction and other related transactions. The Receiver was subsequently provided with an independent legal opinion from McMillan LLP with respect to the validity and enforceability of the security held by Sears Canada and Alaris, respectively, which opinion challenged the validity of Alaris’ security in relation to the Additional Loans (i.e., Alaris’ Security) as potentially void or voidable. Alaris disagreed with this conclusion, and advised the Receiver and Sears Canada of its intention to dispute these findings. Attached as Exhibit B to this Affidavit is an excerpt of the Receiver’s Twelfth Report to the Court dated April 11, 2017 which summarizes the above.

10. Rather than see its potential recovery from the SHS estate diminish and be delayed as a result of a dispute between the Receiver and Alaris over the validity of Alaris’ Security, Sears Canada ultimately agreed to enter into a Distribution Agreement with Alaris dated October 7, 2014 (the “**Distribution Agreement**”), which agreement governed the distribution of any funds delivered by the Receiver or Trustee to Sears Canada in respect of its Loan Security, and in respect of separate security Sears Canada held for other debts of SHS which were not subject to the Intercreditor Agreement (the “**Other Security**”) (the “**Receivership Funds**”). Attached as Exhibit C is a copy of the Distribution Agreement.

11. The Distribution Agreement provides, among other things, that the Receivership Funds shall not include (a) funds repaid by the Receiver or the Trustee to Alaris or Sears Canada pursuant to any Receiver's Certificate; (b) funds paid by the Receiver or Trustee to Sears Canada that are Administrative Priority Claims (as defined therein); and (c) funds received from any person by Alaris or Sears Canada outside the Receivership or Bankruptcy.

12. Prior to entering into the Distribution Agreement, the Receiver had provided Sears Canada and Alaris, for discussion purposes, with an indicative split analysis (the "**Split Analysis**"), which designated funds against which Alaris' security attached (the "**Split Funds**") and funds against which Alaris' security did not attach (the "**No Split Funds**"). The Split Analysis was incorporated and attached as Schedule "A" to the Distribution Agreement. It is my understanding that the Split Analysis reflected the Receiver's determination that as of June 15, 2014, approximately thirty-five percent (35%) of Sears Canada's estimated recoveries under the Receivership were designated as "No Split" Funds due to Sears Canada's prior ranking security and would, therefore, not be shared with Alaris.

13. Under the Distribution Agreement, within two business days of receipt by Sears Canada of any Receivership Funds, Sears Canada was to provide notice to Alaris stating the amount and description of such Receivership Funds, and whether such Receivership Funds were designated as "Split" or "No Split" Funds pursuant to the Split Analysis. Thereafter, within two business days of receipt of any Receivership Funds that were designated by Sears Canada as "Split Funds" pursuant to the Split Analysis or thereunder, Sears Canada was to pay fifty percent (50%) of any such Receivership Funds to Alaris by wire transfer.

14. The Distribution Agreement also provides that in the event that Alaris receives any funds disbursed by the Receiver or Trustee in respect of its Loan Security, any such funds shall be subject to the same receipt and distribution requirements that are applicable to the Receivership Funds.

15. Unlike the Intercreditor Agreement, the Distribution Agreement is silent with respect to any requirement on the part of Sears Canada to segregate and hold any Receivership Funds received by it in relation thereto for the benefit of Alaris in trust. Furthermore, I have no recollection of any discussion between Sears Canada and Alaris that the Receivership Funds were to be held in trust and/or segregated in a separate account.

SEARS CANADA AND ALARIS RECOVER ENFORCEMENT PROCEEDS

16. Separate and apart from the ongoing Receivership and Bankruptcy proceedings, each of Sears Canada and Alaris took steps to initiate independent legal proceedings against the principals of SHS in connection with the Guarantees that they had provided in relation to the Additional Loans (i.e., the Loan Security). The Receiver was aware of these independent actions, and held off closing the Receivership and Bankruptcy proceedings pending their outcome. Attached as Exhibit D is an email from the Receiver dated February 27, 2017.

17. By late February 2017, Sears Canada and Alaris had each settled all of their independent actions, and had independently collected settlement funds from various guarantors to the Additional Loans (the “**Settlement Funds**”). It was my understanding that the Settlement Funds constituted Enforcement Proceeds under the Intercreditor Agreement, and, subject to the terms of the Intercreditor Agreement, required equalization as between the parties and were the subject of a trust. In other words, if one party had collected more Settlement Funds than the other, an equalization payment was required to be made such that both parties would end up with the same amount of Enforcement Proceeds. The Enforcement Proceeds collected were to be held in trust

pending such equalization payment. Ultimately, Sears Canada collected \$800,000 in Settlement Funds, and Alaris collected \$625,000 in Settlement Funds.

18. It was my expectation that the process of equalizing the Enforcement Proceeds received pursuant to the Intercreditor Agreement and any subsequent payment required as between Sears Canada and/or Alaris in relation thereto would occur relatively promptly. Given this expectation, and the administrative inconvenience associated with setting up a segregated account for what I assumed would be a relatively short period, I did not instruct that the Settlement Funds which had been received by Sears Canada be segregated, but rather had them deposited in a general operating account. As noted herein, notwithstanding that the Settlement Funds were not segregated, Sears Canada does not dispute that the Alaris Share of Settlement Funds are the subject of a valid trust claim.

SEARS CANADA RECOVERS RECEIVERSHIP FUNDS

19. Following confirmation that Sears Canada and Alaris had each received the Settlement Funds, the Receiver began to take steps to terminate the Receivership and Bankruptcy proceedings. On April 17, 2017, the Receiver confirmed its intention to seek an order of the Court to permit the termination of the Receivership and to approve a distribution to Sears Canada of not less than \$1,500,000 (with a hold-back of approximately \$300,000 for remaining costs until the discharge was completed). Attached as Exhibit E is an email from the Receiver dated April 17, 2017. In that same email, the Receiver also confirmed its understanding that any distribution by Sears Canada to Alaris in relation to the Receivership Funds was governed by a separate agreement between Sears Canada and Alaris.

20. On April 20, 2017, Sears Canada received a payment of \$1,500,000 from the Receiver. Contrary to paragraph 9 of the Driscoll Affidavit, I have no knowledge of the Receiver suggesting

that this payment was in respect of “Split” Funds. Rather, it is my understanding that the payment of \$1,500,000 represented the entirety of the Receivership Funds distributed by the Receiver (less the hold-back). Contrary to paragraph 14 of the Driscoll Affidavit, it was never my understanding that the Receivership Funds were to be held by Sears Canada in trust. Upon receipt from the Receiver, the Receivership Funds were commingled by Sears Canada with other funds and placed in a general operating account.

TREATMENT OF THE SETTLEMENT FUNDS AND THE RECEIVERSHIP FUNDS

21. On April 26, 2017, Mr. Driscoll emailed me to advise that he was aware that Sears Canada had received the Receivership Funds from the Receiver the week prior. Prior to this email, Alaris did not request that Sears Canada transfer any portion of the Settlement Funds or any Receivership Funds from Sears Canada to Alaris. Mr. Driscoll inquired as to whether Sears Canada had Alaris’ wire information to send over Alaris’ portion of the Receivership Funds, and suggested that Sears Canada and Alaris “square up” the Settlement Funds. Attached as Exhibit F is an email from Alaris dated April 26, 2017.

22. At the time of the April 26th email, there was still the potential that Sears Canada would receive additional Receivership Funds from the Receiver relating to the retained hold-back funds. Given that, I asked Mr. Driscoll whether he would prefer to hold off further equalization or reconciliation efforts relating to the Settlement Funds and the Receivership Funds until final payments were received. Mr. Driscoll advised that it was his preference to settle up what we could. The parties agreed to move forward with a “step-by-step” process whereby we would first negotiate an agreement to deal with equalization of the Settlement Funds (i.e., to split equally the Settlement Funds that each party had collected through their independent enforcement actions, as

required by the Intercreditor Agreement), leaving reconciliation and distribution of the Receivership Funds pursuant to the Distribution Agreement to a later date.

23. On May 17, 2017, the Receiver confirmed that the \$300,000 hold-back under the Receivership had been spent, and that no further Receivership Funds would be paid to Sears Canada.

24. It was my understanding that the Receivership Funds paid by the Receiver to Sears Canada required reconciliation as to whether they constituted “Split” or “No Split” Funds, and that only that portion of the Receivership Funds characterized as “Split” Funds would be distributed equally as between the parties. However, given that the parties had agreed to first negotiate an agreement relating to the equalization and distribution of the Settlement Funds, no steps were taken by Sears Canada to reconcile the Receivership Funds, and no notice was provided by Sears Canada to Alaris in relation thereto.

25. Contrary to the suggestion at paragraph 12 of the Driscoll Affidavit, responses by Sears Canada and its counsel in relation to the Settlement Funds and the Receivership Funds were not intentionally delayed. Sears Canada and its counsel remained cooperative throughout the period in issue, and responded promptly to inquiries by Alaris. Attached as Exhibit G are emails between Sears Canada and Alaris dated April 26 – April 28, 2017.

SEARS CANADA FILES FOR CCAA PROTECTION

26. On June 22, 2017, Sears Canada and related applicants commenced proceedings under the *Companies' Creditors Arrangement Act* (the “CCAA”).

27. Approximately one week prior to the CCAA filing, on June 16, 2017, Sears Canada and Alaris finalized and entered into an agreement relating to the equalization and distribution of the

Settlement Funds pursuant to the Intercreditor Agreement (the “**Enforcement Proceeds Agreement**”). The Enforcement Proceeds Agreement is attached as Exhibit H to this Affidavit.

28. Pursuant to the terms of the Enforcement Proceeds Agreement, Sears Canada and Alaris agreed that Sears Canada would pay Alaris \$87,500 (the “**Alaris Share of Settlement Funds**”), in full and final satisfaction of the obligations of the parties under the Intercreditor Agreement with respect to Enforcement Proceeds. This was expressly acknowledged by Alaris in an executed acknowledgement and receipt (the “**Acknowledgement**”), which was appended as Schedule B to the Enforcement Proceeds Agreement.

29. Under the terms of the Enforcement Proceeds Agreement, the Alaris Share of Settlement Funds were payable by Sears Canada to Alaris on or before June 20, 2017. On June 19, 2017, I initiated the internal process to issue a wire payment to Alaris of the Alaris Share of Settlement Funds. However, it is my understanding that as a result of the impending filing by Sears Canada for CCAA protection, the wire payment was not made. Sears Canada has since conceded that the Alaris Share of Settlement Funds are subject to a valid trust claim in favour of Alaris, and has segregated the Alaris Share of Settlement Funds in a separate account pending formal determination of this motion. Attached as Exhibit I to this Affidavit is a letter dated September 6, 2017.

30. No reconciliation or updated Split Analysis was ever performed in relation to the Receivership Funds. However, as mentioned above, the Split Analysis provided by the Receiver and appended to the Distribution Agreement suggests that approximately thirty-five percent (35%) of the Receivership Funds ought to be designated as “No Split” Funds. Applying that ratio to the Receivership Funds would result in approximately \$500,000 designated as “No Split” Funds, and would require Sears Canada to pay fifty percent (50%) of the remaining \$1,000,000 in “Split”

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Funds to Alaris (i.e., Alaris would be entitled to payment in the amount of \$500,000, as opposed to \$750,000 which Alaris seeks on this motion), however this claim would be stayed and subject to compromise as a pre-filing obligation. Out of an abundance of caution, Sears Canada has segregated \$750,000 pending a formal determination of this motion.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario, on
January 22, 2018.

Waleed Malik
Commissioner for Taking Affidavits

WALEED MALIK
LSO. # 678460

Daniel Westreich
Daniel Westreich

TAB A

THIS IS EXHIBIT "A" REFERRED TO IN
THE AFFIDAVIT OF DANIEL WESTREICH,
SWORN BEFORE ME ON THIS 22nd DAY OF JANUARY, 2018.

Waleed Malik

A Commissioner for Taking Affidavits.

WALEED MALIK
LSO. # 678960

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.
(the "ISO")

AND:

PAUL VERHOEFF

AND:

STEPHEN VERHOEFF

AND:

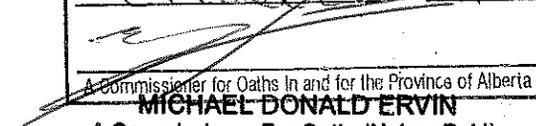
SEARS CANADA INC.
(the "Sears")

AND:

ALARIS INCOME GROWTH PARTNERSHIP
(the "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 <u>A</u>
referred to in the Affidavit of <u>Darren Brisoll</u>
Sworn before me this <u>19th</u> day of <u>October</u> , 20 <u>13</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

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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:

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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

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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.

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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

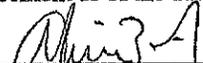
This Agreement may be executed in several counterparts and each of which, so executed shall be deemed to be an original and such counterparts together shall be but one and the same instrument. A copy of this Agreement executed by any party and transmitted by facsimile or e-mail shall be binding upon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

5.9 Independent Legal Advice

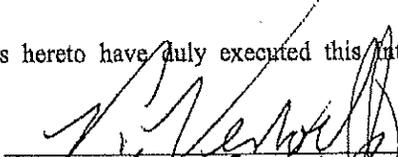
Each of the parties to this Agreement acknowledge that it has been advised to obtain independent legal advice with respect to entering into this Agreement, that it has obtained such independent legal advice or has expressly deemed not to seek such advice, and that the party is entering into this Agreement 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.



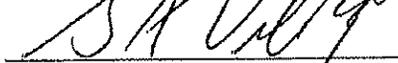
Witness Gina Baccari



PAUL VERHOEFF

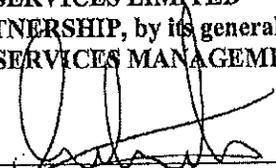


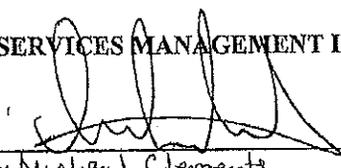
Witness Gina Baccari

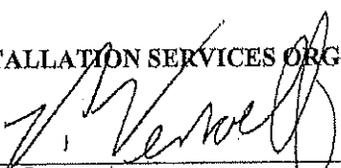


STEPHEN VERHOEFF

**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:

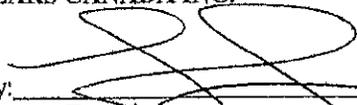
SHS SERVICES MANAGEMENT INC.

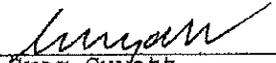
By: _____
Name:
Title:

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.

TAB B

THIS IS EXHIBIT "B" REFERRED TO IN
THE AFFIDAVIT OF DANIEL WESTREICH,
SWORN BEFORE ME ON THIS 22nd DAY OF JANUARY, 2018.

Waleed Malik

A Commissioner for Taking Affidavits.

WALEED MALIK
LSO. # 678460

Court File No. CV-13-10370-00CL

**SHS Services Management Inc. /
Gestion des Services SHS Inc.
SHS Services Limited Partnership**

RECEIVER'S TWELFTH REPORT TO THE COURT

April 11, 2017

Report”)⁵. Those claims were resolved during the course of the Receivership Proceedings. As such the Receiver intends to release the Contingency Reserve (and the accrued interest thereon) in connection with making the distributions discussed further below;

- d) The Receiver has transferred approximately \$0.5 million to the accounts of the Trustee in respect of the Bankruptcy Proceedings in respect of the costs therein.
19. In addition to the amounts noted in the Statement of Receipts and Disbursements, the Receiver estimates additional disbursements of approximately \$100,000 to \$150,000 from cash on hand will be required to complete the Receivership Proceedings, including payment of outstanding and estimated remaining fees and disbursements of the Receiver and its legal counsel as well as costs for the Bankruptcy Proceedings (the “**Outstanding Disbursements**”).

DISTRIBUTION

20. The Receiver is requesting that this Court make an order authorizing the Receiver to distribute the proceeds realized, collected or otherwise recovered by the Receiver to Sears, up to the aggregate amount of all of the indebtedness, liabilities and obligations now or hereafter owing by the Companies to Sears and in such amounts and at such times as the Receiver determines appropriate, subject to maintaining sufficient reserves in order to fund the anticipated remaining costs of the Receivership Proceedings.
21. The primary pre-filing secured indebtedness of SHS to Sears and Alaris arose pursuant to certain loans concluded on September 30, 2013 pursuant to promissory notes later replaced by loan agreements on October 31, 2013, which provided for loans of \$2.0 million by each of Sears and Alaris to SHS LP (respectively the “**Sears Loan**” and the “**Alaris Loan**”), for a total of \$4.0 million of secured obligations excluding accrued interest.

⁵ Second Report: http://www.pwc.com/ca/en/car/shs/assets/shs-045_010814.pdf

22. Sears has also asserted that the obligations under section 13.2 of the Branded Concession Agreement between Sears and SHS dated December 20, 2012 (the “BCA”) are secured (the “**BCA Secured Obligations**”).
23. The Sears Loan is secured, *inter alia*, under the security agreements listed in Appendix “D” (the “**Sears Security**”). As security for the Alaris Loan, Alaris was granted the security documents listed in Appendix “E” (the “**Alaris Security**”).
24. In the fifth report of the Receiver dated June 19, 2014 (the “**Fifth Report**”) ⁶, the Receiver indicated that it had been provided with the independent legal opinion (the “**Security Opinion**”) from McMillan with respect to the validity and enforceability of the Sears Security and the Alaris Security. Subject to the standard assumptions, qualifications and limitations contained therein, McMillan has provided its opinion to the Receiver that:
 - a) The Sears Security is effective, valid and enforceable against the Receiver and a trustee in bankruptcy of SHS in accordance with its terms; and
 - b) In light of the decided cases on point, the Alaris Security is either void or voidable because it was received and is held by Alaris in violation of section 60(a) of the *Partnership Act*, Alberta.
25. Alaris’ legal counsel advised the Receiver at the time that it disagreed with the conclusion reached by McMillan as described above in sub-paragraph (b).
26. The Receiver is informed by counsel for Sears and Alaris that those parties have entered into an agreement concerning the distribution of proceeds from the Receivership Proceedings (the “**Secured Creditors Distribution Agreement**”). As a result of this agreement, the Receiver is informed that it is to make secured creditor distributions to Sears pursuant to the Sears Security.
27. The Sears Security is subject to prior charges and security interests or claims against the Property, which include the Receiver’s Charge and the Receiver’s Borrowing Charge granted by the Receivership Order.
28. Some of the fees of the Receiver and the Receiver’s counsel remain outstanding. As stated

⁶ Fifth Report: http://www.pwc.com/ca/en/cai/shs/assets/shs-121_062014.pdf

earlier, the Receiver has included in its estimate of the Outstanding Disbursements, its estimated fees and disbursements and the estimated fees and disbursements of its counsel to date. The Receiver intends to maintain sufficient reserves throughout the remainder of the Receivership Proceedings to provide adequate security for its anticipated remaining costs, and for the remaining costs of the Bankruptcy Proceedings.

29. The Receiver previously repaid all borrowings made by way of Receiver's Certificate secured by the Receiver's Borrowing Charge.
30. The Receiver has paid all claims filed related to outstanding wages or vacation pay owed as of the Date of Appointment to the Companies' employees which are priority claims under section 81.4 of the BIA. The Receiver is not aware of any other such claims which may be outstanding.
31. Other than the claims set out above, the Receiver is not aware of any security interests, liens, charges, encumbrances or other rights of third parties that would have priority over the Sears Security with respect to the Property of the Company.
32. Accordingly, the Receiver intends to provide an initial distribution to Sears of an amount not less than \$1.5 million (the "**Initial Distribution**"), and retain approximately \$0.3 million to pay the Outstanding Disbursements and the estimated fees and disbursements for the completion of the Receivership Proceedings.
33. Following the Initial Distribution, the Receiver intends to make such subsequent distributions (the "**Further Distributions**") to Sears from time to time as the Receiver determines are appropriate, subject to maintaining sufficient reserves in order to satisfy the Outstanding Disbursements under the Receiver's Charge, and fund the anticipated remaining costs of the Receivership Proceedings.
34. The Receiver is of the view that it is appropriate to seek this Court's approval to make such further distributions to Sears as the Receiver determines are appropriate, subject to the Receiver maintaining sufficient reserves to complete the administration of the Receivership Proceedings, for the following reasons:
 - a) Sears and Alaris are the only economically affected parties on account of the quantum and priority of the Company's indebtedness to them as discussed

above;

- b) As noted Sears and Alaris have made arrangements between them for the distribution of proceeds pursuant to Secured Creditors Distribution Agreement; and
- c) To maximise efficiency and to avoid the need to seek the approval of this Court to make a subsequent distribution to Sears.

REMAINING DUTIES AND TERMINATION OF THE RECEIVERSHIP PROCEEDINGS

- 35. The Receiver has made a motion to terminate the Receivership Proceedings and obtain its discharge, subject to the Receiver filing the Discharge Certificate.
- 36. As summarized herein, the Receiver has completed its duties as set out in the Appointment Order and subsequent orders with respect to the Property, except for the following outstanding matters (the "**Remaining Duties**"):
 - a) payment of the Outstanding Disbursements;
 - b) filing of outstanding and upcoming HST returns;
 - c) completing the Initial Distribution and the Further Distributions, if any; and
 - d) other administrative matters incidental to the Receiver's appointment, including completion of statutory reporting pursuant to section 246(3) of the BIA.
- 37. Notwithstanding the existence of the Remaining Duties, the Receiver is of the view that it is appropriate to seek an order of the Court discharging the Receiver at this time, subject to the standard provisions permitting the performance of the Remaining Duties and the Receiver filing the Discharge Certificate evidencing completion of the Remaining Duties.

REQUEST FOR FEE APPROVAL

- 38. The Receiver and its counsel, McMillan LLP ("**McMillan**") have maintained detailed

TAB C

THIS IS EXHIBIT "C" REFERRED TO IN
THE AFFIDAVIT OF DANIEL WESTREICH,
SWORN BEFORE ME ON THIS 22nd DAY OF JANUARY, 2018.

Waleed Malik

A Commissioner for Taking Affidavits.

WALEED MALIK

LSO # 678460

DISTRIBUTION AGREEMENT¹

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

BETWEEN:

ALARIS INCOME GROWTH FUND PARTNERSHIP
("Alaris")

- 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:



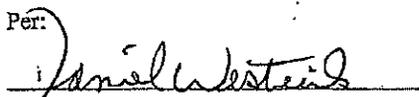
Name: Darren Driscoll
Title: Chief Financial Officer

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 (i.e. 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 (i.e. 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

TAB D

THIS IS EXHIBIT "D" REFERRED TO IN
THE AFFIDAVIT OF DANIEL WESTREICH,
SWORN BEFORE ME ON THIS 22nd DAY OF JANUARY, 2018.

Waleed Malik

A Commissioner for Taking Affidavits.

WALEED MALIK
LSO # 678460

Re: SHS - Inspectors resolutions re settlement and fee approvals

1 message

Daniel Westreich <dwestre@sears.ca>

Tue, Feb 28, 2017 at 11:02 AM

To: "mica.arlette@ca.pwc.com" <mica.arlette@ca.pwc.com>

Cc: "tracey.weaver@ca.pwc.com" <tracey.weaver@ca.pwc.com>, "brett.harrison@mcmillan.ca" <brett.harrison@mcmillan.ca>, Douglas Nishimura <DNishimura@fieldlaw.com>, Darren Driscoll <ddriscoll@alarisroyalty.com>, "Slavens, Adam" <aslavens@torys.com>

My three resolutions are signed and attached as well.

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

Stay Connected!

[Facebook](#) | [Twitter](#) | [LinkedIn](#) | [Youtube](#) | [Instagram](#) |On Mon, Feb 27, 2017 at 4:12 PM, Darren Driscoll <ddriscoll@alarisroyalty.com> wrote:

My 3 resolutions are signed and attached.

Regards,

Darren

From: mica.arlette@ca.pwc.com [mailto:mica.arlette@ca.pwc.com]

Sent: February-27-17 11:49 AM

To: Daniel Westreich; Darren Driscoll

Cc: tracey.weaver@ca.pwc.com; brett.harrison@mcmillan.ca

Subject: SHS - Inspectors resolutions re settlement and fee approvals

Hi Daniel and Darren,

Writing you on two separate points today:

(1) Verhoeff settlement

We have heard from counsel for Sears regarding the proposed settlement with the Verhoeffs, a copy of which I understand has been shared with Alaris. The settlement and release requires execution by the Trustee. In order to formally do this, we need an executed resolution from the inspectors permitting us to do so.

We are comfortable with the release included in the settlement based on our understanding that none of Alaris, Sears or the ISO Parties take issue with upcoming distribution, approval of our fees/activities and the Receiver's discharge/release.

Assuming you are in agreement, **please sign and return this to us as soon as possible** so we can release our signature pages. (See file "SHS - Inspector resolution re settlement.pdf")

(2) Prior Inspector resolution and path to closure

I also attach below my note from December with the separate resolution for the inspectors on fee approvals for PwC and McMillan. I think we are now at a point where we can address the path to closure that Darren had requested when we sent this previously.

Once we have confirmation that the settlement has been completed, and once the relevant related filings have been made with the court, we will move to close the receivership and bankruptcy proceedings. The timing of this is partially dependent on getting confirmation letters from the OSB to close the bankruptcy, as well as court time, but I expect this could all be completed within the next 1-2 months.

As previously indicated we are holding approximately \$2.08 million in net proceeds, prior to payment of the fees noted below and any costs associated with closing the bankruptcy and receivership. We can make a more specific estimate of those costs and funds to be distributed later this week. As part of terminating the proceedings we would distribute the net funds on hand to Sears, who I understand has a separate agreement with Alaris on how these net proceeds would be shared.

In connection with proceeding to close the receivership and bankruptcy, we do need to obtain inspector approval of our fees to date per my prior note.

Please sign and return the earlier resolutions to us, or let us know if you would like further information. (See files "SHS Inc. - Inspector resolution (PwC Fees) Nov 1,2015 to Oct 31, 2016.pdf" and "SHS - Inspectors Resolution -McMillan fees to July 31, 2016.pdf")

Regards,
M.

Mica Arlette

PwC | Partner, Consulting & Deals | Senior Vice President, Corporate Advisory & Restructuring

T: +1 416 814 5834 | C: +1 416 816 4273 | F: +1 416 814 3210

Email: mica.arlette@ca.pwc.com

Assistant: Bev D Schempp | T: +1 905 815 6500 ext. 63320

PricewaterhouseCoopers Inc.

T A B E

THIS IS EXHIBIT "E" REFERRED TO IN
THE AFFIDAVIT OF DANIEL WESTREICH,
SWORN BEFORE ME ON THIS 22nd DAY OF JANUARY, 2018.

Waleed Malik

A Commissioner for Taking Affidavits.

WALEED MALIK
LSO # 678 960

SHS - planning for distribution after discharge order

1 message

mica.arlette@ca.pwc.com <mica.arlette@ca.pwc.com>

Mon, Apr 17, 2017 at 10:42 AM

To: Daniel Westreich <dwestre@sears.ca>

Cc: aslavens@torys.com, brett.harrison@mcmillan.ca, tracey.weaver@ca.pwc.com

Hi Daniel - trusting all is well with you!

As you are aware we are seeking an order of the Court to approve a distribution to Sears and to permit the termination of the receivership proceedings on SHS. Assuming the order is made as requested, it's our intention to distribute no less than \$1.5 million to Sears this week, which would leave us holding a reserve of approximately \$0.3 million for remaining costs until the discharge can be completed.

Can you please confirm the account to which those funds should be transferred in order to facilitate the further distribution to Alaris at your end? We understand that's governed by a separate agreement between Sears and Alaris.

In terms of further process following the distribution:

- we are in the process of completing the statutory steps to wrap up the bankruptcy proceedings and obtain our discharge as trustee. The timing of the bankruptcy discharge is dependent on the turnaround time by the Office of the Superintendent of Bankruptcy (OSB) and the Court in responding to our requests for the standard approvals, and we will advise you as that goes forward.
- once the bankruptcy discharge is completed, we will make any further distributions from our reserve and proceed to issue our discharge certificate to formally terminate the receivership proceedings.
-

Overall I'm optimistic that this will all be done before June, but the OSB and Court turnaround on the bankruptcy is the main variable that we don't control.

Please let me know once you have the bank account information confirmed, and if you have any questions on this.

Regards,
M.

Mica Arlette, CPA, CA, CIRP, LIT

PwC | Partner, Consulting & Deals | Senior Vice President, Corporate Advisory & Restructuring

T: +1 416 814 5834 | C: +1 416 816 4273 | F: +1 416 814 3210

Email: mica.arlette@ca.pwc.com

Assistant: Bev D Schempp | T: +1 905 815 6500 ext. 63320

PricewaterhouseCoopers Inc. LIT

PwC Tower, 18 York Street, Suite 2600, Toronto ON M5J 0B2

<http://www.pwc.com/ca>

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Ce courriel est strictement réservé à l'usage de la personne à qui il est adressé (le destinataire). Il peut contenir de l'information privilégiée et confidentielle. L'examen, la réexpédition et la diffusion de ce message par une personne autre que son destinataire sont interdits. Nous déclinons toute responsabilité à l'égard des pertes ou des dommages subis par une personne autre que le destinataire par suite de décisions ou de mesures fondées sur le contenu de cette communication ou autrement. Si vous avez reçu ce courriel par erreur, veuillez communiquer avec son expéditeur et en détruire toutes les copies.

TAB F

THIS IS EXHIBIT "F" REFERRED TO IN
THE AFFIDAVIT OF DANIEL WESTREICH,
SWORN BEFORE ME ON THIS 22nd DAY OF JANUARY, 2018.

Waleed Malik

A Commissioner for Taking Affidavits.

WALEED MALIK

LSO # 678460



Daniel Westreich <dwestre@sears.ca>

SHS funds

1 message

Darren Driscoll <ddriscoll@alarisroyalty.com>

Wed, Apr 26, 2017 at 1:41 PM

To: "daniel.westreich@sears.ca" <daniel.westreich@sears.ca>

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

TAB G

THIS IS EXHIBIT "G" REFERRED TO IN
THE AFFIDAVIT OF DANIEL WESTREICH,
SWORN BEFORE ME ON THIS 22nd DAY OF JANUARY, 2018.

Waleed Malik

A Commissioner for Taking Affidavits.

WALEED MALIK
LSO # 678460



Daniel Westreich <dwestre@sears.ca>

Re: SHS funds

1 message

Daniel Westreich <dwestre@sears.ca>
To: Darren Driscoll <drriscoll@alarisroyalty.com>

Fri, Apr 28, 2017 at 3:30 PM

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 <drriscoll@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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[Facebook](#) | [Twitter](#) | [LinkedIn](#) | [Youtube](#) | [Instagram](#) |

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

TAB H

THIS IS EXHIBIT "H" REFERRED TO IN
THE AFFIDAVIT OF DANIEL WESTREICH,
SWORN BEFORE ME ON THIS 22nd DAY OF JANUARY, 2018.

Waleed Malik

A Commissioner for Taking Affidavits.

WALEED MALIK
LSO # 678460

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")

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
DANIEL WESTREICH
DIVISIONAL VICE-PRESIDENT, SENIOR CORPORATE COUNSEL

I/we have authority to bind the company.

SEARS CANADA INC.

Per:

P. MONTADO
P. MONTADO
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.

TAB I

THIS IS EXHIBIT "I" REFERRED TO IN
THE AFFIDAVIT OF DANIEL WESTREICH,
SWORN BEFORE ME ON THIS 22nd DAY OF JANUARY, 2018.

Waleed Malik

A Commissioner for Taking Affidavits.

WALEED MALIK
LSO # 678460

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.

OSLER

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 Owning 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”**).

OSLER

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.*

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUÉBEC INC., 191020 CANADA 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., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

Applicants

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

AFFIDAVIT OF DANIEL WESTREICH

(Alaris Income Growth Fund Partnership Motion for a Declaration of Trust returnable February 15, 2018)

OSLER, HOSKIN & HARCOURT LLP

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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUÉBEC INC., 191020 CANADA 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., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

Applicants

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

RESPONDING MOTION RECORD OF THE APPLICANTS

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