

**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., CORBEIL  
ELECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC.,  
SEARS CONTACT SERVICES INC., INITIUM LOGISTICS  
SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM  
TRADING AND SOURCING CORP., SEARS FLOOR  
COVERING CENTRES INC., 173470 CANADA INC., 2497089  
ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA  
INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD.,  
4201531 CANADA INC., 168886 CANADA INC., AND 3339611  
CANADA INC.

**MOTION RECORD OF THE MOVING PARTY/CREDITOR,  
BARRY PATRICK KENNY  
(Request to Lift the Stay of Proceedings)  
Vol. 1**

July 6, 2017

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**NOTICE OF MOTION OF THE MOVING PARTY/CREDITOR,  
BARRY PATRICK KENNY  
(Request to Lift the Stay of Proceedings)**

The Moving Party/Creditor, Barry Patrick Kenny, will make a motion to the Judge presiding over the Commercial List on July 13, 2017 at the Courthouse, 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard:

- in writing under subrule 37.12.1(1);
- in writing as an opposed motion under subrule 37.12.1(4);
- orally.

**THE MOTION IS FOR:**

- (a) An Order lifting the stay of proceedings referred to in paragraphs 14, 15, 16, and 17 of the Initial Order dated June 22, 2017;
- (b) An Order granting Barry Patrick Kenny leave to continue the proposed class action against Sears Canada Inc. under Court File No. 208/15;
- (c) An Order dispensing with notice of the within motion or abridging the time for service, filing, and confirmation of this motion, if necessary;
- (d) Costs of this motion as against any party opposing this motion; and
- (e) Any such further and other relief as to this Honourable Court seems just.

**THE GROUNDS FOR THE MOTION ARE:**

- (a) On February 3, 2015, a proposed class action was commenced by Barry Patrick Kenny in the London Superior Court of Justice under Court File No. 208/15 (the “Class Action”);
- (b) The Class Action names Sears Canada Inc. as Defendant;
- (c) The Honourable Justice Leach is the case management Judge of the Class Action;
- (d) Over the course of approximately 2½ years, Kenny and Sears have efficiently litigated the Class Action and have attended case management conferences before Justice Leach;

- (e) On or about December 2016, the parties scheduled three days before the Honourable Justice Leach for hearing of the certification motion to be heard October 10-13, 2017;
- (f) On or about March 25, 2016, Kenny served his Motion Record regarding the certification motion;
- (g) On or about July 12, 2016, Sears served its Responding Motion Record regarding the certification motion;
- (h) On June 22, 2017, the Initial Order was granted by the Court in the within CCAA Proceedings;
- (i) Paragraph 14 of the Initial Order states,

THIS COURT ORDERS that until and including July 22, 2017, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Sears Canada Entities or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the Sears Canada Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Sears Canada Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

- (j) Kenny and other members of the proposed class in the Class Action have not been compensated for their wrongful dismissal as alleged in the Class Action;
- (k) There are approximately 601 putative class members in the Class Action;

- (l) Kenny and the putative class members in the Class Action have a cause of action against Sears as a common employer;
- (m) Lifting the stay of proceedings to allow the certification of the proposed class action to proceed will assist in the administration of the CCAA proceeding in identifying the full class of former employees;
- (n) There will be no prejudice suffered by any parties and specifically no prejudice suffered by Sears and/or the Monitor in lifting the stay of proceedings;
- (o) Rules 3.02 and 37 of the *Rules of Civil Procedure*;
- (p) Section 11 of the *Companies' Creditors Arrangement Act*; and
- (q) Such further and other grounds as counsel may advise.

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

- (a) The Affidavit of Sabrina Lombardi sworn July 6, 2017 and the Exhibits thereto; and
- (b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

July 6, 2017

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

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(Commercial list)

PROCEEDING COMMENCED AT  
TORONTO

**NOTICE OF MOTION**

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**ONTARIO  
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IN THE MATTER OF THE *COMPANIES' CREDITORS  
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CANADA INC.

**AFFIDAVIT OF SABRINA LOMBARDI  
(Request to Lift the Stay of Proceedings)**

I, SABRINA LOMBARDI, of the Town of Komoka, in the County of Middlesex-Centre, in the  
Province of Ontario, MAKE OATH AND SAY:

1. I am a lawyer with McKenzie Lake Lawyers LLP, counsel for the Moving Party/Creditor,  
Barry Patrick Kenny ("Kenny"), and as such have knowledge of the matters deposed to.  
Where I make statements in this affidavit which are not within my personal knowledge, I  
have identified the source of that information and belief. All of the information I have  
deposed to I verily believe to be true.

## **Background**

2. On February 3, 2015, my office commenced an action on behalf of Kenny in the Ontario Superior Court of Justice in London, Ontario. Kenny retained my office to represent him with respect to allegations that the defendants, SHS Services Management Inc. (“SHS”) and Sears Canada Inc. (“Sears”), breached the employment contract of and wrongfully dismissed Kenny and other putative class members (the “Class Action”). Attached hereto to this my affidavit and marked as Exhibit “A” is a true copy of the Fresh as Amended Statement of Claim.
3. On February 17, 2015, a similar class action was commenced in British Columbia seeking to represent those former employees who reside in British Columbia. Since in or about January 2017, counsel for the British Columbia action has been working cooperatively with my office. As such, my office now has the authority to represent all former employees across Canada who are putative class members in the Class Action.

## **History of the Sears/SHS Relationship**

4. I have reviewed the affidavit of Micheal Clements, a former director of SHS, sworn December 12, 2013 filed in support of SHS’ application for an interim receiver (a copy of Mr. Clements’ affidavit is included as Tab 3(D) of the Motion Record (Certification) (Volumes 1-3) dated March 25, 2016 attached to this affidavit and marked as Exhibit “C” below). Mr. Clements’ affidavit sets out the history of the transaction and related debts whereby Sears sold its home services business to SHS.

5. As part of this transaction, former Sears employees, including Kenny and putative class members in the Class Action, were offered employment with SHS commencing on or about March 2, 2013 being the date of the transaction between Sears and SHS.
6. Several hundred Sears employees, including Kenny, became employees of SHS as of March 2, 2013.
7. I am advised by Kenny, and do verily believe, that Kenny was never notified of the termination of his employment with Sears and was not provided with any notice or pay in lieu thereof. Further, I am advised by Kenny, and do verily believe, that pursuant to the employment contract between Kenny and SHS, in the event that SHS terminated his employment for any reason, SHS would recognize Kenny's previous years of continuous service with Sears (which service was in excess of 35 years) for the purposes of calculating his entitlement to working notice, or payment in lieu of working notice.

#### **Receivership of SHS and Termination of Employees**

8. On December 13, 2013, at the request of SHS, the Court appointed PricewaterhouseCoopers Inc. ("PwC") as interim receiver of SHS.
9. On December 13, 2013, PwC terminated the employment of all SHS employees, including Kenny. Kenny, as well as other SHS employees and putative class members were given no notice of such termination. Further, Kenny, as well as other SHS employees and putative class members, were not paid any benefits under the applicable provincial employment standards legislation, including termination pay, severance pay or vacation pay.

10. On January 9, 2014, at the request of Sears, the Court appointed PwC as receiver of SHS. Thereafter, SHS made an assignment in bankruptcy.

### **The Proposed Class in the Class Action**

11. Based upon the evidence disclosed in the Class Action to date, SHS had approximately 601 employees as of December 13, 2013. I believe that the majority of these employees were former Sears employees who transferred to SHS as of March 2, 2013. Attached hereto to this my affidavit and marked as Exhibit "B" is a copy of the affidavit of Theresa Lea sworn August 11, 2016 enclosing SHS' employee list as of September 1, 2013.

12. I anticipate that the majority of those 601 employees are putative class members in the Class Action.

### **Status of the Class Action Litigation**

13. The parties to the Class Action have been working diligently to efficiently litigate the Class Action.

14. In or about June 2015, Justice Leach was appointed as case management Judge of the Class Action pursuant to the *Class Proceedings Act, 1992*. Since that time, Justice Leach has case managed the Class Action and has presided over several case management conferences/conference calls and interim motions.

15. The Statement of Claim was amended in August 2015 removing the individual Sears directors as defendants to the Class Action. Further, in late 2016, the Class Action was

partially settled as against two former SHS directors. The Class Action continues as against Sears, SHS, and one former SHS director (Micheal Clements).

### **Certification Motion**

16. The parties to the Class Action agreed to a tentative timetable regarding the delivery of certification materials and the scheduling of the certification hearing.
17. Pursuant to this timetable, on or about March 25, 2016, my office served a Motion Record regarding the certification hearing. Attached hereto to this my affidavit and marked as Exhibit "C" is a copy of the Motion Record (Certification) (Volumes 1-3) dated March 25, 2016.
18. Again pursuant to this timetable, on or about July 12, 2016, Sears served its Responding Motion Record regarding the certification hearing. Attached hereto to this my affidavit and marked as Exhibit "D" is a copy of the Responding Motion Record of the Defendant Sears Canada Inc. (Motion for Certification).
19. The certification hearing is currently scheduled to be heard on October 10-13, 2017 before Justice Leach. These dates were scheduled through coordination with the Trial Coordinator's office and were difficult to obtain given the limited availability in Justice Leach's calendar.



**Request to Lift the Stay of Proceedings**


20. As stated above, there are approximately 601 former SHS employees who are putative class members in the Class Action.

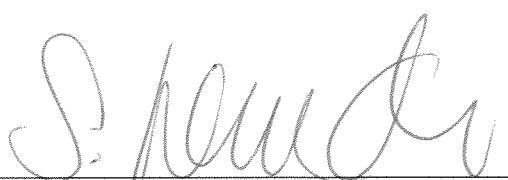
21. By lifting the stay of proceedings and allowing a determination on the certification hearing, the Court will determine the precise number of class members who may have a claim in the CCAA Proceedings. As such, a determination on the certification hearing will support an efficient administration of justice and streamline the number of creditors in the CCAA Proceedings.

22. Further, allowing the certification hearing to proceed will not cause any prejudice to Sears given the status of the Plan of Arrangement and the fact that former employees will be identified therein. The certification hearing will allow of full adjudication of the claims of all former Sears employees, including those captured in the Class Action.

23. I swear this affidavit in support of a motion for an order lifting the stay of proceedings and for no other or improper purpose.

**SWORN OR AFFIRMED** before )  
me at the City of London, in the )  
Province of Ontario, this 6<sup>th</sup> day of )  
July, 2017. )

  
\_\_\_\_\_  
A Commissioner, etc. )

  
\_\_\_\_\_  
SABRINA LOMBARDI

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT  
ACT, R.S.C. 1985, C. C-36, AS AMENDED  
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Lawyers for the Moving Party/Creditor

This is Exhibit "A" mentioned and referred to in the Affidavit of Sabrina Lombardi, sworn before me at the City of London, in the County of Middlesex, this 6th day of July, 2017.



---

A Commissioner, etc.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

*(Court Seal)*

BARRY PATRICK KENNY

Plaintiff

and

SHS SERVICES MANAGEMENT INC., SEARS CANADA INC., MICHEAL  
CLEMENTS, STEPHEN VERHOEFF and PAUL VERHOEFF

Defendants

*Proceeding under the Class Proceedings Act, 1992*

**FRESH AS AMENDED STATEMENT OF CLAIM**

TO THE DEFENDANT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date Feb 3, 2015 Issued by K. Waldick  
Local Registrar

Address of  
court office: 80 Dundas Street  
London, Ontario N6A 6A3

TO: **SHS SERVICES MANAGEMENT INC.**  
c/o Burnet, Duckworth & Palmer LLP  
2400, 525 - 8 Avenue SW  
Calgary, Alberta T2P 1G1

Defendant

AND TO: **SEARS CANADA INC.**  
Legal Department  
290 Yonge Street, Suite 700  
Toronto, Ontario M5B 2C3

Defendant

AND TO: **MICHEAL CLEMENTS**  
290 Yonge Street, Suite 700  
Toronto, Ontario M5B 2C3

Defendant

AND TO: **STEPHEN VERHOEFF**  
72 Midvalley Crescent SE  
Calgary, Alberta T2X 1N3

Defendant

AND TO: **PAUL VERHOEFF**  
63 Bent Tree Court  
Calgary, Alberta T3Z 3B2

Defendant

## CLAIM

- I. The Plaintiff, Barry Patrick Kenny (“Kenny”) claims, on behalf of himself and others similarly situated in Canada, as against the Defendants, Sears Canada Inc. and SHS Services Management Inc.:
  - (a) An Order certifying the proceeding and appointing him as representative Plaintiff;
  - (b) a Declaration that Sears Canada Inc. and SHS Services Management Inc. were at all material times the common employers of the Plaintiff;
  - (c) further and/or in the alternative, a Declaration that Sears Canada Inc. and SHS Services Management Inc. were carrying on associated or related activities or businesses for the purposes of *Employment Standards Act, 2000*, S.O. 2000, c. 41; the *Employment Standards Act*, R.B.S.C. 1996, c. 113; *The Employment Standards Code*, C.C.S.M. c. E110, *Labour Standards Code*, R.S.N.S. 1989, c. 246 and *The Civil Code of Québec*, L.R.Q. c. C-1991;
  - (d) damages for breach of employment contract and wrongful dismissal in the amount of \$200,000.00 for each class member or as aggregated following a common issues trial;
  - (e) an interim, interlocutory and permanent injunction compelling the Defendants to pay all amounts due under the applicable employment standards legislation, including amounts for wages, vacation pay, overtime pay, holidays, termination pay and severance pay; and,

(f) an Order requiring the Receiver-Manager of the corporate Defendant SHS Services Management Inc. and Sears Canada Inc. to provide the Plaintiff with an accounting of all commissions owed to the Plaintiff for the period of September 2013 up to and including December 13, 2013.

2. The Plaintiff, Kenny claims, on behalf of himself and others similarly situated in Canada, as against the Defendants, Sears Canada Inc., SHS Services Management Inc. and Micheal Clements:

- (a) an Order certifying the proceeding and appointing him representative Plaintiff;
- (b) damages for earned but unpaid wages, commissions and expenses in an amount to be assessed;
- (c) pre-judgment interest on all sums due and owing herein in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (d) post-judgment interest in accordance with section 129 of the *Courts of Justice Act*, *supra*, as amended;
- (e) the costs of distributing all monies received from the Defendants to the class members;
- (f) costs on a substantial indemnity basis, plus applicable taxes;
- (g) such further and other relief as to this Honourable Court may seem just.

**The Parties:**

3. The Plaintiff, Kenny is an individual residing in London, Ontario. Kenny was employed pursuant to a written contract of employment with the Defendant, SHS Services Management Inc. ("SHS") from March 2, 2013 until on or about December 13, 2013. Prior to that time, Kenny was employed by the Defendant, Sears Canada Inc. ("Sears") for thirty-five (35) years, ten (10) months and three (3) days.
4. SHS is a corporation incorporated in accordance with the provisions of the *Canada Business Corporations Act* and which carried on the business of selling, furnishing and installing home improvement and products, including windows, doors, roofing, heating, ventilation and air conditioning ("HVAC"), carpets and window coverings, as well as duct cleaning and carpet cleaning. SHS is no longer operating and went into interim receivership on or about December 13, 2013.
5. PricewaterhouseCoopers Inc. is a corporation incorporated pursuant to the provisions of *Canada Business Corporations Act* and is extra-provincially registered in Ontario. PricewaterhouseCoopers Inc. was appointed interim receiver and subsequently receiver of SHS on December 13, 2013 and January 9, 2014 respectively.
6. Sears is a corporation incorporated pursuant to the provisions of the *Canada Business Corporations Act* with head office in Toronto, Ontario and which carries on business as a retailer, among other things.
7. The Defendant, Micheal Clements ("Clements") is an individual and was at all material times, the sole director of SHS.



8. The Defendant, Stephen Verhoeff ("S. Verhoeff") is an individual who was, until October of 2013, a director of SHS.
9. The Defendant Paul Verhoeff ("P. Verhoeff") is an individual who was, until October of 2013, a director of SHS.

### **The Asset Transfer Agreement and Offer of Employment**

10. In or about March of 2013, pursuant to an Asset Transfer Agreement, SHS agreed to acquire certain assets and to operate certain businesses of Sears, particularly the business operating under the "Sears Home Services" banner (the "Asset Agreement").
11. On or about February 18, 2013, Kenny was notified of the Asset Agreement and acquisition of the Sears Home Service assets by way of receipt of a Conditional Offers of Employment with SHS (the "Offer").
12. The Offer was conditional upon the successful closing of the Asset Agreement transaction (the "Transaction").
13. The offer to Kenny provided that he would hold the position and title of Sales Associate and would be compensated on a commission basis. In particular, Kenny was entitled to draw against commission paid on personal sales in the Home Services department. The rate of commission was set at a variable rate of 11% on Décor and 9% on exterior including Windows, Doors, and Roofing, 11% on Window Coverings, 8% on Flooring, 5% on Area Rugs, and 9% on HVAC. Kenny's draw amount was set at \$12.40 per hour. Kenny's position and responsibilities were to remain substantially unchanged from those with Sears.

14. On or about February 24, 2013, Kenny signed the offer.
15. The transaction closed on or about March 2, 2013. Kenny continued employment with SHS upon completion of the transaction.
16. The Plaintiff states that he was never notified of the termination of his employment with Sears, nor was he provided with any notice or pay in lieu thereof.
17. As a Sales Associate, Kenny reported to the District Sales Manager and was responsible for among other things, selling HVAC and other household items.
18. On or about December 13, 2013, pursuant to an order of the Ontario Superior Court of Justice, PricewaterhouseCoopers Inc. ("PWC") was appointed as interim receiver and receiver, without security, of all the assets, undertakings and properties of SHS.
19. On that same date, all employees of SHS including Kenny were terminated without notice.
20. On January 9, 2014, pursuant to an Order of the Ontario Superior Court of Justice, PWC was relieved of its duties, obligations and liabilities as interim receiver and was appointed as receiver, without security, of all the assets, undertakings and property of SHS.
21. Kenny's employment contract provided that in the event SHS terminated him employment for any reason that does not constitute just cause, "*SHS will recognize your prior years of continuous service with Sears for the purposes of calculating your entitlement to working notice, or payment in lieu of working notice.*"
22. The Plaintiff states that at all material times, it was an express or, in the alternative, implied term of his contract of employment that such employment would not be terminated without reasonable notice.

23. Kenny was not terminated for just cause and SHS failed to provide him with reasonable notice or pay in lieu thereof. The employment of other members of the class in Ontario and other provinces was also terminated.
24. As a result of their wrongful dismissal, Kenny and the rest of the class have suffered loss of salary, wages, bonus, benefits and incremental increases and income and benefits to which they would have been entitled during the period of reasonable notice.
25. The Plaintiff participated in a consolidated Sears defined benefit pension plan and Sun Life Insurance Company defined contribution plan. The Plaintiff's pension rights and entitlement were diminished and impaired as a result of the transfer of his position from Sears to SHS and the subsequent termination of his employment and that of other members of the class.
26. As a result of their wrongful dismissal, Kenny and other class members will incur relocation and other expenses while attempting to mitigate their losses by seeking suitable alternative employment.
27. The Plaintiff and other class membership are also entitled to benefits under the *Employment Standards Act, 2000*, S.O. 2000, c. 41, the *Labour Standards Code*, R.S.N.S. 1989, c. 246, *The Employment Standards Code*, C.C.S.M. c. E110, the *Employment Standards Act*, R.S.B.C. 1996, c. 113, the *Alberta Employment Standards Code*, R.S.A. 2000 c. E-9 and *The Saskatchewan Employment Act*, S.S. 2014, c. S-15.1, and the *Civil Code of Québec*, L.R.Q., c. C-1991 such as termination pay, severance pay and vacation pay.

28. Notwithstanding the employer's obligations under the applicable provincial employment legislation, the Defendants failed or refused to pay the Plaintiff, and other class members, the minimum statutory amount owed in lieu of notice of termination and severance.
29. To date, Kenny has failed to secure suitable alternate employment.

### **The Common Employer**

30. Pursuant to the Asset Agreement, Sears and SHS also entered into a "Sears Branded Concession Agreement" (the "Concession Agreement") whereby SHS became a licensee for the purpose of procurement, presentation and merchandising of Sears "Brand Name" products.
31. The Concession Agreement purported to control all aspects of the SHS and Sears' relationship and placed extensive constraints on SHS' ability to conduct business.
32. The Concession Agreement provided, *inter alia*, that employees and representatives of SHS must have available on his person, when present on Sears premises and designated stores, identification and security card issued by Sears.
33. SHS was also required to obtain the prior approval of Sears before (i) causing a reduction in workforce of more than 5% in any three month period; or (ii) causing a mass termination as recognized by applicable law. Likewise, SHS was required to inquire with Sears prior to employing any new employees as to whether or not that employee had been previously employed by Sears.

34. SHS was required to adhere to any applicable Sears' policies regarding customer service and/or satisfaction and resolve any and all complaints in accordance with Sears' approved process.
35. The Plaintiff states that upon the closing of the transaction, SHS and Sears operated a closely intertwined business enterprise and were Kenny's and the class members' common employers. In particular, the Plaintiff states:
  - (a) The business and activities of SHS and Sears were closely and inextricably linked;
  - (b) Sears exerted a significant degree of operational control over SHS, including matters related to employment, remuneration and marketing;
  - (c) Sears and SHS operated from many of the same premises;
  - (d) Until September of 2013, SHS used Sears' IT system in the course of its operations. During this time, Sears collected payments from SHS customers and remitted to SHS its share of sales. Sears' procurement system was used by SHS throughout;
  - (e) Sears retained a commission from payments remitted to SHS for services and products;
  - (f) Payments made by customers for SHS services and products could be made on a Sears credit card and in such an event money was collected by Sears and subsequently remitted to SHS;
  - (g) SHS stock was warehoused at Sears warehouses in Sarnia, London and Windsor and other locations and such inventory was handled by Sears' receiving staff;

- (h) SHS employees received an employee discount with Sears;
- (i) Any change SHS wished to make to its commission and remuneration structure had to be approved by Sears in advance;
- (j) Sears retained authority for resolving any consumer complaints regarding products or services supplied by SHS;
- (k) An operational committee was created and consisted of two members from each of Sears and SHS. The responsibilities of the operational committee was to focus and consult on matters of mutual concern to both SHS and Sears including gross revenue, marketing plan, the customer experience, and product and pricing optimization.
- (l) Sears occasionally injected cash into SHS to keep it viable;
- (m) Sears personnel had unfettered access to SHS premises;
- (n) Sears dedicated an employee or employees to act as marketing liaison with SHS. The marketing liaison was responsible, *inter alia*, for assisting SHS with any requests relating to the development and implementation of marketing and advertising strategies, monitoring of marketplace trends;
- (o) Sears dedicated an employee to act as a liaison for product management. Such liaison was responsible for providing SHS with assistance relating to strategy regarding the assortment of products and services and supplier base, including assistance with monitoring trends and identifying opportunities;

- (p) Sears dedicated an employee or employees to act as operations liaisons for SHS. Such employees were responsible for, *inter alia*, providing SHS with assistance relating to customer service, customer resolution, the customer experience, suggestions regarding the development and monitoring of operation plans, and service and performance metrics;
  - (q) Sears had access to real-time reporting of all SHS' point of sale records; and
  - (r) Sears' employees who joined SHS were not permitted to exercise their Sears pension rights while they were employed by SHS.
36. The Plaintiff states that at all material times, Sears controlled the operation of SHS and therefore the employment condition of the Plaintiff and all other employees of the nominal employer, SHS.
37. The Plaintiff states that there existed a sufficient degree of control, direction and integration between SHS and Sears such that they ought to be regarded as one for the purpose of determining liability for obligations owed to their employees.
38. The Plaintiff also pleads and relies upon sections 4(1) and (2) of the *Employment Standards Act, 2000*, S.O. 2000, c. 41, section 95(1) and (2) of the *Employment Standards Act*, R.S.B.C. 1996, c. 113, section 134(1) and 134(2) of *The Employment Standards Code*, C.C.S.M. c. E110, and section 11 of the *Labour Standards Code*, R.S.N.S. 1989, c. 246.
39. As directors of SHS, the Defendants, Clements, S. Verhoeff and P. Verhoeff are jointly and severally liable to employees of the said corporation for all debts not exceeding six months' wages that became payable while they were directors for services performed for the corporation. The Plaintiff pleads and relies upon the provisions of the *Canada Business*

*Corporations Act*, R.S.C. 1985, c. C-44, section 119, the *Employment Standards Act, 2000*, S.O. 2000, c. 41., section 81, *The Saskatchewan Employment Act*, S.S. 2014, c. S-15.1, section 2-68, the *Alberta Employment Standards Code*, R.S.A. 2000, c. E-9, section 112, the *Employment Standards Act*, R.S.B.C. 1996, c. 113, section 96, and *The Employment Standards Code*, C.C.S.M. c. E110, section 90(1).

40. The Defendants, Clements, S. Verhoeff and P. Verhoeff are accordingly indebted to the Plaintiff for the amounts claimed in this action against SHS and Sears, to the limit of liability fixed by the said statutory provisions.
41. Having regard to all of the relevant factors including Kenny's age, length of service, level of responsibilities, employment prospects and all of the circumstances associated with the termination of his employment, the Defendants, SHS and Sears were obligated in law to provide him with at least twenty-four (24) months' notice of dismissal or compensation in lieu thereof.
42. The Plaintiff anticipates that it may be necessary to serve this Statement of Claim upon one or more of the Defendants outside the Province of Ontario and in that regard pleads and relies upon the provisions of Rule 17.02 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 as amended and in particular.
  - (a) Rule 17.02(f) - a contract made and/or breached in Ontario;
  - (b) Rule 17.02(h) - damages sustained in Ontario;
43. The Plaintiff proposes that this action be tried at the City of London, in the County of Middlesex.



Date: ~~July 9, 2015~~

Feb 3, 2015

**MCKENZIE LAKE LAWYERS LLP**

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Michael J. Peerless

Michael Saelhof

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Lawyers for the Representative Plaintiff,

Barry Patrick Kenny

BARRY PATRICK KENNY  
Plaintiff

-and-

SHS SERVICES MANAGEMENT INC. et al.  
Defendants

Court File No. 208/15

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
  
PROCEEDING COMMENCED AT  
LONDON

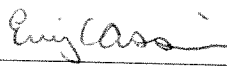
**FRESH AS AMENDED STATEMENT OF CLAIM**

**MCKENZIE LAKE LAWYERS LLP**  
140 Fullarton Street, Suite 1800  
London, Ontario N6A 5P2

John H. McNair  
Michael J. Peerless  
Michael Saehof  
Tel: 519-672-5666  
Fax: 519-672-2674

Lawyers for the Plaintiff,  
Barry Patrick Kenny

This is Exhibit "B" mentioned and referred to in the Affidavit of Sabrina Lombardi, sworn before me at the City of London, in the County of Middlesex, this 6th day of July, 2017.



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A Commissioner, etc.



**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

BARRY PATRICK KENNY

Plaintiff

- and -

SHS SERVICES MANAGEMENT INC., SEARS CANADA INC., MICHEAL CLEMENTS,  
STEPHEN VERHOEFF and PAUL VERHOEFF

Defendants

(Proceeding under the *Class Proceedings Act, 1992*)

**AFFIDAVIT OF THERESA LEA**

I, Theresa Lea, of the City of Calgary in the Province of Alberta MAKE OATH AND SAY:

1. I am an authorized signing officer and the former Vice-President of Finance of Installation Services Org. Ltd (ISO), and a former officer of SHS Services Management Inc. (SHS), and as such I have knowledge of the facts to which I depose herein.
2. ISO provided payroll services to SHS until these services were transitioned to SHS's Markham office in or about May 2013.
3. In September 2013, SHS prepared a three year financial forecast as part of its refinancing efforts. The forecast included an Excel spreadsheet with the then current payroll data for SHS as of September 2013. This spreadsheet was


prepared by me in the ordinary course of the business of SHS incorporating payroll information I received from Adam Barnard AVP Finance of SHS on September 29, 2013.


- 4. The payroll data spreadsheet identifies the SHS employees by employee number, employee name, initial hire date, last hire date, seniority date, location, job status, terms of remuneration, and position description, among other details. If the employee was a former Sears employee who was then hired by SHS, the initial hire date information reflects the date that the employee began working for Sears. To the best of my knowledge, the payroll data accurately reflects the details of SHS's employees as of September 2013.

Attached hereto and marked as **Exhibit A** is copy of the payroll data for SHS Services Management Inc. as of September 2013 with the names of the employees redacted for privacy.

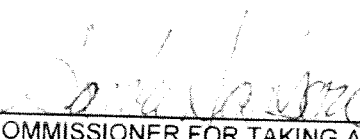
- 5. Exhibit A shows that in the period from March 4, 2013 to September 1, 2013, SHS had a total of 171 new hires into full-time, part-time, and commissioned sales positions. These new hires are highlighted in yellow on Exhibit A.
- 6. I am not aware of any new hires made by SHS after September 2013. At that time, the President had ordered a hiring freeze due to the poor financial performance of the company.

**SWORN BEFORE ME** at the City of Calgary, in the Province of Alberta on Thursday the 11<sup>th</sup> day of August, 2016

  
 Commissioner for Taking Affidavits  
 (or as may be)

  
 Theresa Lea

This is Exhibit "A" to the  
Affidavit of Theresa Lea  
sworn August 11, 2016

  
A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

SANDRA JACKSON  
COMMISSIONER FOR OATHS  
IN AND FOR THE PROVINCE  
OF ALBERTA  
EXPIRES: FEBRUARY 04, 2018





52	03-Oct-1981	07-Oct-1985	Charlemagne	ON	7012	1	11				1	Commission Full Time	18,25	427.20	444 Associate
53	08-Nov-1981	08-Nov-1985	Saint Joseph d'Asbestos	QC	6014	1	60					1 Full Time	18,30	758.75	Material Handler
54	13-Nov-1983	23-May-2006	St-Basile	QC	7013	1	60					1 Full Time	19,92	804.00	Sales Associate
55	10-Mar-1986	10-Mar-1986	Edmonton	AB	7011	1	22					Commission Full Time	24	540.00	Sales Associate
56	01-May-1986	31-May-1986	St-Basile	QC	7012	1	22					Commission Full Time	24	413.00	Sales Associate
57	11-May-1986	11-May-1986	Vancouver	BC	7012	1	22					Commission Full Time	13.25	413.00	Sales Associate
58	02-Sep-1986	02-Sep-1986	St-Basile	QC	7012	1	60					Commission Full Time	20	400.00	Sales Associate
59	27-Sep-1986	27-Sep-1986	St-Basile	QC	7012	1	60					Commission Full Time	20	400.00	Sales Associate
60	15-Oct-1986	15-Oct-1986	Amherstburg	ON	6011	1	60					Part Time	17.44	418.46	Sales Associate
61	05-Mar-1987	25-May-1987	Amherstburg	ON	7011	2	50					1 Part Time	14.00	316.00	Light Operator
62	31-Mar-1987	13-Jan-2009	Windsor	ON	7012	1	48					Commission Full Time	17.66	346.46	Sales Associate
63	10-Apr-1987	10-Sep-1987	St-Catharines	ON	7012	2	60					Commission Full Time	13.66	426.40	Sales Associate
64	13-Apr-1988	27-Apr-2003	St-Basile	QC	7012	2	60					Commission Full Time	12.25	400.00	Sales Associate
65	06-May-1988	06-May-1988	Edmonton	ON	7011	1	60					Commission Full Time	20	400.00	Sales Associate
66	05-Jun-1988	05-Jun-1988	Edmonton	ON	7012	1	21					1 Part Time	18.28	422.84	Lead Developer
67	13-Jun-1988	13-Jun-1988	St-Basile	QC	7011	2	53					Commission Full Time	14	480.00	Sales Associate
68	17-Aug-1988	17-Aug-1988	Mississauga	ON	7012	2	52					1 Part Time	13.35	576.00	Sales Associate
69	23-Aug-1988	23-Aug-1988	Langley	BC	7012	1	11					Commission Full Time	14.8	640.00	Sales Associate
70	26-Sep-1988	26-Sep-1988	East York	ON	6011	2	54					Commission Full Time	10.25	532.00	Sales Associate
71	01-Nov-1988	01-Nov-1988	New Westminster	BC	7012	2	65					1 Full Time	12.95	673.13	Operators Coordinator
72	16-Jan-1989	16-Jan-1989	Edmonton	ON	7012	2	11					1 Full Time	1,059.71	Inventory Analyst	
73	27-May-1989	27-May-1989	Chilliwack	BC	7012	2	53					Commission Full Time	34.4	576.00	Sales Associate
74	24-Jun-1989	24-Jun-1989	Winnipeg	MB	7011	1	11					Commission Full Time	36	640.00	Sales Associate
75	01-Oct-1989	01-Oct-1989	Barnstable	ON	7011	1	40					Commission Full Time	10.25	410.00	Sales Associate
76	27-Mar-1990	27-Mar-1990	Gatineau	QC	7012	2	50					1 Part Time	11.00	410.00	Sales Associate
77	26-Apr-1990	26-Apr-1990	D.D.O.	QC	7012	2	50					Commission Full Time	15	400.00	Lead Developer
78	01-May-1990	01-May-1990	Ottawa	ON	6011	2	66					Commission Full Time	16	640.00	Sales Associate
79	12-May-1990	12-May-1990	London	ON	7012	2	53					1 Full Time	16.15	605.63	Project Coordinator
80	15-Nov-1990	15-Nov-1990	St-Catharines	ON	8012	2	51					Commission Full Time	14	560.00	Sales Associate
81	17-Dec-1990	17-Dec-1990	Gatineau	QC	7011	1	87					1 Part Time	17,707.77	576.00	Sales Associate
82	28-Feb-1991	28-Feb-1991	Saskatoon	SK	7012	1	50					1 Part Time	22.71	203.36	Lead Developer
83	05-Mar-1991	05-Mar-1991	Langley	BC	7012	1	50					Commission Full Time	20	800.00	Sales Associate
84	20-Mar-1991	20-Mar-1991	Kamloops	BC	7011	1	51					1 Part Time	11.61	800.00	Sales Associate
85	05-Apr-1991	05-Apr-1991	Black Diamond	AB	7012	1	20					Commission Full Time	10.32	412.80	Lead Developer
86	09-May-1991	09-May-1991	Montreal	QC	6011	2	86					Commission Full Time	16	640.00	Sales Associate
87	13-May-1991	13-May-1991	Saint-Laurent	QC	7012	2	50					1 Part Time	14.61	350.64	Project Coordinator
88	28-May-1991	28-May-1991	Ottawa	ON	7012	2	50					Commission Full Time	20	800.00	Sales Associate
89	09-Jul-1991	09-Jul-1991	Strom	ON	6011	2	53					Commission Full Time	29	800.00	Sales Associate
90	29-Jul-1991	29-Jul-1991	Loxton Hill	ON	8011	2	53					Commission Full Time	14.94	540.36	Operations Coordinator
91	19-Aug-1991	19-Aug-1991	Barrie	ON	7012	2	82					1 Full Time	19.5	400.00	Sales Associate
92	04-Sep-1991	04-Sep-1991	Victoria	BC	7012	2	50					Commission Full Time	20.00	750.00	Accounts Payable
93	11-Sep-1991	11-Sep-1991	Whitby	ON	7012	1	13					Commission Full Time	13.5	540.00	Sales Associate
94	23-Sep-1991	23-Sep-1991	Cheney	QC	6011	0	36					Commission Full Time	20	800.00	Sales Associate
95	22-Oct-1991	22-Oct-1991	Seymour	ON	7012	2	50					Commission Full Time	20	800.00	Sales Associate
96	02-Dec-1991	02-Dec-1991	Toronto	ON	7012	2	50					Commission Full Time	15.86	380.00	Project Coordinator
97	21-Jan-1992	21-Jan-1992	Vancouver	BC	7010	1	30					1 Part Time	12.40	188.40	Sales Associate
98	26-Oct-1992	26-Oct-1992	Calgary	AB	7012	1	20					1 Full Time	1,346.15	1,446.15	Lead Developer
99	26-Nov-1992	26-Nov-1992	Vancouver	BC	7010	1	11					Commission Full Time	20	800.00	Sales Associate
100	01-Mar-1993	18-Oct-2011	Scarborough	ON	7012	2	50					1 Part Time	12.25	300.00	District Sales Manager
101	17-May-1993	17-May-1993	Edmonton	ON	7011	2	52					Commission Full Time	18.54	134.40	Lead Developer
102	26-Jun-1993	26-Jun-1993	Greely	ON	6010	2	52					1 Part Time	11.00	741.60	Sales Associate
103	04-Aug-1993	04-Aug-1993	Stratford	ON	7010	0	86					1 Full Time	1,019.23	1,716.00	Sales Associate
104	25-Aug-1993	25-Aug-1993	Pier-Canada	ON	7011	2	50					1 Full Time	1,442.31	1,716.00	Lead Developer
105	01-Sep-1993	01-Sep-1993	Laval	QC	6011	1	11					1 Part Time	1,442.31	1,442.31	Customer Experience Manager
106	24-May-1994	24-May-1994	Edouville	ON	7012	2	50					Commission Full Time	12.95	200.00	Lead Developer
107	11-Aug-1994	11-Aug-1994	Andrie	AB	6011	1	20					Commission Full Time	30	800.00	Sales Associate
108												1 Full Time	17.95	873.13	Operations Coordinator
109														800.00	Sales Associate
110														800.00	Sales Associate
111														800.00	Sales Associate
112														800.00	Sales Associate
113														800.00	Sales Associate
114														800.00	Sales Associate
115														800.00	Sales Associate
116														800.00	Sales Associate
117														800.00	Sales Associate
118														800.00	Sales Associate
119														800.00	Sales Associate
120														800.00	Sales Associate





Table with columns: Start Date, End Date, Location, ID, Title, Job Description, Level, Salary, Commission, etc. The table lists various employees and their roles over time.



Continuation of the table from the previous section, containing employee records with dates, locations, and job titles.

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342	02-Nov-2009	64-Nov-2009	02-Nov-2009	Norm Vancouver	BC	7012	1	11	Sales	1	Commission Full Time	10.25	410.00	Sales Associate
343	02-Nov-2009	02-Nov-2009	02-Nov-2009	Edmonton	AB	7012	1	21	Sales	1	Commission Full Time	9.75	390.00	Sales Associate
344	02-Nov-2009	02-Nov-2009	02-Nov-2009	Burlington	ON	7012	3	60	Sales	1	Commission Full Time	16.8	672.00	Sales Associate
345	07-Nov-2009	12-Feb-2010	12-Sep-2010	Markham	ON	7012	2	50	Lead Dev	1	Part Time	10.25	154.00	Lead Developer
346	07-Nov-2009	12-Feb-2010	12-Sep-2010	Markham	ON	7012	2	50	Sales	1	Commission Full Time	10.25	650.40	Sales Associate
347	20-Nov-2009	29-Nov-2009	29-Nov-2009	Woodville	AB	7011	1	21	Lead Dev	1	Part Time	13.25	212.00	Lead Developer
348	20-Nov-2009	29-Nov-2009	29-Nov-2009	Edmonton	AB	7011	1	21	Sales	1	Commission Full Time	10	400.00	Sales Associate
349	03-Dec-2009	03-Dec-2009	03-Dec-2009	Edmonton	ON	7011	1	35	Lead Dev	1	Part Time	18.46	191.36	Lead Developer
350	18-Jan-2010	18-Jan-2010	18-Jan-2010	Ajax	ON	7011	0	38	Operations	1	Full Time	13.00	712.50	Project Coordinator/Team Lead
351	01-Feb-2010	01-Feb-2010	01-Feb-2010	Calgary	AB	7012	1	23	Sales	1	Commission Full Time	15	650.00	Sales Associate
352	08-Feb-2010	08-Feb-2010	08-Feb-2010	Boston	QC	7012	3	60	Sales	1	Commission Full Time	15.27	673.15	Operations/Coordinator
353	22-Feb-2010	22-Feb-2010	22-Feb-2010	Ottawa	ON	7011	0	53	Operations	1	Full Time	2,652.31	673.15	Admin/Program
354	22-Feb-2010	22-Feb-2010	22-Feb-2010	Ottawa	ON	7011	0	85	Procurement	1	Full Time	2,652.31	673.15	Admin/Program
355	09-Mar-2010	08-Mar-2010	28-Mar-2010	Scarborough	ON	7011	3	51	Lead Dev	1	Part Time	13.25	154.00	Lead Developer
356	10-Mar-2010	10-Mar-2010	10-Mar-2010	London	ON	7011	3	60	Operations	1	Full Time	1,133.85	640.00	Sales Associate
357	21-Mar-2010	21-Mar-2010	21-Mar-2010	Longueuil	QC	7012	2	53	Sales	1	Commission Full Time	16	695.00	Sales Associate
358	22-Mar-2010	22-Mar-2010	22-Mar-2010	Ottawa	ON	7012	1	53	Sales	1	Commission Full Time	17.24	410.00	Sales Associate
359	05-Apr-2010	05-Apr-2010	05-Apr-2010	Hamilton	ON	7012	1	53	Sales	1	Commission Full Time	10.25	252.48	Project Coordinator
360	12-Apr-2010	12-Apr-2010	12-Apr-2010	St Laurent	QC	7012	0	56	Operations	1	Part Time	13.52	800.00	Sales Associate
361	20-Apr-2010	20-Apr-2010	20-Apr-2010	St Laurent	QC	7012	3	60	Sales	1	Commission Full Time	20	192.00	Lead Developer
362	30-Apr-2010	27-Apr-2010	27-Apr-2010	Longueuil	QC	7012	3	60	Sales	1	Commission Full Time	12.60	410.00	Sales Associate
363	17-May-2010	17-May-2010	17-May-2010	Vancouver	BC	7012	1	11	Lead Dev	1	Part Time	10.00	160.00	Lead Developer
364	25-May-2010	25-May-2010	25-May-2010	Calgary	AB	7012	1	20	Sales	1	Commission Full Time	10.25	410.00	Sales Associate
365	25-May-2010	25-May-2010	25-May-2010	Stoney Creek	ON	7012	2	52	Sales	1	Commission Full Time	10.25	410.00	Sales Associate
366	25-May-2010	25-May-2010	25-May-2010	Hamilton	ON	7012	1	60	Sales	1	Commission Full Time	10.25	400.00	Sales Associate
367	31-May-2010	31-May-2010	31-May-2010	St-Julienne	QC	7012	1	51	Sales	1	Commission Full Time	10.25	410.00	Sales Associate
368	01-Jun-2010	01-Jun-2010	01-Jun-2010	Cambridge	ON	7012	1	51	Lead Dev	1	Part Time	11.00	176.00	Lead Developer
369	14-Jun-2010	14-Jun-2010	14-Jun-2010	Burnaby	BC	7012	1	11	Sales	1	Commission Full Time	10.32	412.80	Sales Associate
370	05-Jul-2010	05-Jul-2010	05-Jul-2010	Kelowna	BC	7012	1	11	Operations	1	Full Time	1,000.00	164.00	Lead Developer
371	05-Jul-2010	05-Jul-2010	05-Jul-2010	Ottawa	ON	7012	1	11	Lead Dev	1	Part Time	10.25	634.00	Project Coordinator
372	11-Dec-2010	11-Dec-2010	11-Dec-2010	Ottawa	ON	7011	2	53	Lead Dev	1	Part Time	17.44	480.00	Sales Associate
373	19-Jul-2010	19-Jul-2010	19-Jul-2010	Elmhurst	ON	7011	0	86	Operations	1	Commission Full Time	12	167.36	Lead Developer
374	23-Aug-2010	23-Aug-2010	23-Aug-2010	Mississauga	ON	7012	2	50	Sales	1	Commission Full Time	10.46	410.00	Sales Associate
375	08-Sep-2010	08-Sep-2010	08-Sep-2010	Scarborough	ON	7012	2	52	Sales	1	Commission Full Time	10.25	577.13	Materials Handler
376	08-Sep-2010	08-Sep-2010	08-Sep-2010	Hamilton	ON	7012	2	52	Operations	1	Commission Full Time	15.89	410.00	Sales Associate
377	15-Sep-2010	15-Sep-2010	15-Sep-2010	Hamilton	ON	7012	1	52	Operations	1	Commission Full Time	10.25	410.00	Sales Associate
378	30-Sep-2010	29-Sep-2010	29-Sep-2010	Product	QC	7012	1	11	Sales	1	Commission Full Time	23.25	164.00	Lead Developer
379	03-Nov-2010	03-Nov-2010	03-Nov-2010	St John's	NL	7011	3	60	Lead Dev	1	Part Time	10.00	184.00	Lead Developer
380	17-Nov-2010	17-Nov-2010	17-Nov-2010	Markham	ON	7011	2	53	Lead Dev	1	Part Time	10.25	418.46	Operations/Coordinator
381	06-Dec-2010	06-Dec-2010	06-Dec-2010	Toronto	ON	7011	0	86	Operations	1	Part Time	17.44	184.00	Lead Developer
382	21-Jan-2011	03-Aug-2012	04-Aug-2012	Geeth	ON	7012	2	51	Lead Dev	1	Commission Full Time	11.56	800.00	Sales Associate
383	27-Jan-2011	04-Sep-2011	04-Sep-2011	Sturtevant	QC	7011	3	61	Sales	1	Commission Full Time	20	164.00	Lead Developer
384	07-Feb-2011	07-Feb-2011	07-Feb-2011	Wardle	QC	7012	1	11	Sales	1	Commission Full Time	18.33	800.00	Sales Associate
385	07-Feb-2011	07-Feb-2011	07-Feb-2011	St-Jude	QC	7012	3	60	Sales	1	Commission Full Time	20	412.90	Sales Associate
386	08-Feb-2011	08-Feb-2011	08-Feb-2011	Hampton	BC	7012	3	60	Operations	1	Commission Full Time	20	800.00	Sales Associate
387	14-Feb-2011	14-Feb-2011	14-Feb-2011	LaSalle	QC	7012	3	60	Sales	1	Commission Full Time	20	499.00	Sales Associate
388	14-Feb-2011	14-Feb-2011	14-Feb-2011	Massachusetts	QC	7012	3	60	Sales	1	Commission Full Time	15,766.92	800.00	Sales Associate
389	14-Feb-2011	14-Feb-2011	14-Feb-2011	Montreal	QC	7012	3	60	Sales	1	Commission Full Time	1,442.31	499.00	Sales Associate
390	15-Feb-2011	15-Feb-2011	15-Feb-2011	Regency	QC	7012	3	60	Sales	1	Full Time	1,843.04	499.00	Sales Associate
391	10-Mar-2011	10-Mar-2011	10-Mar-2011	Richmond Hill	AB	7012	0	85	Procurement	1	Full Time	1,843.04	600.00	National Install Merchant (Carpet/Out)
392	14-Mar-2011	14-Mar-2011	14-Mar-2011	Richmond Hill	ON	7012	0	85	Sales	1	Commission Full Time	15	301.20	Project Coordinator
393	14-Mar-2011	14-Mar-2011	14-Mar-2011	Clarence Creek	QC	7011	0	86	Operations	1	Part Time	961.54	392.00	Lead Developer
394	28-Mar-2011	28-Mar-2011	28-Mar-2011	St Laurent	QC	7011	2	51	Lead Dev	1	Part Time	1,902.89	192.00	Lead Developer
395	20-Apr-2011	20-Apr-2011	20-Apr-2011	Kitchener	BC	7011	1	11	Procurement	1	Full Time	1,902.89	192.00	National Install Merchant (Roof/Flange)
396	25-Apr-2011	25-Apr-2011	25-Apr-2011	Port Couci	ON	7011	0	85	Operations	1	Full Time	1,634.62	192.00	National Install Merchant (Roof/Flange)
397	27-Apr-2011	27-Apr-2011	27-Apr-2011	Markham	ON	7011	2	53	Operations	1	Full Time	1,634.62	192.00	Operations Manager

410.00 Sales Associate  
 390.00 Sales Associate  
 672.00 Sales Associate  
 154.00 Lead Developer  
 650.40 Sales Associate  
 212.00 Lead Developer  
 400.00 Sales Associate  
 191.36 Lead Developer  
 712.50 Project Coordinator/Team Lead  
 650.00 Sales Associate  
 673.15 Operations/Coordinator  
 673.15 Admin/Program  
 154.00 Lead Developer  
 640.00 Sales Associate  
 695.00 Sales Associate  
 410.00 Sales Associate  
 252.48 Project Coordinator  
 800.00 Sales Associate  
 192.00 Lead Developer  
 410.00 Sales Associate  
 410.00 Sales Associate  
 176.00 Lead Developer  
 412.80 Sales Associate  
 Installation Manager  
 164.00 Lead Developer  
 634.00 Project Coordinator  
 480.00 Sales Associate  
 167.36 Lead Developer  
 410.00 Sales Associate  
 577.13 Materials Handler  
 410.00 Sales Associate  
 Operations Coordinator  
 164.00 Lead Developer  
 184.00 Lead Developer  
 418.46 Operations/Coordinator  
 184.00 Lead Developer  
 800.00 Sales Associate  
 164.00 Lead Developer  
 741.30 Sales Associate  
 800.00 Sales Associate  
 412.90 Sales Associate  
 Installation Manager  
 800.00 Sales Associate  
 800.00 Sales Associate  
 499.00 Sales Associate  
 District Sales Manager  
 National Install Merchant (Carpet/Out)  
 600.00 Sales Associate  
 301.20 Project Coordinator  
 392.00 Lead Developer  
 1,902.89 National Install Merchant (Roof/Flange)  
 1,902.89 National Install Merchant (Roof/Flange)  
 1,634.62 Operations Manager













**BARRY PATRICK KENNY**  
Plaintiff

-and- SHS SERVICES MANAGEMENT INC. et al.  
Defendants

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
*Proceeding under the Class Proceedings Act, 1992*

PROCEEDING COMMENCED AT  
TORONTO

**AFFIDAVIT OF THERESA LEA**  
**(sworn August 11, 2016)**

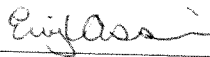
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This is Exhibit "C" mentioned and referred to in the Affidavit of Sabrina Lombardi, sworn before me at the City of London, in the County of Middlesex, this 6th day of July, 2017.



---

A Commissioner, etc.

Court File No. 802/15

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

BARRY PATRICK KENNY

Plaintiff

and

SHS SERVICES MANAGEMENT INC., SEARS CANADA INC.,  
MICHEAL CLEMENTS, STEPHEN VERHOEFF and PAUL VERHOEFF

Defendants

(Proceeding under the *Class Proceedings Act, 1992*)

**MOTION RECORD**

**CERTIFICATION**

**Volume 1 of 3**

March 25, 2016

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**BARRY PATRICK KENNY**

**Plaintiff**

**and**

**SHS SERVICES MANAGEMENT INC., SEARS CANADA INC., MICHEAL  
CLEMENTS, STEPHEN VERHOEFF and PAUL VERHOEFF**

**Defendants**

*(Proceeding under the Class Proceedings Act, 1992)*

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**TAB 1**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN

BARRY PATRICK KENNY

Plaintiff

and

SHS SERVICES MANAGEMENT INC., SEARS CANADA INC.  
MICHAEL CLEMENTS, STEPHEN VERHOEFF and PAUL VERHOEFF

Defendants

(Proceeding under the *Class Proceedings Act, 1992*)

**NOTICE OF MOTION**

The Plaintiff will make a motion to the Honourable Justice Leach, to be fixed in March/April 2017, at the Court House, 80 Dundas Street, London, Ontario, N6A 6A3.

**PROPOSED METHOD OF HEARING:** This Motion is to be heard

in writing under subrule 37.12(1);

in writing as an opposed motion under subrule 37.12.1(4);

orally

**THE MOTION IS FOR:**

1. An Order that the definitions in the Statement of Claim are incorporated in and shall be applied in interpreting this Order;

An Order that the within action be certified as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c.6, as amended;

2. An Order defining the class as:
  - (a) All persons in Canada, (excluding residents of British Columbia) who were under contract of employment with SHS Services Management Inc., from March 2, 2013 until December 13, 2013.
  
3. An Order that the within proceeding is certified on the basis of the following Common Issues:
  - (a) Was there a sufficient degree of relationship and common control between Sears Canada Inc. and SHS Services Management Inc., such that they were the common employers of the Plaintiff and the Class, for the purposes of the operation of the common law “common employer” doctrine?
  
  - (b) Further and/or in the alternative, were Sears Canada Inc. and SHS Services Management Inc. carrying on associated or related activities or businesses for the purposes of the *Employment Standards Act, 2000*, SO 2000, c. 41, *The Employment Standards Code*, CCSM, c. E110, the *Labour Standards Code*, RSNS 1989, c 246 and *The Civil Code of Québec*, LRQ, c.C-1991?
  
  - (c) Are Sears Canada Inc. and SHS Services Management Inc. defendants jointly or severally liable to pay all amounts due, under common law and applicable employment standards legislation, including amounts for wages, vacation pay, overtime pay, holidays, termination pay and severance pay?

- 3 -

- (d) Are the SHS Services Management Inc. Directors jointly and severally liable to pay all debts not exceeding six months' wages that became payable while they were Directors for services performed for SHS Services Management Inc.?
4. An Order that Barry Patrick Kenny be appointed as the representative plaintiff in the within proceeding;
  5. An Order that Notice of certification as a class proceeding shall be given to the Class pursuant to the Litigation Plan attached to the Affidavit of Barry Patrick Kenny, filed;
  6. An Order that the defendants shall be responsible for all costs associated with the Notice program;
  7. An Order that members of the class who elect to opt-out of the class proceeding must do so within a period of time to be fixed by the judge after the date of the order certifying the action by filing an opt-out form as further described in the Litigation Plan attached to the Affidavit of Barry Patrick Kenny, filed;
  8. The costs of this motion plus applicable taxes; and,
  9. Such further and other relief as to this Honourable Court may seem just.

**THE GROUNDS FOR THE MOTION ARE:**

10. The pleadings herein disclose a cause of action against the defendants;
11. There is an identifiable class which will be represented by the representative plaintiff Barry Patrick Kenny;

- 4 -

12. The class is objectively defined, membership being rationally bound by those who were employed by SHS Services Management Inc., from March 2, 2013 until December 13, 2013 (the time of the Asset Agreement to the appointment of PWC as interim receiver of SHS Services Management Inc.);
13. The claims of the class members raise common issues with respect to the within litigation, the determination of which will move the litigation substantially forward;
14. A class proceeding will be the preferable procedure for the resolution of the common issues;
15. A class proceeding in this case would constitute the fairest, most efficient and manageable means of adjudication of the common issues;
16. The proposed representative plaintiff Barry Patrick Kenny:
  - (a) will fairly and adequately represent the interests of the class;
  - (b) has a Litigation Plan which sets out a workable method for the advancement of the proceeding on behalf of the class, including notification of class members; and,
  - (c) does not have an interest in conflict, on the common issues, with the interests of other class members;
17. The *Class Proceedings Act, 1992*, S.O. 1992, c.6;
18. The *Rules of Civil Procedure*, Rules 1, 2 and 12; and,
19. Such further and other grounds as counsel may advise and this Honourable Court permit.



**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the

Motion:

20. The Affidavit of John McNair, sworn March 24, 2016;
21. The Affidavit of Barry Patrick Kenny, sworn March 23, 2016; and,
22. Such further and other material as counsel may advise and this Honourable Court permit.

March 24, 2016

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Lawyers for the Plaintiff,  
Barry Patrick Kenny

**ARRY PATRICK KENNY**  
Plaintiff

-and-

**SHS SERVICES MANAGEMENT INC. et al.**  
Defendants

Court File No. 802/15

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**PROCEEDING COMMENCED AT**  
**LONDON**

**NOTICE OF MOTION**

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Lawyers for the Plaintiff,  
Barry Patrick Kenny

**TAB 2**

Court File No. 802/15

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N

BARRY PATRICK KENNY

Plaintiff

and

SHS SERVICES MANAGEMENT INC., SEARS CANADA INC.  
MICHEAL CLEMENTS, STEPHEN VERHOEFF and PAUL VERHOEFF

Defendants

(Proceeding under the *Class Proceedings Act, 1992*)

**AFFIDAVIT OF BARRY PATRICK KENNY**

I, Barry Patrick Kenny, of the City of London, in County of Middlesex, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a plaintiff in the within action and, unless otherwise stated, I have personal knowledge of the facts to which I depose and which I believe are true.

**INTRODUCTION**

2. I am a proposed representative plaintiff in this proposed class action. I have reviewed the Statement of Claim and Amended Statement of Claim, and as such have knowledge of the matters hereinafter deposed, except where stated to be by way of information and belief, in which case I do believe those matters to be true.

3. All capitalized terms have the same meanings assigned to them as in the Statement of Claim.

#### **NATURE OF THE ACTION**

4. I commenced this action on February 3, 2015 in the Ontario Superior Court of Justice in London, Ontario. I retained McKenzie Lake to represent me with respect to the allegations that the defendants, SHS Services Management Inc. (hereinafter “SHS”), and Sears Canada Inc. (hereinafter “Sears”), breached the employment contract of, and wrongfully dismissed, me and the other class members. I further retained McKenzie Lake to represent me with respect to the allegations that the defendants Micheal Clements, Stephen Verhoeff and Paul Verhoeff, (“SHS Directors”) and William C. Crowley, James McBurney, Timothy Flemming, Deborah E. Rosati, R. Raja Khanna, Douglas Campbell, The Estate of H. Ronald Weissman (deceased) William R. Harker, Danita Stevenson and Sam Jeffrey Stollenwerk (“Sears Directors”) were liable to me and class members for unpaid wages, commissions and expenses.

5. On or about August 7, 2015, an Amended Statement of Claim, removing all of the Sears Director Defendants, previously named, was filed. Attached as **Exhibit “A”** is a copy of the Amended Statement of Claim.

6. I am advised by my lawyers that on February 17, 2015, Fraser Valley Employment Law and Tevlin Gleadle Employment Law Strategies LLP commenced a similar class proceeding in British Columbia, under the style of cause of *Leonard Kenneth Tomm v. Sears Canada Inc.* (the “*Tomm Action*”).

### **NATURE OF THIS MOTION**

7. In this motion, I am seeking, on my behalf and on behalf of all persons in Canada (excluding residents of British Columbia) employed by SHS Services Management Inc., from March 2, 2013 until December 13, 2013, an order certifying this action as a class proceeding and certain other ancillary orders necessary for the proper conduct of this action.

### **MY EMPLOYMENT AND TERMINATION**

8. On March 2, 2013 until December 13, 2013 I was employed, pursuant to a written contract of employment with SHS Services Management Inc. ("SHS"). A copy of this contract is attached as **Exhibit "B"**.

9. Prior to this, I was employed by Sears Canada Inc. ("Sears") for thirty-five (35) years, ten (10) months and three (3) days.

10. On or about February 18, 2013, I was notified of an Asset Agreement between Sears and SHS, by way of receipt of a Conditional Offer of Employment with SHS. The offer of employment was conditional upon the successful closing of the Asset Agreement transaction.

11. The employment offer provided that I would hold the position and title of Sales Associate and would be compensated on a commission basis. In particular, I was entitled to draw against commission paid on personal sales in the Home Services department. The rate of commission was set at a variable rate of 11% on Décor and 9% on exterior including Windows, Doors and Roofing, 11% on Window Coverings, 8% on Flooring, 5% on Area Rugs and 9% on HVAC.

My draw amount was set at \$12.40 per hour. My position and responsibilities were to remain substantially unchanged from those I had previously held with Sears.

12. On February 24, 2013, I signed the offer of employment with SHS and upon the closing of the Asset Transfer transaction, on or about March 2, 2013, my employment continued with SHS. As a Sales Associate, I reported to the District Sales Manager and was responsible for, among other things, selling HVAC and other household items. My day-to-day duties continued, unchanged.

13. I was never notified of the termination of my employment with Sears, nor was I provided with any notice or pay in lieu thereof.

14. On or about December 13, 2013, I was terminated without notice by SHS. According to my employment contract with SHS, in the event SHS terminated my employment for any reason (other than just cause), SHS would recognize my prior years of continuous service with Sears for the purposes of calculating my entitlement to working notice, or payment in lieu of working notice.

15. I have suffered loss of salary, wages, bonus, benefits and incremental increases and income and benefits to which I would have been entitled during a period of reasonable notice of termination.

16. I also participated in a consolidated Sears defined benefit pension plan and Sun Life Insurance Company defined contribution plan. My pension rights and entitlements were diminished and impaired as a result of my subsequent termination of employment by SHS.

17. In addition, I incurred other expenses while attempting to mitigate my losses by seeking suitable alternative employment.

18. On or about February 24, 2014 I retained McKenzie Lake Lawyers LLP. I have discussed this case at length with them and they keep me informed of the status of the litigation.

**I AM PREPARED TO ACT AS A REPRESENTATIVE PLAINTIFF**

19. I am prepared to act as a representative plaintiff for a class defined as all Canadians (excluding residents of British Columbia) employed by SHS Services Management Inc., from March 2, 2013 until December 13, 2013.

20. I understand that the major steps in a class action are and will be as follows:

- (a) McKenzie Lake Lawyers LLP issued of a Statement of Claim on February 3, 2015, and an Amended Claim on August 7, 2015;
- (b) by this motion for certification, I am asking the court to certify this action as a class proceeding;
- (c) if the court certifies the action as a class proceeding, notice of the certification order is given to class members who are given the opportunity to opt-out of the class action within a fixed time period;
- (d) we must list all relevant documents and the defendants too must list all their relevant documents;



- (e) examinations for discovery will be held during which lawyers for the defendants may ask me questions and my counsel will ask questions of each of the defendants' representatives;
- (f) conferences will be held with the judge from time to time;
- (g) if the action is not settled, there will be a trial;
- (h) if the class is successful at trial, notice must be given to the class members to give them the opportunity to participate because their involvement may be necessary at that stage to prove their damages;
- (i) then, the amount the defendants will be required to pay to each class member will be determined;
- (j) appeals may be taken at various stages of the action; and
- (k) the action may be settled, but only with court approval, at any stage.

21. I also understand that, in agreeing to seek and accept an appointment by the court as a representative plaintiff, it is my responsibility, among other things:

- (a) to become familiar with the issues to be decided by the court;
- (b) to review the Statement of Claim and amendments;
- (c) to assist in the preparation and execution of an affidavit in support of the motion for certification;

- (d) to attend, if necessary, with my counsel to be cross-examined on my affidavit;
- (e) to attend, if necessary, with my counsel for my examination for discovery where I will be asked questions;
- (f) to assist, if necessary, in the preparation and execution of an affidavit listing relevant documents I have or previously had in my possession or under my control;
- (g) to attend, if necessary, with counsel at the trial and give evidence;
- (h) to receive briefings from my counsel from time to time;
- (i) to express my opinions on strategy to my counsel;
- (j) to express my opinion to my counsel and to the court if offers to settle are made;
- (k) to express my opinion to my counsel and to the court if settlement positions are to be formulated; and,
- (l) to assist in the preparation of and sign an affidavit in support of court approval of any settlement.

22. To date, I have taken a number of steps to fairly and adequately represent the interests of potential class members. These include:

- (a) I retained McKenzie Lake Lawyers LLP;

- (b) I have met, spoken to, and corresponded with counsel on a number of occasions to inform myself about the litigation and advise counsel about my personal circumstances;
- (c) I provided documents and information to my lawyers;
- (d) I reviewed the Statement of Claim, filed February 3, 2015; and,
- (e) I aided in the drafting of this affidavit.

23. Throughout the litigation, I will continue to fairly and adequately represent the interests of class members by interacting with and instructing class counsel as necessary and ensuring through counsel that the class is kept apprised of developments. I will also make myself available for court processes as required.

24. I have reviewed the Litigation Plan, attached hereto as **Exhibit "C"**, which class counsel has developed to advance the within proceeding. The Litigation Plan provides, among other things, for notice to the class members if the action is certified. I have reviewed the notice program and believe that, if implemented, it is a reasonable means for attempting to notify all class members. I do not have experience with litigation plans, but I am advised by Sabrina Lombardi that the Litigation Plan is consistent with Ontario law.

#### **I UNDERSTAND THIS PLAN**

25. I understand that the common issues presently being asserted in this case are set out in the notice of motion.

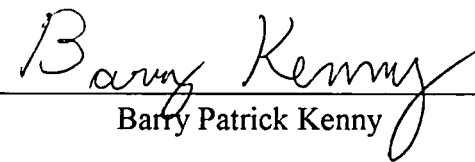
26. I do not have, on any of these issues or issues arising out of them, any interest which is in conflict with the interests of any other class member. I am not employed by any of the defendants in this action and I have no special relationship with any of the defendants. I understand that this affidavit will be used in the motion for certification against the defendants.

27. I believe that I can fairly and adequately represent the interests of the class and I am committed to fulfilling my responsibilities.

28. I make this affidavit in support of a motion for an Order that the within proceeding be certified as a class proceeding and for no other or improper purpose.

SWORN OR AFFIRMED before )  
me at the City of London, in the )  
Province of Ontario, this 23<sup>rd</sup> day of )  
March, 2016. )

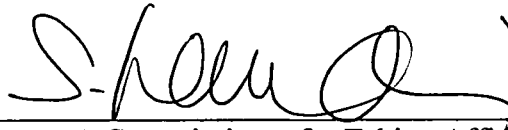
  
\_\_\_\_\_  
A Commissioner, etc.

  
\_\_\_\_\_  
Barry Patrick Kenny

# **Tab A**

This is Exhibit "A" referred to in the Affidavit of Barry Patrick Kenny

sworn before me, on this 23<sup>rd</sup> day of March, 2016

A handwritten signature in black ink, appearing to read "S. Paul O'Connell". The signature is written in a cursive style and is positioned above a horizontal line.

A Commissioner for Taking Affidavits

Court File No. 208/15

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

*(Court Seal)*

BARRY PATRICK KENNY

Plaintiff

and

SHS SERVICES MANAGEMENT INC., SEARS CANADA INC., MICHEAL  
CLEMENTS, STEPHEN VERHOEFF and PAUL VERHOEFF

Defendants

*Proceeding under the Class Proceedings Act, 1992***FRESH AS AMENDED STATEMENT OF CLAIM**

TO THE DEFENDANT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

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Date Feb 3, 2015 Issued by K. Waldick  
Local Registrar

Address of  
court office: 80 Dundas Street  
London, Ontario N6A 6A3

TO: **SHS SERVICES MANAGEMENT INC.**  
c/o Burnet, Duckworth & Palmer LLP  
2400, 525 - 8 Avenue SW  
Calgary, Alberta T2P 1G1

Defendant

AND TO: **SEARS CANADA INC.**  
Legal Department  
290 Yonge Street, Suite 700  
Toronto, Ontario M5B 2C3

Defendant

AND TO: **MICHEAL CLEMENTS**  
290 Yonge Street, Suite 700  
Toronto, Ontario M5B 2C3

Defendant

AND TO: **STEPHEN VERHOEFF**  
72 Midvalley Crescent SE  
Calgary, Alberta T2X 1N3

Defendant

AND TO: **PAUL VERHOEFF**  
63 Bent Tree Court  
Calgary, Alberta T3Z 3B2

Defendant



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**CLAIM**

1. The Plaintiff, Barry Patrick Kenny (“Kenny”) claims, on behalf of himself and others similarly situated in Canada, as against the Defendants, Sears Canada Inc. and SHS Services Management Inc.:
  - (a) An Order certifying the proceeding and appointing him as representative Plaintiff;
  - (b) a Declaration that Sears Canada Inc. and SHS Services Management Inc. were at all material times the common employers of the Plaintiff;
  - (c) further and/or in the alternative, a Declaration that Sears Canada Inc. and SHS Services Management Inc. were carrying on associated or related activities or businesses for the purposes of *Employment Standards Act, 2000*, S.O. 2000, c. 41; the *Employment Standards Act*, R.B.S.C. 1996, c. 113; *The Employment Standards Code*, C.C.S.M. c. E110, *Labour Standards Code*, R.S.N.S. 1989, c. 246 and *The Civil Code of Québec*, L.R.Q. c. C-1991;
  - (d) damages for breach of employment contract and wrongful dismissal in the amount of \$200,000.00 for each class member or as aggregated following a common issues trial;
  - (e) an interim, interlocutory and permanent injunction compelling the Defendants to pay all amounts due under the applicable employment standards legislation, including amounts for wages, vacation pay, overtime pay, holidays, termination pay and severance pay; and,

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- (f) an Order requiring the Receiver-Manager of the corporate Defendant SHS Services Management Inc. and Sears Canada Inc. to provide the Plaintiff with an accounting of all commissions owed to the Plaintiff for the period of September 2013 up to and including December 13, 2013.
2. The Plaintiff, Kenny claims, on behalf of himself and others similarly situated in Canada, as against the Defendants, Sears Canada Inc., SHS Services Management Inc. and Micheal Clements:
- (a) an Order certifying the proceeding and appointing him representative Plaintiff;
  - (b) damages for earned but unpaid wages, commissions and expenses in an amount to be assessed;
  - (c) pre-judgment interest on all sums due and owing herein in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
  - (d) post-judgment interest in accordance with section 129 of the *Courts of Justice Act*, *supra*, as amended;
  - (e) the costs of distributing all monies received from the Defendants to the class members;
  - (f) costs on a substantial indemnity basis, plus applicable taxes;
  - (g) such further and other relief as to this Honourable Court may seem just.

**The Parties:**

3. The Plaintiff, Kenny is an individual residing in London, Ontario. Kenny was employed pursuant to a written contract of employment with the Defendant, SHS Services Management Inc. ("SHS") from March 2, 2013 until on or about December 13, 2013. Prior to that time, Kenny was employed by the Defendant, Sears Canada Inc. ("Sears") for thirty-five (35) years, ten (10) months and three (3) days.
4. SHS is a corporation incorporated in accordance with the provisions of the *Canada Business Corporations Act* and which carried on the business of selling, furnishing and installing home improvement and products, including windows, doors, roofing, heating, ventilation and air conditioning ("HVAC"), carpets and window coverings, as well as duct cleaning and carpet cleaning. SHS is no longer operating and went into interim receivership on or about December 13, 2013.
5. PricewaterhouseCoopers Inc. is a corporation incorporated pursuant to the provisions of *Canada Business Corporations Act* and is extra-provincially registered in Ontario. PricewaterhouseCoopers Inc. was appointed interim receiver and subsequently receiver of SHS on December 13, 2013 and January 9, 2014 respectively.
6. Sears is a corporation incorporated pursuant to the provisions of the *Canada Business Corporations Act* with head office in Toronto, Ontario and which carries on business as a retailer, among other things.
7. The Defendant, Micheal Clements ("Clements") is an individual and was at all material times, the sole director of SHS.

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8. The Defendant, Stephen Verhoeff ("S. Verhoeff") is an individual who was, until October of 2013, a director of SHS.
9. The Defendant Paul Verhoeff ("P. Verhoeff") is an individual who was, until October of 2013, a director of SHS.

**The Asset Transfer Agreement and Offer of Employment**

10. In or about March of 2013, pursuant to an Asset Transfer Agreement, SHS agreed to acquire certain assets and to operate certain businesses of Sears, particularly the business operating under the "Sears Home Services" banner (the "Asset Agreement").
11. On or about February 18, 2013, Kenny was notified of the Asset Agreement and acquisition of the Sears Home Service assets by way of receipt of a Conditional Offers of Employment with SHS (the "Offer").
12. The Offer was conditional upon the successful closing of the Asset Agreement transaction (the "Transaction").
13. The offer to Kenny provided that he would hold the position and title of Sales Associate and would be compensated on a commission basis. In particular, Kenny was entitled to draw against commission paid on personal sales in the Home Services department. The rate of commission was set at a variable rate of 11% on Décor and 9% on exterior including Windows, Doors, and Roofing, 11% on Window Coverings, 8% on Flooring, 5% on Area Rugs, and 9% on HVAC. Kenny's draw amount was set at \$12.40 per hour. Kenny's position and responsibilities were to remain substantially unchanged from those with Sears.

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14. On or about February 24, 2013, Kenny signed the offer.
15. The transaction closed on or about March 2, 2013. Kenny continued employment with SHS upon completion of the transaction.
16. The Plaintiff states that he was never notified of the termination of his employment with Sears, nor was he provided with any notice or pay in lieu thereof.
17. As a Sales Associate, Kenny reported to the District Sales Manager and was responsible for among other things, selling HVAC and other household items.
18. On or about December 13, 2013, pursuant to an order of the Ontario Superior Court of Justice, PricewaterhouseCoopers Inc. ("PWC") was appointed as interim receiver and receiver, without security, of all the assets, undertakings and properties of SHS.
19. On that same date, all employees of SHS including Kenny were terminated without notice.
20. On January 9, 2014, pursuant to an Order of the Ontario Superior Court of Justice, PWC was relieved of its duties, obligations and liabilities as interim receiver and was appointed as receiver, without security, of all the assets, undertakings and property of SHS.
21. Kenny's employment contract provided that in the event SHS terminated him employment for any reason that does not constitute just cause, "*SHS will recognize your prior years of continuous service with Sears for the purposes of calculating your entitlement to working notice, or payment in lieu of working notice.*"
22. The Plaintiff states that at all material times, it was an express or, in the alternative, implied term of his contract of employment that such employment would not be terminated without reasonable notice.

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23. Kenny was not terminated for just cause and SHS failed to provide him with reasonable notice or pay in lieu thereof. The employment of other members of the class in Ontario and other provinces was also terminated.
24. As a result of their wrongful dismissal, Kenny and the rest of the class have suffered loss of salary, wages, bonus, benefits and incremental increases and income and benefits to which they would have been entitled during the period of reasonable notice.
25. The Plaintiff participated in a consolidated Sears defined benefit pension plan and Sun Life Insurance Company defined contribution plan. The Plaintiff's pension rights and entitlement were diminished and impaired as a result of the transfer of his position from Sears to SHS and the subsequent termination of his employment and that of other members of the class.
26. As a result of their wrongful dismissal, Kenny and other class members will incur relocation and other expenses while attempting to mitigate their losses by seeking suitable alternative employment.
27. The Plaintiff and other class membership are also entitled to benefits under the *Employment Standards Act, 2000*, S.O. 2000, c. 41, the *Labour Standards Code*, R.S.N.S. 1989, c. 246, *The Employment Standards Code*, C.C.S.M. c. E110, the *Employment Standards Act*, R.S.B.C. 1996, c. 113, the *Alberta Employment Standards Code*, R.S.A. 2000 c. E-9 and *The Saskatchewan Employment Act*, S.S. 2014, c. S-15.1, and the *Civil Code of Québec*, L.R.Q., c. C-1991 such as termination pay, severance pay and vacation pay.

28. Notwithstanding the employer's obligations under the applicable provincial employment legislation, the Defendants failed or refused to pay the Plaintiff, and other class members, the minimum statutory amount owed in lieu of notice of termination and severance.
29. To date, Kenny has failed to secure suitable alternate employment.

#### **The Common Employer**

30. Pursuant to the Asset Agreement, Sears and SHS also entered into a "Sears Branded Concession Agreement" (the "Concession Agreement") whereby SHS became a licensee for the purpose of procurement, presentation and merchandising, of Sears "Brand Name" products.
31. The Concession Agreement purported to control all aspects of the SHS and Sears' relationship and placed extensive constraints on SHS' ability to conduct business.
32. The Concession Agreement provided, *inter alia*, that employees and representatives of SHS must have available on his person, when present on Sears premises and designated stores, identification and security card issued by Sears.
33. SHS was also required to obtain the prior approval of Sears before (i) causing a reduction in workforce of more than 5% in any three month period; or (ii) causing a mass termination as recognized by applicable law. Likewise, SHS was required to inquire with Sears prior to employing any new employees as to whether or not that employee had been previously employed by Sears.

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34. SHS was required to adhere to any applicable Sears' policies regarding customer service and/or satisfaction and resolve any and all complaints in accordance with Sears' approved process.
35. The Plaintiff states that upon the closing of the transaction, SHS and Sears operated a closely intertwined business enterprise and were Kenny's and the class members' common employers. In particular, the Plaintiff states:
  - (a) The business and activities of SHS and Sears were closely and inextricably linked;
  - (b) Sears exerted a significant degree of operational control over SHS, including matters related to employment, remuneration and marketing;
  - (c) Sears and SHS operated from many of the same premises;
  - (d) Until September of 2013, SHS used Sears' IT system in the course of its operations. During this time, Sears collected payments from SHS customers and remitted to SHS its share of sales. Sears' procurement system was used by SHS throughout;
  - (e) Sears retained a commission from payments remitted to SHS for services and products;
  - (f) Payments made by customers for SHS services and products could be made on a Sears credit card and in such an event money was collected by Sears and subsequently remitted to SHS;
  - (g) SHS stock was warehoused at Sears warehouses in Sarnia, London and Windsor and other locations and such inventory was handled by Sears' receiving staff;



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- (h) SHS employees received an employee discount with Sears;
- (i) Any change SHS wished to make to its commission and remuneration structure had to be approved by Sears in advance;
- (j) Sears retained authority for resolving any consumer complaints regarding products or services supplied by SHS;
- (k) An operational committee was created and consisted of two members from each of Sears and SHS. The responsibilities of the operational committee was to focus and consult on matters of mutual concern to both SHS and Sears including gross revenue, marketing plan, the customer experience, and product and pricing optimization.
- (l) Sears occasionally injected cash into SHS to keep it viable;
- (m) Sears personnel had unfettered access to SHS premises;
- (n) Sears dedicated an employee or employees to act as marketing liaison with SHS. The marketing liaison was responsible, *inter alia*, for assisting SHS with any requests relating to the development and implementation of marketing and advertising strategies, monitoring of marketplace trends;
- (o) Sears dedicated an employee to act as a liaison for product management. Such liaison was responsible for providing SHS with assistance relating to strategy regarding the assortment of products and services and supplier base, including assistance with monitoring trends and identifying opportunities;

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- (p) Sears dedicated an employee or employees to act as operations liaisons for SHS. Such employees were responsible for, *inter alia*, providing SHS with assistance relating to customer service, customer resolution, the customer experience, suggestions regarding the development and monitoring of operation plans, and service and performance metrics;
  - (q) Sears had access to real-time reporting of all SHS' point of sale records; and
  - (r) Sears' employees who joined SHS were not permitted to exercise their Sears pension rights while they were employed by SHS.
36. The Plaintiff states that at all material times, Sears controlled the operation of SHS and therefore the employment condition of the Plaintiff and all other employees of the nominal employer, SHS.
37. The Plaintiff states that there existed a sufficient degree of control, direction and integration between SHS and Sears such that they ought to be regarded as one for the purpose of determining liability for obligations owed to their employees.
38. The Plaintiff also pleads and relies upon sections 4(1) and (2) of the *Employment Standards Act, 2000*, S.O. 2000, c. 41, section 95(1) and (2) of the *Employment Standards Act*, R.S.B.C. 1996, c. 113, section 134(1) and 134(2) of *The Employment Standards Code*, C.C.S.M. c. E110, and section 11 of the *Labour Standards Code*, R.S.N.S. 1989, c. 246.
39. As directors of SHS, the Defendants, Clements, S. Verhoeff and P. Verhoeff are jointly and severally liable to employees of the said corporation for all debts not exceeding six months' wages that became payable while they were directors for services performed for the corporation. The Plaintiff pleads and relies upon the provisions of the *Canada Business*

*Corporations Act*, R.S.C. 1985, c. C-44, section 119, the *Employment Standards Act, 2000*, S.O. 2000, c. 41., section 81, *The Saskatchewan Employment Act*, S.S. 2014, c. S-15.1, section 2-68, the *Alberta Employment Standards Code*, R.S.A. 2000, c. E-9, section 112, the *Employment Standards Act*, R.S.B.C. 1996, c. 113, section 96, and *The Employment Standards Code*, C.C.S.M. c. E110, section 90(1).

40. The Defendants, Clements, S. Verhoeff and P. Verhoeff are accordingly indebted to the Plaintiff for the amounts claimed in this action against SHS and Sears, to the limit of liability fixed by the said statutory provisions.
41. Having regard to all of the relevant factors including Kenny's age, length of service, level of responsibilities, employment prospects and all of the circumstances associated with the termination of his employment, the Defendants, SHS and Sears were obligated in law to provide him with at least twenty-four (24) months' notice of dismissal or compensation in lieu thereof.
42. The Plaintiff anticipates that it may be necessary to serve this Statement of Claim upon one or more of the Defendants outside the Province of Ontario and in that regard pleads and relies upon the provisions of Rule 17.02 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 as amended and in particular,
  - (a) Rule 17.02(f) - a contract made and/or breached in Ontario;
  - (b) Rule 17.02(h) - damages sustained in Ontario;
43. The Plaintiff proposes that this action be tried at the City of London, in the County of Middlesex.

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Date: ~~July 9, 2015~~

Feb 3, 2015

**MCKENZIE LAKE LAWYERS LLP**  
140 Fullarton Street, Suite 1800  
London, Ontario N6A 5P2

John H. McNair  
Michael J. Peerless  
Michael Saehof  
Tel: 519-672-5666  
Fax: 519-672-2674

Lawyers for the Representative Plaintiff,  
Barry Patrick Kenny

BARRY PATRICK KENNY  
Plaintiff

-and-

SHS SERVICES MANAGEMENT INC. et al.  
Defendants

Court File No. 208/15

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**PROCEEDING COMMENCED AT**  
**LONDON**

**FRESH AS AMENDED STATEMENT OF CLAIM**

**MCKENZIE LAKE LAWYERS LLP**  
140 Fullarton Street, Suite 1800  
London, Ontario N6A 5P2

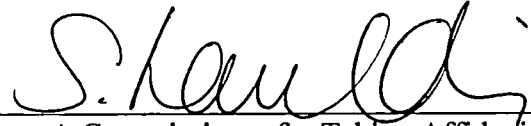
John H. McNair  
Michael J. Peerless  
Michael Saethof  
Tel: 519-672-5666  
Fax: 519-672-2674

Lawyers for the Plaintiff,  
Barry Patrick Kenny

# **Tab B**

This is Exhibit "B" referred to in the Affidavit of Barry Patrick Kenny

sworn before me, on this 23<sup>rd</sup> day of March, 2016

A handwritten signature in cursive script, appearing to read "S. Kauld", written over a horizontal line.

A Commissioner for Taking Affidavits



## Welcome to SHS Services Management

Dear Barry,

Let me be the first to welcome you to SHS Services Management. This is an exciting time for us all as we embark on this journey of transforming not only Sears Home Services, but the home improvement services industry in Canada.

The partnership that has been forged by Sears and SHS Services Management puts us in a position of strength as we combine the Sears brand, private labels, Sears Card, Sears Club Points, nationwide store network and 48 years of experience in Home Services with SHS's world-class Service Delivery Model to allow us to offer Canadians a Home Services experience that is second-to-none. The business will continue to operate under the Sears Home Services brand so the customer can still take confidence in the knowledge that they are dealing with Sears.

We understand that these changes along with your move to SHS may cause some uncertainty, particularly when it comes to the terms and conditions of your employment. You can rest assured however that together with the team at Sears, we have worked diligently to ensure your terms – specifically as they pertain to compensation, benefits and pension – are comparable to what you currently receive. You will also be able to continue to take advantage of your Sears discount.

Today you will hear a great deal about what your future at SHS will be like. While you will learn a lot, you might still have questions that remain unanswered. To assist you in getting those questions we have set up a toll-free telephone help line. We have much to accomplish over the next few months. I ask you to bear with us and to help us with the changes we will encounter. We will be working alongside you every step of the way as we move through this process.

We are looking forward to welcoming you to our team because at SHS, it's our people who set us apart from the competition, and it's our culture and values that define us. They unite us in our goals and influence all that we do, from providing our customers with experiences that are best-in-class, to how we work with each other, our vendor and installer partners, and how we develop our business for the future.

Again, we're excited to have you as part of our team! We are committed to our vision and to you, and I am confident that, together, we will accomplish great things.

Kind regards,

Michael Strachan



# SHS

services management

125 Commerce Valley Drive West  
Suite 500  
Markham, Ontario  
L3T 7W4

February 18<sup>th</sup>, 2013

**PERSONAL AND CONFIDENTIAL**

Barry Kenny  
c/o Sears Canada Inc.  
700 – 290 Yonge Street  
Toronto, Ontario  
M5C 2B3

Dear Barry Kenny:

**Conditional Offer of Employment with SHS Services Management Inc.**

As you may be aware, your current employer, Sears Canada Inc. (**Sears**), has entered into an agreement whereby SHS Services Management Inc. (**SHS**) has agreed to acquire certain assets and to operate certain business of Sears, particularly the business operating under the "Sears Home Services" banner (the **Transaction**). We anticipate that the Transaction will close on March 2, 2013, or such other date as the parties agree (the **Closing Date**).

SHS values your knowledge and experience and we are pleased to extend this conditional offer of employment to you to be employed with SHS. Please be advised that this offer of employment is conditional upon the successful closing of the Transaction, and effective immediately after closing. If the Transaction does not close, this offer is null and void.

Outlined below are the terms and conditions of this conditional offer of employment:

**1. Title**

You will hold the position and title of Sales Associate.

**2. Commencement Date**

The commencement of your employment with SHS will be on the Closing Date, immediately after closing (the **Commencement Date**), but SHS will recognize your prior years of continuous service with Sears for the purposes of vacation entitlement and statutory or common law severance entitlement. Your seniority date will remain as **6/13/1977**.

**3. Location & Hours of Work**

You will continue to work in your current workplace location. In the likely event that SHS relocates your place of employment our intent will be to have the new facility located within a 10 km radius of your current location. SHS's workweek is based upon 37.5 hours. You will be required to devote whatever time is necessary to complete the requirements of your position, which may exceed the standard hours of work. Your daily hours of work will be confirmed to you by your manager.

**4. Term**

You will continue to be employed with SHS as a Full Time employee on an indefinite basis, unless terminated earlier in accordance with this conditional offer of employment (the **Term**).

**5. Reporting**

In the capacity of Sales Associate, you will report to District Sales Manager.

**6. Responsibilities**

Your responsibilities will continue, in essence, as they existed with Sears, to be modified as reasonably necessary to reflect the revised structure of the business and the needs of SHS. A more detailed description of your duties and responsibilities are attached and will be discussed with you.

**7. Compensation**

Your compensation will be a draw account against commission paid on personal sales in the Home Services department. The rate of commission in this department is set at a variable rate of 11% on Décor and 9% on exterior including Windows, Doors, and Roofing, 11% on Window Coverings, 8% on Flooring, 5% on Area Rugs, and 9% on HVAC. Commission rates will be reviewed periodically and may be changed without notice to you. Your draw amount has been set at \$12.4 per hour.

**8. Availability**

Shifts are scheduled according to the needs of the business. You will be required to be available a specific minimum number of shifts as discussed with your manager. All changes to scheduled shifts must be made in writing to management for approval.

Every effort will be made to grant availability changes; however, permanent restricted availability that does not meet business needs may result in the termination of employment based on non-availability.

**9. Benefits**

You will be entitled to participate in all benefit plans adopted by SHS for its employees generally, in accordance with the terms and conditions of such plans, and as such plans may be amended from time to time. We will be available to discuss the specifics of such benefit plans with you at your convenience.

You will be eligible to enroll in a Defined Contribution Pension Plan with SHS. We will be available to discuss the specifics of such Pension Plan with you at your convenience.

**10. Vacation**

You will be entitled to paid vacation of 6 weeks per year, payable in accordance with SHS vacation policy. In scheduling such vacation, you will have regard to the operations of SHS and the reasonable directions of your superiors.

**11. Discount**

You will be eligible for the Sears Associate Discount Benefit, in accordance with the Associate Discount Policy which may be amended from time to time by Sears. Your associate identification card must be presented at the time of purchase to be eligible for the discount.

**12. Voluntary Resignation**

You may terminate your employment at any time by providing two (2) weeks advance written notice of the termination date to SHS. In such event, SHS's obligation to compensate you shall cease on the termination date, save and except only for payment of the pro-rata Base Salary earned for services rendered up to and including the termination date, plus any accrued vacation pay owing up to and including the termination date.

**13. Termination**

SHS may terminate your employment at any time for cause, without further notice or obligation to you, and without any pay, compensation or benefits in lieu of notice. If your employment is terminated for cause, you will be paid the pro-rata portion of your Base Salary earned, but not yet paid, up to and including your last day actively at work, and any outstanding vacation pay due and owing to you, but otherwise no further compensation will be payable to you.

SHS may also terminate your employment immediately, for any reason that does not constitute cause. SHS will recognize your prior years of continuous service with Sears for the purposes of calculating your entitlement to working notice, or payment in lieu of working notice.

**14. Confidentiality**

As an employee of SHS, you will have access to the confidential information of SHS and its affiliates, as well as confidential information of Sears (collectively, the **Protected Parties**), including, without limitation, policies, processes, operating methods, source relationships, computer software and all tangible items on which there is recorded information related to the Protected Parties' businesses, as well as all information relating to the presentation, merchandising, marketing, provision and sale of products and services of the Protected Parties, including all customer lists and customer information (the **Confidential Information**). You will not, during your employment with SHS, or at any time after the cessation of your employment with SHS, reproduce, disclose or in any way make available, either directly or indirectly, any of the Confidential Information to any other person at any time without the prior written consent of the applicable Protected Party, as the case may be, whose confidential information you seek to disclose.

**15. Personal Data and Privacy**

You consent that:

- (a) Personal data relating to you may be maintained and stored by SHS electronically or in any other form; and
- (b) Personal data relating to you may be freely transferred and shared between SHS, its affiliates, and Sears, irrespective of where the offices of such entities are physically located.

You acknowledge and agree that SHS has the right to collect, use and disclose your personal information for purposes relating to your employment with SHS, including:

- (a) Ensuring that you are paid for the services performed for SHS;
- (b) Administering any benefits to which you are or may become entitled to, including medical, dental, life insurance, or pension benefits. This shall include the disclosure of your personal information to any insurance company and/or broker or to any entity that manages or administers SHS's benefits on behalf of SHS;
- (c) Compliance with any regulatory reporting and withholding requirements relating to your employment;
- (d) Enforcing SHS's policies, including those relating to the proper use of the electronic communications network and to comply with applicable laws; and
- (e) In the event of a sale or transfer of all or part of the assets of SHS, disclosing to any potential acquiring organization, your personal information solely for the purpose of determining the value of SHS and its assets and liabilities and to evaluate your position within SHS. If your personal information is disclosed to any potential acquiring organization, SHS will require the potential acquiring organization to agree to protect the privacy of your personal information in a manner that is consistent with any policy of SHS dealing with privacy that may be in effect from time to time and/or any applicable law that may be in effect from time to time.

**16. Acknowledgement of Employment Form**

At the time of commencing employment with SHS, you will execute the attached "Statement of Understanding of Employment and/or Engagement Form" attached to this conditional offer letter, which will be an acknowledgement that you are not and shall not be deemed to be an employee of Sears for any purposes, and that you will not be eligible for or considered for employment with Sears while you are an employee of SHS.

**17. Entire Agreement**

This conditional offer and the documents referenced in this letter constitute the entire agreement between you and SHS and supercedes all prior contracts, agreements and understandings between the parties.

**18. Governing Law**

Unless otherwise stated, your employment and this conditional offer letter shall be governed by and construed in accordance with the laws of the Province of Ontario.

Please be advised that the terms of this conditional offer are confidential. We ask that you not discuss the terms with other employees of Sears. This offer remains open for your acceptance until Monday, February 25<sup>th</sup>, 2013.

We are pleased to make this offer of employment to you and hope that you will accept it. To indicate your acceptance of this offer, kindly sign and return this letter via fax (877-622-8642) to SHS Services Management Inc. by February 25<sup>th</sup>, 2013.

Again, we remind you that this offer is conditional. We look forward to the conditions being satisfied and hope to be working with you in the future. If you have any questions, please contact our SHS Employee Support Line at 1-877-907-5325, Monday to Friday 8:00am (EST) to 8:00pm (PST), February 18<sup>th</sup> – March 1<sup>st</sup>, or by email at [humanresources@shsServices.ca](mailto:humanresources@shsServices.ca).

Yours truly,

**SHS SERVICES MANAGEMENT INC.**

Per: \_\_\_\_\_

**I have read the above Conditional Offer of Employment and I accept this Conditional Offer of Employment with SHS Services Management Inc., on the terms and conditions set out in this letter. I understand that this Offer of Employment is conditional upon the Transaction closing.**

Dated this 24 day of February, 2013.

Signature: Barry Kenny  
Barry Kenny

Witness Signature: Deborah Kenny



**Understanding of Employment and/or Engagement Form**

(Section 1: To be completed by YOU, the employee)

I, **Barry Kenny**, understand that SHS Services Management Inc. is a Licensee of Sears Canada Inc. authorized to operate a business operating under the "Sears Home Services" banner.

I understand that I am an employee of or engaged by SHS Services Management Inc.

I further understand that I am not and shall not be deemed to be an employee of Sears Canada Inc. for any purpose whatsoever, including but not limited to, any future claims pursuant to Workers' Compensation, Employment Standards or Human Rights Legislation or any other possible claims, actions or demands.

I further understand that I am not eligible for and will not be considered for employment at Sears Canada Inc. while I am an employee of or engaged by SHS Services Management Inc.

I have read the above; I fully understand it and I sign this statement voluntarily.

Employee Signature or Licensee's Representative: Barry Kenny  
Barry Kenny

Date: Feb 24, 2013

(Section 2: To be completed by SHS Services Management Inc., the Licensee)

I, \_\_\_\_\_ of SHS Services Management Inc. am authorized to sign on  
(Print Authorized Licensee Signatory Name)

behalf of \_\_\_\_\_ operating as \_\_\_\_\_ a Licensee of Sears  
Canada Inc. and confirm that the above named is an employee of or engaged by SHS Services Management Inc.

Signature of Authorized Licensee Signatory: \_\_\_\_\_

Date: \_\_\_\_\_

Code/Rev: 008-09

Position: Sales Associate  
 Location: Your current territory  
 Reports to: District Sales Manager  
 Direct Reports: N/A

**Position Summary:** Responsible to proactively approach all customers with the intent to sell in support of the achievement of daily sales appointments while maintaining store displays and current departmental signing.

**Position Description**

- Instinctively engage each customer with the intent to generate sales and sales appointments.
- Participates in the achievement of service excellence.
- Ensure merchandise, signing and store presentation standards are consistently executed through the eyes of the customer with the intent to sell.
- Provides customers with solutions to their home decorating projects, challenges, and possibilities.
- Participates in the achievement of surpassing sales targets through the execution of corporate programs.
- Demonstrate a constant and up-to-date expertise of our products, services, promotions and policies.

**Qualifications & Competencies:**

- Excellent selling service skills.
- Knowledge of Home Installation business operations, policies and processes.
- Demonstrated knowledge of point of sale terminal.

**Working Conditions:**

- Store environment.
- Shift work.
- Other: Ability to lift/carry 10kg or more.

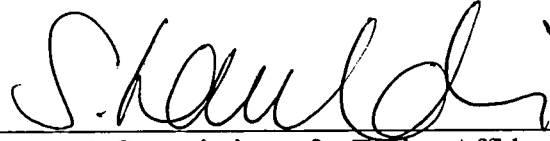
Employee Name: Barry Kenny Signature: Barry Kenny Date: Feb 24, 2013

Supervisor Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

# Tab C

This is Exhibit "C" referred to in the Affidavit of Barry Patrick Kenny

sworn before me, on this 23<sup>rd</sup> day of March, 2016

A handwritten signature in cursive script, appearing to read "J. Kauldi", written over a horizontal line.

A Commissioner for Taking Affidavits



## **SEARS/SHS LITIGATION PLAN**

Section 5(1)(e)(ii) of the *CPA* requires the plaintiff to produce "a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding." The plaintiff proposes the following plan, subject to amendments suggested by the defendants and ordered by the Court.

### **CLASS COUNSEL AND THEIR TEAM**

1. Class Counsel is McKenzie Lake Lawyers, LLP ("McKenzie Lake").
2. McKenzie Lake has the requisite knowledge, skill, experience, personnel and financial wherewithal to prosecute this class action.

### **THE DEFINITION OF THE CLASS**

3. The "Class" and "Class Members" are defined as: all persons in Canada, (excluding residents of British Columbia) who were employed by SHS Services Management Inc., from March 2, 2013 until December 13, 2013 (the time of the Asset Transfer to SHS and SHS's bankruptcy).
4. Based on the Affidavit of Micheal Clements sworn December 12, 2013 in Ontario Superior Court File No. CV-13-10370-00CL, which includes a list of SHS employees as of December 7, 2013 broken down by province and city/town, there are about 569 Class Members estimated to be included in this litigation.

### **REPORTING TO AND COMMUNICATING WITH THE CLASS MEMBERS**

5. Current information on the status of this class action is posted on [www.mckenzielake.com](http://www.mckenzielake.com) (the "Website"). The Website will be updated regularly. Some of the Court decisions will be posted on the Website.
6. The Website provides Class Members with information on how to register with Class Counsel and make inquiries.

### **LITIGATION SCHEDULE**

7. The plaintiff will ask Justice Leach to set a litigation schedule for:
  - (a) the completion of pleadings;
  - (b) motion(s) for judgment;
  - (c) the documentary production and delivery of affidavits of documents by the parties;
  - (d) examinations for discovery;
  - (e) delivery of expert reports; and
  - (f) the trial of the common issues, if necessary.
8. The plaintiff may ask that the litigation schedule be amended, from time to time, as required.

### **DOCUMENT EXCHANGE AND MANAGEMENT**

9. The defendants possess most of the documents relating to the liability common issues such as: The Asset Transfer Agreement, the Branded Concession Agreement and individual employment contracts.

-3-

10. These documents will be produced to Class Counsel through the normal production processes such as the defendants' affidavit of documents, cross-examination and examination for discovery.

11. Class Counsel will handle the documents produced by the defendants and use data management systems to organize, code and manage these documents.

12. The plaintiff will produce all relevant documents in their possession or under their control.

13. The plaintiff has virtually no documentation relating to the liability issues.

#### **DOCUMENTS PRODUCED FROM NON-PARTIES**

14. The plaintiff may seek orders for production of relevant documents in the possession or under the control of non-parties.

#### **PLAINTIFF'S EXPERTS**

15. The plaintiff does not expect to require an expert witness at the common issues stage of this proceeding as the dispute, essentially, is of fact and law without opinions likely to be of assistance. The plaintiff may retain experts with respect to damages, at the next stage.

#### **NOTICE OF CERTIFICATION OF THIS ACTION AS A CLASS PROCEEDING AND THE OPT-OUT PROCEDURE**

16. If the action is certified as a class proceeding, the Court will be asked to:

- (a) settle the form of the notice (the "Notice of Certification");
- (b) set an opt-out date;

- (c) determine the method by which Notice of Certification will be given; and
  - (d) order the defendants to disclose to Class Counsel the names of the Class Members, municipal addresses, telephone numbers, email addresses, and any other relevant information.
17. The plaintiff proposes that the Notice of Certification be disseminated by (“Notice Plan”):
- (a) publishing it once in the national edition of the Globe and Mail (in English);
  - (b) sending the Notice of Certification by email or first class mail directly to Class Members who have given an email address, or physical address, to Class Counsel;
  - (c) sending the Notice of Certification to the Class Members for whom email addresses were disclosed by the defendants;
  - (d) posting it in English and French on the Website;
  - (e) delivering it to any person who requests it; and
  - (f) issuing a press release to Canada Newswire in English and French along with a copy of the Notice of Certification in English and French.
18. The plaintiff will ask the Court to order the defendants to pay the costs of the Notice Plan.
19. The plaintiff proposes the following opt-out procedure:
- (a) the Court will approve the form and content of an opt-out form (the “Opt-Out Form”);

-5-

- (b) a person may opt out of the action by sending an Opt-Out Form before the opt-out date to a person designated by the Court; and
- (c) no Class Member may opt out of the action after the expiration of the opt-out date.

#### **EXAMINATIONS FOR DISCOVERY**

20. The plaintiff intends to examine for discovery at least one representative from each corporate defendant, along with each individual defendant, and will seek leave to extend the discovery period beyond 7 hours.

21. The plaintiff may ask the Court for an order allowing them to examine multiple representatives of each corporate defendant, if necessary.

#### **AGGREGATE DAMAGES**

22. Section 24(1) of the *Class Proceedings Act* allows the Court to award aggregate damages to the Class if certain criteria are established.

23. The plaintiff plans to deal with aggregate damages following the common issues trial.

#### **DISPUTE RESOLUTION DURING THE CURRENCY OF THE ACTION**

24. The plaintiff is willing to participate in mediation or non-binding alternative dispute resolution efforts if the defendants are prepared to do so.

#### **THE TRIAL OF THE COMMON ISSUES**

25. The plaintiff will ask the Court to hold a trial of the common issues six (6) months after the completion of examinations for discovery, undertakings and any motions for refusals.

26. The findings of fact and conclusions on the common issues may permit the judge at the common issues trial to give directions, pursuant to s. 25(3) of the *CPA*, to deal with any remaining individual issues.

#### **THE PROCESS AFTER THE COMMON ISSUES TRIAL**

27. If the plaintiff is successful at the common issues trial or after a motion for judgment, the Court will be asked under s. 25 of the *Class Proceedings Act* to:

- (a) settle the form and content of a notice of resolution of the common issues (the “Notice of Resolution”);
- (b) order that the Notice of Resolution be distributed substantially in accordance with the Notice Plan, except that the Notice of Resolution shall not be emailed to any person who validly opted out of this class action; and
- (c) set a deadline by which each Claimant must file a claim to establish eligibility as a Class Member (“Claims’ Bar Date”).

#### **APPOINTMENT OF AN ADMINISTRATOR AND REFEREE(S) AND THEIR COSTS**

28. The plaintiff will ask the Court to appoint an Administrator and Referee(s), fix their compensation and order the defendants to pay the cost of this Administration.

#### **THE CLAIM FORM AND DECISIONS ON ELIGIBILITY**

29. The Claim Form shall be approved by the Court.

30. Each Claimant must deliver a completed Claim Form by the Claims’ Bar Date.

-7-

31. The Administrator must decide in writing whether or not a Claimant is a Class Member and send the decision to the Claimant and, if appropriate, to the defendants and Class Counsel.

**REVIEW OF ADMINISTRATOR'S ELIGIBILITY DECISION BY THE REFEREE(S)**

32. Within a period approved by the Court, the Claimant and, if appropriate, the defendants may appeal the Administrator's decision on eligibility to the Referee.

33. The eligibility review will be dealt with as a paper record review unless a Referee orders otherwise.

34. The review of the Administrator's eligibility decision shall proceed in such manner as the Referee directs.

35. The Referee's decision on eligibility shall be final.

**THE DISTRIBUTION PROCESS ON THE ASSUMPTION THAT THE JUDGE  
AWARDED AGGREGATE DAMAGES TO THE CLASS**

36. As soon as practicable after all eligibility reviews are completed, the Administrator shall by motion, on notice to Class Counsel and the defendants, if necessary, report to the Court the proposed distribution of the aggregate damages for each eligible Class Members.

37. No distribution to eligible Class Members shall be made until authorized by the Court. The Administrator may make an interim distribution if authorized by the Court.

38. Each eligible Class Member shall sign such documents as the Administrator may require, in accordance with a protocol approved by the Court, as a condition precedent to receiving any money from the Administrator.

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39. In the event the defendants do not pay the judgment(s) in full, the Court will be asked to give further directions to ensure that there are no priorities among eligible Class Members.

**THE PROCESS ON THE ASSUMPTION THAT ALL INDIVIDUAL DAMAGE ISSUES ARE NOT RESOLVED AT THE COMMON ISSUES TRIAL**

40. After determining the common issues, the trial judge will be asked to give directions to resolve any remaining individual issues.

41. The plaintiff will ask the Court to order the following procedure:

- (a) delivery of pleadings, affidavits of documents and examinations for discovery;
- (b) the Referee has the power to award prejudgment interest and costs of the hearings; and,
- (c) the Referee has the power to make any order to allow the fair determination of the hearings.

42. Following any hearing, the Referee shall prepare a written report setting out his or her reasons for the decision. The Referee will send the report by mail or fax or email to each of the defendants, the Administrator, Class Counsel and shall file the report with the Court. The Referee's report shall be deemed to be confirmed upon the expiration of 15 days after it is filed with the Court unless the defendants or the Class Counsel serve a notice of motion to oppose confirmation of the report within that 15 day period as required by Rule 54.09(b).

43. If there is no overall settlement or judgment with the defendants and each claim must be proven and assessed, then the defendants should be required to pay to Class Counsel or the



Administrator the amount of each judgment immediately after each report becomes final. The money shall be held in trust and invested as the Court directs.

#### **CLASS COUNSEL FEES**

44. The Court will be asked to fix the amount of Class Counsel fees, disbursements and applicable taxes and authorize payment as a fixed charge on the recovery.

#### **CY-PRÈS DISTRIBUTION**

45. If there is any residue from the amounts recovered in this action, the Court will be asked to distribute this residue cy-près to a recipient approved by the Court.

#### **FINAL REPORT**

46. After the Administrator makes its final distribution, the Administrator shall make its final report to the Court, in such manner as the Court directs, and the Court may then discharge the Administrator.

#### **REVIEW OF THE LITIGATION PLAN**

47. This plan will be reconsidered before, during and after the common issues trial and may be revised by Court order.

**ARRY PATRICK KENNY**  
Plaintiff

-and-

**SHS SERVICES MANAGEMENT INC. et al.**  
Defendants

Court File No. 802/15

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**PROCEEDING COMMENCED AT**  
**LONDON**

---

**AFFIDAVIT OF BARRY PATRICK KENNY**

---

**McKENZIE LAKE LAWYERS LLP**  
140 Fullarton Street, Suite 1800  
London, Ontario N6A 5P2

Michael J. Peerless (LSUC # 34127P)  
Tel: 519.667.2644

Sabrina Lombardi (LSUC# 52116R)  
Tel: 519.667.2645  
Fax: 519.672.2674

Lawyers for the Plaintiff,  
Barry Patrick Kenny

**TAB 3**

Court File No.: 802/15

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN

BARRY PATRICK KENNY

Plaintiff

and

SHS SERVICES MANAGEMENT INC., SEARS CANADA INC.  
MICHAEL CLEMENTS, STEPHEN VERHOEFF and PAUL VERHOEFF

Defendants

(Proceeding under the *Class Proceedings Act, 1992*)

**AFFIDAVIT OF JOHN MCNAIR**

I, John McNair, of the Municipality of Thames Centre, in County of Middlesex, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a partner with the law firm McKenzie Lake Lawyers LLP ("McKenzie Lake"), counsel for the plaintiff and proposed class herein, and as such have knowledge of the matters deposed to. Where I make statements in this affidavit which are not within my personal knowledge, I have identified the source of that information and belief. All of the information I have deposed to I verily believe to be true.

**BACKGROUND**

2. The within action was commenced by Barry Patrick Kenny (the "Kenny Action") on February 3, 2015 in the Ontario Superior Court of Justice in London, Ontario. Mr. Kenny retained McKenzie Lake to represent him with respect to the allegations that the defendants, SHS

Services Management Inc. (hereinafter “SHS”), Sears Canada Inc. (hereinafter “Sears”), breached the employment contract of, and wrongfully dismissed, the Mr. Kenny and other class members. Mr. Kenny further retained McKenzie Lake to represent him with respect to the allegations that the defendants Micheal Clements, Stephen Verhoeff and Paul Verhoeff, (“SHS Directors”) and William C. Crowley, James McBurney, Timothy Flemming, Deborah E. Rosati, R. Raja Khanna, Douglas Campbell, The Estate of H. Ronald Weissman (deceased) William R. Harker, Danita Stevenson and Sam Jeffrey Stollenwerk (“Sears Directors”) were liable to the him and the class members for unpaid wages, commissions and expenses. Attached as **Exhibit “A”** is a copy of the Statement of Claim

3. On February 17, 2015, Fraser Valley Employment Law and Tevlin Gleadle Employment Law Strategies LLP commenced a similar class proceeding in British Columbia, under the style of cause of *Leonard Kenneth Tomm v. Sears Canada Inc.* (the “*Tomm* Action”). Attached as **Exhibit “B”** is a copy of the *Tomm* Action Notice of Civil Claim.

4. On or about August 7, 2015, the plaintiff herein filed an Amended Statement of Claim, removing all of the Sears Director defendants, previously named. Attached hereto and marked as **Exhibit “C”** is a copy of the Amended Statement of Claim.

### **Class Members**

5. McKenzie Lake has been retained by 95 former Sears/SHS employees for the purpose of advancing this class action or individual claims on behalf of those former Sears/SHS employees. As of March 21, 2016, McKenzie Lake has been directly contacted by 104 former Sears/SHS employees inquiring about the Sears/SHS wrongful dismissal class action.

6. Exhibit "M" from the Affidavit of Micheal Clements sworn December 12, 2013 in Ontario Superior Court File No. CV-13-10370-00CL is a list of SHS employees as of December 7, 2013 broken down by province and city/town. The number of employees, per province, are as follows:

Province	No. Employees
Alberta	79
British Columbia	74
Manitoba	12
New Brunswick	4
Nova Scotia	11
Ontario	317
Quebec	127
Saskatchewan	19
<b>TOTAL</b>	<b>643</b>

Attached hereto as **Exhibit "D"** is a copy of the affidavit of Micheal Clements, sworn December 12, 2013, in respect of Court File No.: CV-13-10370-00CL, including exhibits "A" through "Q" thereto.

7. The plaintiff in the within action seeks to represent all persons in Canada, (excluding residents of British Columbia) who were under contract of employment with SHS Services Management Inc., from March 2, 2013 until December 13, 2013 (the time of the Asset Transfer closing and SHS's bankruptcy).

**SEARS AND SHS - COMMON EMPLOYER**

8. The plaintiff's allegations are contained in the Statement of Claim, filed February 3 and amended August 7, 2015. Generally, it is alleged, *inter alia*, that at all material times, Sears controlled the operation of SHS and the employment condition of the plaintiff and putative class members. It is further alleged that there existed a sufficient relationship and degree of control, direction and integration between SHS and Sears such that they ought to be regarded as one for the purpose of determining liability for obligations owed to the plaintiff and other class members in respect of their wrongful dismissal (which coincided with SHS's commencing bankruptcy proceedings, in or about December 13, 2013).

9. The plaintiff alleges that, as a result of being wrongfully dismissed, he and the class members are entitled to benefits under employment statutes and pursuant to common law. More specifically, the plaintiff claims that he and class members have suffered loss of salary, wages, bonus, benefits, incremental increases and income and benefits to which they would have been entitled during the period of reasonable notice. The plaintiff alleges further that he and class members have incurred and will incur relocation and other expenses while attempting to mitigate their losses by seeking suitable alternative employment.

10. The crucial factual/legal issue to be resolved by this litigation is whether or not Sears and SHS are common employers, (the applicability of the common employer doctrine and/or pursuant to employment statutes). The establishment of this fact will advance the claims of all of the putative class members forward considerably.

11. Attached hereto as **Exhibit “E”** is a copy of the Asset Transfer Agreement, (whereby SHS agreed to acquire certain assets and to operate certain businesses of Sears, particularly the business operating under the “Sears Home Services” banner).
12. Attached hereto as **Exhibit “F”** is a copy of the Branded Concession Agreement.
13. Attached hereto as **Exhibit “G”** is a copy of the Interim Receiver’s First Report to the Court, dated December 20, 2013 submitted in Court File No. CV-13-10370-00CL.
14. Attached hereto as **Exhibit “H”** is a copy of the Interim Receiver’s Second Report to the Court, dated January 7, 2013 submitted in Court File No. CV-13-10370-00CL
15. Attached hereto as **Exhibit “I”** is a copy of the January 9, 2014 Order of Justice Brown in Court File No. CV-13-10370-00CL, obtained by Sears to have PricewaterhouseCoopers Inc. appointed as receiver without security of all the assets, undertakings and properties of SHS. (This order transitioned PWC from *interim* receiver to receiver).
16. Attached hereto as **Exhibit “J”** is a copy of the Receiver’s Third Report to the Court, dated January 28, 2014, submitted in Court File No. CV-13-10370-00CL.
17. Attached hereto as **Exhibit “K”** is a copy of the Receiver’s Supplementary Report to the Receiver’s Third Report to the Court, dated January 31, 2014, submitted in Court File No. CV-13-10370-00CL.
18. Attached hereto as **Exhibit “L”** is a copy of the Receiver’s Second Supplementary Report to the Receiver’s Third Report to the Court, dated February 3, 2014, submitted in Court File No. CV-13-10370-00CL.



19. Attached hereto as **Exhibit “M”** is a copy of the Receiver’s Fourth Report to the Court, dated March 4, 2014, (not including exhibits), submitted in Court File No. CV-13-10370-00CL.
20. Attached hereto as **Exhibit “N”** is a copy of the Receiver’s Fifth Report to the Court, dated June 19, 2014, submitted in Court File No. CV-13-10370-00CL.
21. Attached hereto as **Exhibit “O”** is a copy of the Receiver’s Sixth Report to the Court, dated July 14, 2014, submitted in Court File No. CV-13-10370-00CL.
22. Attached hereto as **Exhibit “P”** is a copy of the Receiver’s Seventh Report to the Court, dated July 28, 2014, submitted in Court File No. CV-13-10370-00CL.
23. Attached hereto as **Exhibit “Q”** is a copy of the Receiver’s Eighth Report to the Court, dated August 12, 2014, submitted in Court File No. CV-13-10370-00CL.
24. Attached hereto as **Exhibit “R”** is a copy of the Receiver’s Tenth Report to the Court, dated October 30, 2014, submitted in Court File No. CV-13-10370-00CL.

## **CLASS CERTIFICATION**

### **Identifiable Class**

25. The plaintiff proposes that the class be defined as per the definition in the notice of motion (and paragraph 7 above).

### **Common Issues**

26. The plaintiff proposes that the proceeding be certified on the basis of the common issues set out in the notice of motion.

**Preferable Procedure**

27. The proposed class includes all persons in Canada, (excluding residents of British Columbia) who were under contract of employment with SHS Services Management Inc., from March 2, 2013 until December 13, 2013 (the time of the Asset Transfer to SHS and SHS's bankruptcy). In the absence of a class proceeding, there is the potential for multiple, overlapping proceedings which have the potential for inconsistent decisions.

28. The plaintiff is uncertain of the precise number of class members. This information is known to the defendants. Based on the information collected by counsel for the plaintiff to date, there are 569 class members.

29. Cases such as this are expensive to pursue. The documentary discovery alone is both extensive and time-consuming. Litigating a case such as this against a large corporation would be prohibitively expensive, very likely exceeding the full damages claim of any individual class member.

**Judicial Economy**

30. A single determination of the significant factual and legal issues in this case eliminates the prospect of a multiplicity of proceedings which is one problem the *Class Proceedings Act, 1992* was designed to prevent.

31. The common issues here are fundamental to the claim of every class member.

**Behaviour Modification**

32. The ability of individuals to access the courts in circumstances where large corporate defendants allegedly cause harm to a broad group of people creates an incentive for other businesses to modify their behaviour in the future.

**Access to Justice**

33. In my opinion, the costs of pursuing this action on an individual basis would be prohibitive and uneconomic for the majority of class members, thereby reducing access to justice. But for this action, the defendants would likely be insulated from much of the alleged damage caused by their conduct because of the costs of litigation alone. I believe that spreading out the cost of litigation gives class members the best chance of achieving access to justice.

34. The common issues raised by this litigation will significantly advance the matter on behalf of all class members.

**Representative Plaintiff**

35. The affidavit of the proposed representative plaintiff details his experiences with the defendants.

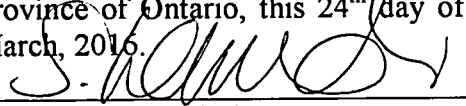
36. I believe the proposed representative plaintiff will fairly and adequately represent the interests of the class. I am not aware of him having any conflict of interest, on the common issues, with other class members.

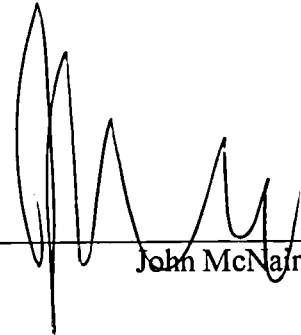
**Litigation Plan**

37. A Litigation Plan has been developed which sets out a workable method of advancing the proceeding on behalf of the class as required by section 5(1)(e)(ii) of the *Class Proceedings Act, 1992*. The plan is subject to review and ongoing modification by this Honourable Court as well as input from the Defendants. A copy of the Litigation Plan is attached to the affidavit of Barry Patrick Kenny, (the proposed representative plaintiff).

**Plaintiff's Counsel**

38. I make this affidavit in support of a motion for an order that the within proceeding be certified as class proceeding and for no other or improper purpose.

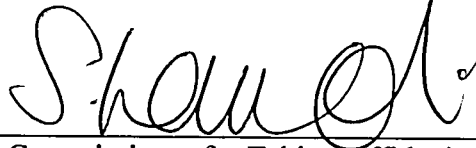
SWORN OR AFFIRMED before )  
me at the City of London, in the )  
Province of Ontario, this 24<sup>th</sup> day of )  
March, 2016. )  
 )  
\_\_\_\_\_)  
A Commissioner, etc. )

  
\_\_\_\_\_)  
John McNair

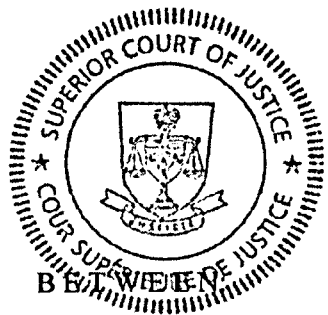
# **Tab A**

This is Exhibit "A" referred to in the Affidavit of John McNair

sworn before me, on this 24<sup>th</sup> day of March, 2016

A handwritten signature in cursive script, appearing to read "Shawn A.", written over a horizontal line.

A Commissioner for Taking Affidavits



(Court Seal)

Court File No. 20815

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BARRY PATRICK KENNY

Plaintiff

and

SIIS SERVICES MANAGEMENT INC.  
SEARS CANADA INC.

MICHEAL CLEMENTS, STEPHEN VERHOEFF, PAUL VERHOEFF,  
WILLIAM C. CROWLEY, JAMES MCBURNEY, TIMOTHY FLEMMING,  
DEBORAH E. ROSATI, R. RAJA KHAMNA, DOUGLAS CAMPBELL, THE  
ESTATE OF H. RONALD WEISSMAN, DECEASED, WILLIAM R. HARKER,  
DANITA STEVENSON and SAM JEFFREY STOLLENWERK

Defendants

*Proceeding under the Class Proceedings Act, 1992*

**STATEMENT OF CLAIM**

TO THE DEFENDANT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff.  
The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.


Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

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IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date FEB 03 2015

Issued by

  
Local Registrar

Address of

court office: 80 Dundas Street  
London, ON N6A 6A3

TO: **SHS SERVICES MANAGEMENT INC.**  
c/o Burnet, Duckworth & Palmer LLP  
2400, 525 - 8 Avenue SW  
Calgary, AB T2P 1G1

Defendant

AND TO: **SEARS CANADA INC.**  
Legal Department  
290 Yonge Street, Suite 700  
Toronto, ON M5B 2C3

Defendant

AND TO: **MICHEAL CLEMENTS**  
290 Yonge Street, Suite 700  
Toronto, ON M5B 2C3

Defendant

AND TO: **WILLIAM C. CROWLEY**  
290 Yonge Street, Suite 700  
Toronto, ON M5B 2C3

Defendant

AND TO: **JAMES McBURNEY**  
290 Yonge Street, Suite 700  
Toronto, ON M5B 2C3

Defendant



-3-

AND TO: **TIMOTHY FLEMMING**  
290 Yonge Street, Suite 700  
Toronto, ON M5B 2C3

Defendant

AND TO: **DEBORAH E. ROSATI**  
290 Yonge Street, Suite 700  
Toronto, ON M5B 2C3

Defendant

AND TO: **R. RAJA KHANNA**  
290 Yonge Street, Suite 700  
Toronto, ON M5B 2C3

Defendant

AND TO: **DOUGLAS CAMPBELL**  
290 Yonge Street, Suite 700  
Toronto, ON M5B 2C3

Defendant

AND TO: **THE ESTATE OF H. RONALD WEISSMAN, DECEASED**  
290 Yonge Street, Suite 700  
Toronto, ON M5B 2C3

Defendant

AND TO: **WILLIAM R. HARKER**  
290 Yonge Street, Suite 700  
Toronto, ON M5B 2C3

Defendant

AND TO: **DANITA STEVENSON**  
290 Yonge Street, Suite 700  
Toronto, ON M5B 2C3

Defendant

AND TO: **SAM JEFFREY STOLLENWERK**  
290 Yonge Street, Suite 700  
Toronto, ON M5B 2C3

Defendant

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AND TO: **STEPHEN VERHOEFF**  
72 Midvalley Crescent SE  
Calgary, Alta T2X 1N3

Defendant

AND TO: **PAUL VERHOEFF**  
63 Bent Tree Court  
Calgary, Alta T3Z 3B2

Defendant

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### CLAIM

1. The Plaintiff, Barry Patrick Kenny (“Kenny”) claims, on behalf of himself and others similarly situated in Canada, as against the Defendants, Sears Canada Inc. and SHS Services Management Inc.:
  - (a) An order certifying the proceeding and appointing him as representative Plaintiff;
  - (b) a declaration that Sears Canada Inc. and SHS Services Management Inc. were at all material times the common employers of the Plaintiff;
  - (c) further and/or in the alternative, a declaration that Sears Canada Inc. and SHS Services Management Inc. were carrying on associated or related activities or businesses for the purposes of *Employment Standards Act, 2000*, S.O. 2000, c. 41; the *Employment Standards Act*, R.B.S.C. 1996, c. 113; *The Employment Standards Code*, C.C.S.M. c. E110, *Labour Standards Code*, R.S.N.S. 1989, c. 246 and *The Civil Code of Québec*, L.R.Q. c. C-1991;
  - (d) damages for breach of employment contract and wrongful dismissal in the amount of \$200,000.00 for each class member or as aggregated following a common issues trial;
  - (e) an interim, interlocutory and permanent injunction compelling the Defendants to pay all amounts due under the applicable employment standards legislation, including amounts for wages, vacation pay, overtime pay, holidays, termination pay and severance pay; and
  - (f) for an Order requiring the Receiver-Manager of the corporate defendant SHS Services Management Inc. and Sears Canada Inc. to provide the Plaintiff with an

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accounting of all commissions owed to the Plaintiff for the period of September 2013 up to and including December 13, 2013.

2. The Plaintiff, Kenny claims, on behalf of himself and others similarly situated in Canada, as against the Defendants Sears Canada Inc. and SHS Services Management Inc., Micheal Clements, James McBurney, Timothy Flemming, Deborah E. Rosati, R. Raja Khanna, Douglas Campbell, The Estate of H. Ronald Weissman, Deceased, William R. Harker, Danita Stevenson, and Sam Jeffrey Stollenwerk:
  - (a) an order certifying the proceeding and appointing him representative Plaintiff;
  - (b) damages for earned but unpaid wages, commissions and expenses in an amount to be assessed;
  - (c) pre-judgment interest on all sums due and owing herein in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
  - (d) post-judgment interest in accordance with section 129 of the *Courts of Justice Act*, *supra*, as amended;
  - (e) the costs of distributing all monies received from the Defendants to the class members;
  - (f) costs on a substantial indemnity basis, plus applicable taxes;
  - (g) such further and other relief as to this Honourable Court may seem just.

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**The Parties:**

3. The Plaintiff, Kenny is an individual residing in London, Ontario. Kenny was employed pursuant to a written contract of employment with the Defendant, SHS Services Management Inc. ("SHS") from March 2, 2013 until on or about December 13, 2013. Prior to that time, Kenny was employed by the defendant Sears Canada Inc. ("Sears") for thirty-five (35) years, ten (10) months and three (3) days.
4. SHS is a corporation incorporated in accordance with the provisions of the *Canada Business Corporations Act* and which carried on the business of selling, furnishing and installing home improvement and products, including windows, doors, roofing, heating, ventilation and air conditioning ("HVAC"), carpets and window coverings, as well as duct cleaning and carpet cleaning. SHS is no longer operating and went into interim receivership on or about December 13, 2013.
5. PricewaterhouseCoopers Inc. is a corporation incorporated pursuant to the provisions of *Canada Business Corporations Act* and is extra-provincially registered in Ontario. PricewaterhouseCoopers Inc. was appointed interim receiver and subsequently receiver of SHS on December 13, 2013 and January 9, 2014 respectively.
6. Sears is a corporation incorporated pursuant to the provisions of the *Canada Business Corporations Act* with head office in Toronto, Ontario and which carries on business as a retailer, among other things.
7. The Defendant, Micheal Clements ("Clements") is an individual and was at all material times, the sole director of SHS.

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8. The Defendant, Stephen Verhoeff (“S. Verhoeff”) is an individual who was, until October of 2013, a director of SHS.
9. The Defendant Paul Verhoeff (“P. Verhoeff”) is an individual who was, until October of 2013, a director of SHS.
10. The Defendant William C. Crowley (“Crowley”) is an individual and was at all material times, a director of Sears.
11. The Defendant James McBurney (“McBurney”) is an individual and was at all material times, a director of Sears.
12. The Defendant, Timothy Flemming (“Flemming”) is an individual and was at all material times, a director of Sears.
13. The Defendant, Deborah E. Rosati (“Rosati”) is an individual and was at all material times, a director of Sears.
14. The Defendant R. Raja Khanna (“Khanna”) is an individual and was at all material times, a director of Sears.
15. The Defendant Douglas Campbell (“Campbell”) is an individual and was at all material times, a director of Sears.
16. The Defendant, The Estate of H. Ronald Weissman, Deceased (“Weissman”) is the personal representative of the deceased, Weissman, who was at all material times, a director of Sears prior to his death.
17. The Defendant William R. Harker (“Harker”) is an individual and was at all material times, a director of Sears.

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18. The Defendant Danita Stevenson (“Stevenson”) is an individual and was at all material times, a director of Sears.
19. The Defendant Sam Jeffrey Stollenwerk (“Stollenwerk”) is an individual and was at all material times, a director of Sears.

**The Asset Transfer Agreement and Offer of Employment**

20. In or about March of 2013, pursuant to an Asset Transfer Agreement, SHS agreed to acquire certain assets and to operate certain businesses of Sears, particularly the business operating under the “Sears Home Services” banner (the “Asset Agreement”).
21. On or about February 18, 2013, Kenny was notified of the Asset Agreement and acquisition of the Sears Home Service assets by way of receipt of a Conditional Offers of Employment with SHS (the “Offer”).
22. The Offer was conditional upon the successful closing of the Asset Agreement transaction (the “Transaction”).
23. The Offer to Kenny provided that he would hold the position and title of Sales Associate and would be compensated on a commission basis. In particular, Kenny was entitled to draw against commission paid on personal sales in the Home Services department. The rate of commission was set at a variable rate of 11% on Décor and 9% on exterior including Windows, Doors, and Roofing, 11% on Window Coverings, 8% on Flooring, 5% on Area Rugs, and 9% on HVAC. Kenny’s draw amount was set at \$12.40 per hour. Kenny’s position and responsibilities were to remain substantially unchanged from those with Sears.
24. On or about February 24, 2013, Kenny signed the Offer.

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25. The Transaction closed on or about March 2, 2013. Kenny continued employment with SHS upon completion of the Transaction.
26. The Plaintiff states that he was never notified of the termination of his employment with Sears, nor was he provided with any notice or pay in lieu thereof.
27. As a Sales Associate, Kenny reported to the District Sales Manager and was responsible for among other things, selling HVAC and other household items.
28. On or about December 13, 2013, pursuant to an order of the Ontario Superior Court of Justice, PricewaterhouseCoopers Inc. ("PWC") was appointed as interim receiver and receiver, without security, of all the assets, undertakings and properties of SHS.
29. On that same date, all employees of SHS including Kenny were terminated without notice.
30. On January 9, 2014, pursuant to an Order of the Ontario Superior Court of Justice, PWC was relieved of its duties, obligations and liabilities as interim receiver and was appointed as receiver, without security, of all the assets, undertakings and property of SHS.
31. Kenny's employment contract provided that in the event SHS terminated him employment for any reason that does not constitute just cause, "*SHS will recognize your prior years of continuous service with Sears for the purposes of calculating your entitlement to working notice, or payment in lieu of working notice.*"
32. The Plaintiff states that at all material times, it was an express or, in the alternative, implied term of his contract of employment that such employment would not be terminated without reasonable notice.



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33. Kenny was not terminated for just cause and SHS failed to provide him with reasonable notice or pay in lieu thereof. The employment of other members of the class in Ontario and other provinces was also terminated.
34. As a result of their wrongful dismissal, Kenny and the rest of the class have suffered loss of salary, wages, bonus, benefits and incremental increases and income and benefits to which they would have been entitled during the period of reasonable notice.
35. The Plaintiff participated in a consolidated Sears defined benefit pension plan and Sun Life Insurance Company defined contribution plan. The Plaintiff's pension rights and entitlement were diminished and impaired as a result of the transfer of his position from Sears to SHS and the subsequent termination of his employment and that of other members of the class.
36. As a result of their wrongful dismissal, Kenny and other class members will incur relocation and other expenses while attempting to mitigate their losses by seeking suitable alternative employment.
37. The Plaintiff and other class membership are also entitled to benefits under the *Employment Standards Act, 2000*, S.O. 2000, c. 41, the *Labour Standards Code*, R.S.N.S. 1989, c. 246, *The Employment Standards Code*, C.C.S.M. c. E110, the *Employment Standards Act*, R.S.B.C. 1996, c. 113, the *Alberta Employment Standards Code*, R.S.A., 2000 c. E-9 and *The Saskatchewan Employment Act*, S.S. 2014, c. S-15.1, and the *Civil Code of Québec*, L.R.Q., c. C-1991 such as termination pay, severance pay and vacation pay.

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38. Notwithstanding the employer's obligations under the applicable provincial employment legislation, the Defendants failed or refused to pay the Plaintiff, and other class members, the minimum statutory amount owed in lieu of notice of termination and severance.
39. To date, Kenny has failed to secure suitable alternate employment.

#### **The Common Employer**

40. Pursuant to the Asset Agreement, Sears and SHS also entered into a "Sears Branded Concession Agreement" (the "Concession Agreement") whereby SHS became a licensee for the purpose of procurement, presentation and merchandising of Sears "Brand Name" products.
41. The Concession Agreement purported to control all aspects of the SHS and Sears' relationship and placed extensive constraints on SHS' ability to conduct business.
42. The Concession Agreement provided, *inter alia*, that employees and representatives of SHS must have available on his person, when present on Sears premises and designated stores, identification and security card issued by Sears.
43. SHS was also required to obtain the prior approval of Sears before (i) causing a reduction in workforce of more than 5% in any three month period; or (ii) causing a mass termination as recognized by applicable law. Likewise, SHS was required to inquire with Sears prior to employing any new employees as to whether or not that employee had been previously employed by Sears.
44. SHS was required to adhere to any applicable Sears' policies regarding customer service and/or satisfaction and resolve any and all complaints in accordance with Sears' approved process.

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45. The Plaintiff states that upon the closing of the Transaction, SHS and Sears operated a closely intertwined business enterprise and were Kenny's and the class members' common employers. In particular, the Plaintiff states:
- (a) The business and activities of SHS and Sears were closely and inextricably linked;
  - (b) Sears exerted a significant degree of operational control over SHS, including matters related to employment, remuneration and marketing;
  - (c) Sears and SHS operated from many of the same premises;
  - (d) Until September of 2013, SHS used Sears' IT system in the course of its operations. During this time, Sears collected payments from SHS customers and remitted to SHS its share of sales. Sears' procurement system was used by SHS throughout;
  - (e) Sears retained a commission from payments remitted to SHS for services and products;
  - (f) Payments made by customers for SHS services and products could be made on a Sears credit card and in such an event money was collected by Sears and subsequently remitted to SHS;
  - (g) SHS stock was warehoused at Sears warehouses in Sarnia, London and Windsor and other locations and such inventory was handled by Sears' receiving staff;
  - (h) SHS employees received an employee discount with Sears;
  - (i) Any change SHS wished to make to its commission and remuneration structure had to be approved by Sears in advance;

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- (j) Sears retained authority for resolving any consumer complaints regarding products or services supplied by SHS;
- (k) An operational committee was created and consisted of two members from each of Sears and SHS. The responsibilities of the operational committee was to focus and consult on matters of mutual concern to both SHS and Sears including gross revenue, marketing plan, the customer experience, and product and pricing optimization.
- (l) Sears occasionally injected cash into SHS to keep it viable;
- (m) Sears personnel had unfettered access to SHS premises;
- (n) Sears dedicated an employee or employees to act as marketing liaison with SHS. The marketing liaison was responsible, *inter alia*, for assisting SHS with any requests relating to the development and implementation of marketing and advertising strategies, monitoring of marketplace trends;
- (o) Sears dedicated an employee to act as a liaison for product management. Such liaison was responsible for providing SHS with assistance relating to strategy regarding the assortment of products and services and supplier base, including assistance with monitoring trends and identifying opportunities;
- (p) Sears dedicated an employee or employees to act as operations liaisons for SHS. Such employees were responsible for, *inter alia*, providing SHS with assistance relating to customer service, customer resolution, the customer experience, suggestions regarding the development and monitoring of operation plans, and service and performance metrics;

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- (q) Sears had access to real-time reporting of all SHS' point of sale records; and
  - (r) Sears' employees who joined SHS were not permitted to exercise their Sears pension rights while they were employed by SHS.
46. The Plaintiff states that at all material times, Sears controlled the operation of SHS and therefore the employment condition of the Plaintiff and all other employees of the nominal employer, SHS.
47. The Plaintiff states that there existed a sufficient degree of control, direction and integration between SHS and Sears such that they ought to be regarded as one for the purpose of determining liability for obligations owed to their employees.
48. The Plaintiff also pleads and relies upon sections 4(1) and (2) of the *Employment Standards Act, 2000*, S.O. 2000, c. 41, section 95(1) and (2) of the *Employment Standards Act*, R.S.B.C. 1996, c. 113, section 134(1) and 134(2) of *The Employment Standards Code*, C.C.S.M. c. E110, and section 11 of the *Labour Standards Code*, R.S.N.S. 1989, c. 246.
49. As directors of Sears, the Defendants, Crowley, McBurney, Flemming, Rosati, Khanna, Campbell, Weissman, Harker, Stevenson and Stollenwerk are jointly and severally liable to employees of such common employer for all debts not exceeding six months' wages that became payable while they were directors for services performed for SHS. The Plaintiff pleads and relies upon the provisions of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, section 119, and the *Employment Standards Act, 2000*, S.O. 2000, c. 41., section 81, *The Saskatchewan Employment Act*, S.S. 2014, c. S-15.1, section 2-68, the *Alberta Employment Standards Code*, R.S.A. 2000, c. E-9, section 112, the *Employment Standards Act*, R.S.B.C. 1996, c. 113, section 96, and *The Employment Standards Code*, C.C.S.M. c. E110, section 90(1).

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50. As directors of SHS, the Defendants, Clements, S. Verhoeff and P. Verhoeff are jointly and severally liable to employees of the said corporation for all debts not exceeding six months' wages that became payable while they were directors for services performed for the corporation. The Plaintiff pleads and relies upon the provisions of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, section 119, the *Employment Standards Act, 2000*, S.O. 2000, c. 41., section 81, *The Saskatchewan Employment Act*, S.S. 2014, c. S-15.1, section 2-68, the *Alberta Employment Standards Code*, R.S.A. 2000, c. E-9, section 112, the *Employment Standards Act*, R.S.B.C. 1996, c. 113, section 96, and *The Employment Standards Code*, C.C.S.M. c. E110, section 90(1).
51. The Defendants Crowley, McBurney, Flemming, Rosati, Khanna, Campbell, Weissman, Harker, Stevenson, Stollenwerk, Clements, S. Verhoeff and P. Verhoeff are accordingly indebted to the Plaintiff for the amounts claimed in this action against SHS and Sears, to the limit of liability fixed by the said statutory provisions.
52. Having regard to all of the relevant factors including Kenny's age, length of service, level of responsibilities, employment prospects and all of the circumstances associated with the termination of his employment, the Defendants SHS and Sears were obligated in law to provide him with at least twenty-four (24) months' notice of dismissal or compensation in lieu thereof.
53. The Plaintiff anticipates that it may be necessary to serve this Statement of Claim upon one or more of the Defendants outside the Province of Ontario and in that regard pleads and relies upon the provisions of Rule 17.02 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 as amended and in particular,
- (a) Rule 17.02(f) - a contract made and/or breached in Ontario;

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(b) Rule 17.02(h) - damages sustained in Ontario;

54. The Plaintiff proposes that this action be tried at the City of London, in the County of Middlesex.

February 2, 2015

**MCKENZIE LAKE LAWYERS LLP**  
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Lawyers for the Representative Plaintiff,  
Barry Patrick Kenny

**BARRY PATRICK KENNY**  
Plaintiff

-and-

**SHS SERVICES MANAGEMENT INC. et al.**  
Defendants

Court File No. 2014

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**PROCEEDING COMMENCED AT**  
**LONDON**

**STATEMENT OF CLAIM**

**MCKENZIE LAKE LAWYERS LLP**  
140 Fullarton Street, Suite 1800  
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Lawyers for the Representative Plaintiff,  
Barry Patrick Kenny

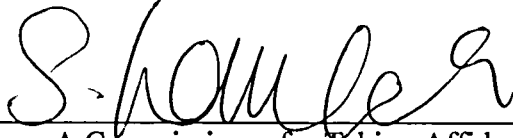


# **Tab B**

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This is Exhibit "B" referred to in the Affidavit of John McNair

sworn before me, on this 24<sup>th</sup> day of March, 2016

A handwritten signature in cursive script, appearing to read "S. Hamler". The signature is written in black ink and is positioned above a horizontal line.

A Commissioner for Taking Affidavits

OF  
BRITISH COLUMBIA  
**SEAL**  
17-Feb-15

Vancouver  
REGISTRY



Court File No. **VLC-S-S-151299**

No. \_\_\_\_\_  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Between:

**LEONARD KENNETH TONN**

**PLAINTIFF**

And:

**SEARS CANADA INC.**

**DEFENDANT**

**Proceeding under the *Class Proceedings Act*, R.S.B.C. 1996, c.50**

**NOTICE OF CIVIL CLAIM**

**This action has been started by the Plaintiff for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 in the above-named Registry of this Court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim on the Plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above-named Registry of this Court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim and Counterclaim on the Plaintiff and on any new parties named in the counterclaim.

**JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Civil Claim within the time for Response to Civil Claim described below.**

**Time for Response to Civil Claim**

**A Response to Civil Claim must be filed and served on the Plaintiff,**

- (a) if you were served with the Notice of Civil Claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the Notice of Civil Claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the Notice of Civil Claim anywhere else, within 49 days after that service, or
- (d) if the time for Response to Civil Claim has been set by order of the Court, within that time.

**CLAIM OF THE PLAINTIFF****Part 1: STATEMENT OF FACTS***The Parties*

1. The Plaintiff, Leonard Kenneth Tonn ("Tonn"), resides in Chilliwack, BC. He is well-suited to advance the interests of the Class Members, as defined below.
2. The Defendant, Sears Canada Inc. ("Sears"), is a company incorporated under the laws of Canada and extra-provincially registered in BC. The registered address of its attorney for service in BC is 4750 Kingsway in Burnaby.

*The Class*

3. Tonn brings this action on his own behalf and as a representative under the *Class Proceedings Act*, RSBC 1996, c.50, of all persons employed by Sears in its home services division in BC under contracts of employment of indefinite duration which terminated on or about March 2, 2013 (collectively, the "Class Members").

*Sears Employment*

4. Sears entered into employment contracts, which were materially identical for the purposes of this proceeding, with the Class Members (the "Sears Employment Contracts"). The terms of the Sears Employment Contracts were expressed orally, in writing and implied by conduct.
5. As at the Sears Termination (as defined below), the Class Members were entitled to the following compensation and benefits pursuant to the Sears Employment Contracts:
  - (a) Monetary remuneration (the "Sears Remuneration");
  - (b) Group insurance benefits (the "Sears Insurance Benefits");
  - (c) Group retirement savings benefits (the "Sears Retirement Benefits"); and
  - (d) Staff discounts on Sears' products and services (the "Sears Staff Discount").
6. It was a term of each of the Sears Employment Contracts, express or implied, that Sears would provide continuous employment of indefinite duration and could not assign, transfer and/or otherwise convey its entitlement(s), right(s), duties, obligation(s), liabilities and/or ability to participate in the Sears Employment Contracts to a third party.
7. The Class Members were employed by Sears pursuant to the Sears Employment Contracts continuously until termination on or about March 2, 2013. The Class Members faithfully, diligently and continuously performed their duties on behalf of Sears pursuant to the Sears Employment Contracts at all times and continuously throughout the term of the Sears Employment Contracts proved to be valuable employees of Sears.

SHS Formation

8. In or around 2012, Sears resolved to sell and/or outsource its home services division to a third party. In or around June of that year, Sears solicited a group of individuals for this purpose.
9. On or about November 19, 2012, the said individuals formed SHS Services Management Inc. ("SHS") under the laws of Canada for the express purpose of enabling Sears to outsource its home services division to SHS.
10. On or about December 20, 2012, Sears and SHS entered into a written agreement whereby SHS purchased a license from Sears to operate its home services business in exchange for ongoing periodic payments (the "Branded Concession Agreement").
11. SHS entered into the Branded Concession Agreement in reliance on Sears' representation(s) that SHS' annual sales would total approximately \$208,000,000.
12. On or about December 20, 2012, Sears and SHS entered into a written agreement whereby Sears conveyed the assets and property comprising its home services division to SHS on terms including a purchase price (the "Asset Transfer Agreement"). Sears loaned SHS \$5,676,525.80 towards this purchase price.
13. As a term of the Asset Transfer Agreement, Sears required SHS to offer employment to Sears' employees in its home services division on specific terms by February 18, 2013 (the "SHS Employment Offer"). Sears represented to SHS that it employed 92 people in its home services division in BC at that time.

Sears Termination

14. On or about February 18, 2013:
  - (a) Sears advised the Class Members that, on March 2, 2013, it might complete the sale of its home services division to SHS;
  - (b) Sears advised the Class Members that the completion of the sale of its home services division would result in the immediate elimination of their positions with Sears and the termination of their employment with Sears;
  - (c) SHS offered employment to the Class Members, in writing, by way of the SHS Employment Offer; and
  - (d) Sears and SHS advised the Class Members that the SHS Employment Offer was conditional upon the successful completion of the sale of Sears' home services division to SHS on March 2, 2013.
15. The Class Members executed the SHS Employment Offer.
16. On or about March 2, 2013:
  - (a) The sale of Sears' home services division to SHS completed;
  - (b) SHS commenced its sole business activity of operating the former Sears' home services division; and
  - (c) Sears terminated the Sears Employment Contracts (the "Sears Termination").

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17. Sears effected the Sears Termination without just cause, reasonable notice and/or pay in lieu thereof to any of the Class Members.
18. At no time did the Class Members, or any of them, consent, expressly or impliedly, to Sears assigning, transferring and/or otherwise conveying its interest(s), entitlement(s), right(s), duties, obligation(s), liabilities and/or ability to participate in the Sears Employment Contracts to SHS, or any third party, whether directly or indirectly, at all or in part.
19. The Sears Termination constituted:
  - (a) An arbitrary and willful breach of the Sears Employment Contracts by Sears;
  - (b) A wrongful dismissal of the Class Members;
  - (c) A wrongful termination of the Sears Insurance Benefits;
  - (d) A wrongful termination of the Sears Retirement Benefits;
  - (e) A wrongful termination of the Sears Staff Discount; and
  - (f) A breach of Sears' obligation not to assign, transfer and/or otherwise convey its interest(s), entitlement(s), right(s), duties, obligation(s), liabilities and/or ability to participate in the Sears Employment Contracts to a third party.

**SHS Employment**

20. On or about March 2, 2013, as a result of the completion of the conveyance of Sears' home services division to SHS, the Class Members commenced employment with SHS (the "SHS Employment Contracts").
21. The Class Members were employed by SHS pursuant to the SHS Employment Contracts continuously until those contracts were terminated on or about December 13, 2013. Throughout this time, the Class Members adequately and continuously performed their duties on behalf of SHS, pursuant to the SHS Employment Contracts, and throughout this employment proved to be valuable employees of SHS.
22. Shortly after March 2, 2013, SHS began experiencing significant financial difficulties, which included, but were not limited to:
  - (a) Its revenues were substantially less than represented by Sears;
  - (b) Sears demanded full re-payment of the monies it loaned to SHS towards the purchase price specified in the Asset Transfer Agreement and SHS complied in full in early September, 2013; and
  - (c) As a result of re-payments demanded by and made to Sears by SHS, it required additional financing.
23. In or around September 30, 2013, SHS obtained additional financing from Sears and other private lenders. Sears took, registered and perfected a general security agreement and/or other security instruments over SHS' assets as security for this additional financing.
24. On or about December 13, 2013, SHS went into receivership, without prior notice to the Class Members, citing, among other things, that:

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- (a) The terms of the Branded Concession Agreement were such that SHS was not a viable business;
  - (b) Sears refused to provide any additional financing or other relief to SHS;
  - (c) Sears intended to issue a Notice of Intention to Enforce Security pursuant to s.244(1) of the *Bankruptcy and Insolvency Act*, RSC;
  - (d) SHS had dismal financial prospects; and
  - (e) SHS would be unable to make its payroll beyond December 13, 2013.
25. By Order of the Ontario Superior Court of Justice, PricewaterhouseCoopers Inc. (the "Receiver") was appointed as SHS' interim receiver. On the same date, the Receiver, on behalf of SHS, terminated the SHS Employment Contracts, without cause, notice, and/or compensation in lieu to the Class Members, or any of them (the "SHS Termination").
26. On or about January 9, 2014, by Order of the Ontario Superior Court of Justice, the Receiver was relieved of its duties as interim receiver and appointed as SHS' receiver.
27. At the time of the SHS Termination, Sears was one of SHS' two (2) secured creditors. The indebtedness of SHS to Sears at that time totaled approximately \$2,000,000, plus substantial interest and costs thereon.
28. As a result of the Sears and SHS Terminations, the Class Members have and continue to suffer damage, loss and expense, including loss of compensation and/or benefits to which they would have been entitled during the period(s) of reasonable notice, including loss and/or diminishment of:
- (a) Monetary remuneration, including the Sears Remuneration;
  - (b) Group insurance benefits, including the Sears Insurance Benefits;
  - (c) Retirement savings assets, rights and entitlements, including in relation to the Sears Retirement Benefits; and
  - (d) Sears Staff Discount.
29. Sears failed to discharge its obligation of good faith, honesty and fair dealing to the Class Members in effecting the Sears Termination by acting in a high-handed, outrageous, reckless, wanton, careless, deliberate, callous, disgraceful, willful manner and with contemptuous disregard for the rights of the Class Members.

**Part 2: RELIEF SOUGHT**

1. Tonn, on his own behalf, and on behalf of the Class Members, claims against Sears for:
- (a) An Order certifying this Action as a class proceeding against Sears;
  - (b) An Order appointing Tonn as representative Plaintiff in respect of the Class Members;
  - (c) General damages;
  - (d) Special damages;
  - (e) Punitive damages;

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- (f) Interest pursuant to the *Court Order Interest Act*, RSBC 1996, c.79 and amendments and Regulations thereto;
- (g) Costs pursuant to s.37 of the *Class Proceedings Act*, RSBC 1996, c.50; and
- (h) Such further and other relief as the Class Members may advise and/or to this Honourable Court may seem fit and just.

### **Part 3: LEGAL BASIS**

#### **Class Proceedings**

1. Tonn, on behalf of the Class Members, pleads and relies upon the *Class Proceedings Act*, RSBC 1996, c.50.
2. Tonn is an appropriate representative of the Class Members.
3. The Class Members as individuals cannot match the resources of Sears. The claims of each Class Member would not be economical to pursue individually. The Class Members, and each of them, would be denied access to justice in the absence of a class proceeding.
4. Sears is sufficiently large and well-resourced that an individual lawsuit would be unlikely to significantly impact its behavior. This Class Proceeding will either produce a voluntary change in Sears' behaviour or result in a Court Order compelling the same. A punitive damage award is necessary to express society's condemnation of Sears' conduct and to achieve both specific and general deterrence.
5. The alternative to a class proceeding is a multiplicity of proceedings raising the same and/or similar factual and legal issues. This would be inefficient, prone to inconsistent findings and would not make effective use of judicial resources.

#### **Wrongful Dismissal**

6. At common law, it was an implied term of the Sears Employment Contracts that the Class Members were entitled to reasonable notice or payment in lieu of reasonable notice of termination.
7. The Sears Termination was effected without notice or payment in lieu of notice, entitling the Class Members to damages for breach of contract at common law.
8. At common law, the Sears Termination entitles the Class Members to special damages for all resulting out of pocket expenses.

#### **Punitive Damages**

9. At common law, it was an implied term of the Sears Employment Contracts that Sears owed the Class Members duties of good faith and honesty in its dealings with them.
10. Sears' conduct leading up to, during, and after the sale of its home services division to SHS, including the transfer of the Class Members' employment, was a breach of its duties of good faith and honesty owed to the Class Members, which renders Sears liable to pay punitive damages.



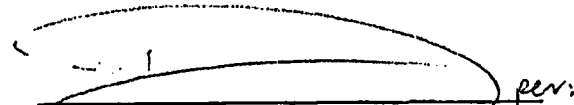
- 7 -

Plaintiff's address for service:	700 - 1006 Beach Avenue Vancouver, BC V6E 1T7
Place of trial:	Vancouver, BC
The address of the registry is:	Vancouver Law Courts 800 Smith Street Vancouver, BC V6Z 2E1

Dated: 17/Feb/2015



A.R. Ayliffe and C.D. Drinovz  
Fraser Valley Employment Law,  
Lawyers for the Plaintiff, Leonard Tonn



B.W. Curtis, D.D. McWhinnie and M. Sheard  
TevlinGleadle Employment Law Strategies,  
Lawyers for the Plaintiff, Leonard Tonn

Rule 7-1 (1) of the *Supreme Court Civil Rules* states:

1. Unless all parties of record consent or the Court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
  - (a) prepare a List of Documents in Form 22 that lists
    - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
    - (ii) all other documents to which the party intends to refer at trial, and
  - (b) serve the list on all parties of record.

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**APPENDIX****Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

This is a claim pursuant to the *Class Proceedings Act* in damages for wrongful dismissal.

**Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

- a motor vehicle accident
- personal injury, other than one arising from a motor vehicle accident
- a dispute about real property (real estate)
- a dispute about personal property
- the lending of money
- the provision of goods or services or other general commercial matters
- an employment relationship
- a dispute about a will or other issues concerning the probate of an estate
- a matter not listed here

**Part 3: THIS CLAIM INVOLVES:**

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflicts of law
- none of the above
- do not know

**Part 4:**

*Class Proceedings Act*, RSBC 1996, c.50.  
*Court Order Interest Act*, RSBC 1996, c.79.

# **Tab C**

This is Exhibit "C" referred to in the Affidavit of John McNair

sworn before me, on this 24<sup>th</sup> day of March, 2016

A handwritten signature in cursive script, appearing to read "S. Kumb", written over a horizontal line.

A Commissioner for Taking Affidavits

Court File No. 208/15

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

*(Court Seal)*

BARRY PATRICK KENNY

Plaintiff

and

SHS SERVICES MANAGEMENT INC., SEARS CANADA INC., MICHEAL  
CLEMENTS, STEPHEN VERHOEFF and PAUL VERHOEFF

Defendants

*Proceeding under the Class Proceedings Act, 1992***FRESH AS AMENDED STATEMENT OF CLAIM**

TO THE DEFENDANT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

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Date Feb 3, 2015 Issued by K. Waldick  
Local Registrar

Address of  
court office: 80 Dundas Street  
London, Ontario N6A 6A3

TO: **SHS SERVICES MANAGEMENT INC.**  
c/o Burnet, Duckworth & Palmer LLP  
2400, 525 - 8 Avenue SW  
Calgary, Alberta T2P 1G1

Defendant

AND TO: **SEARS CANADA INC.**  
Legal Department  
290 Yonge Street, Suite 700  
Toronto, Ontario M5B 2C3

Defendant

AND TO: **MICHEAL CLEMENTS**  
290 Yonge Street, Suite 700  
Toronto, Ontario M5B 2C3

Defendant

AND TO: **STEPHEN VERHOEFF**  
72 Midvalley Crescent SE  
Calgary, Alberta T2X 1N3

Defendant

AND TO: **PAUL VERHOEFF**  
63 Bent Tree Court  
Calgary, Alberta T3Z 3B2

Defendant

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### CLAIM

1. The Plaintiff, Barry Patrick Kenny (“Kenny”) claims, on behalf of himself and others similarly situated in Canada, as against the Defendants, Sears Canada Inc. and SHS Services Management Inc.:
  - (a) An Order certifying the proceeding and appointing him as representative Plaintiff;
  - (b) a Declaration that Sears Canada Inc. and SHS Services Management Inc. were at all material times the common employers of the Plaintiff;
  - (c) further and/or in the alternative, a Declaration that Sears Canada Inc. and SHS Services Management Inc. were carrying on associated or related activities or businesses for the purposes of *Employment Standards Act, 2000*, S.O. 2000, c. 41; the *Employment Standards Act*, R.B.S.C. 1996, c. 113; *The Employment Standards Code*, C.C.S.M. c. E110, *Labour Standards Code*, R.S.N.S. 1989, c. 246 and *The Civil Code of Québec*, L.R.Q. c. C-1991;
  - (d) damages for breach of employment contract and wrongful dismissal in the amount of \$200,000.00 for each class member or as aggregated following a common issues trial;
  - (e) an interim, interlocutory and permanent injunction compelling the Defendants to pay all amounts due under the applicable employment standards legislation, including amounts for wages, vacation pay, overtime pay, holidays, termination pay and severance pay; and,

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- (f) an Order requiring the Receiver-Manager of the corporate Defendant SHS Services Management Inc. and Sears Canada Inc. to provide the Plaintiff with an accounting of all commissions owed to the Plaintiff for the period of September 2013 up to and including December 13, 2013.
2. The Plaintiff, Kenny claims, on behalf of himself and others similarly situated in Canada, as against the Defendants, Sears Canada Inc., SHS Services Management Inc. and Micheal Clements:
- (a) an Order certifying the proceeding and appointing him representative Plaintiff;
  - (b) damages for earned but unpaid wages, commissions and expenses in an amount to be assessed;
  - (c) pre-judgment interest on all sums due and owing herein in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
  - (d) post-judgment interest in accordance with section 129 of the *Courts of Justice Act*, *supra*, as amended;
  - (e) the costs of distributing all monies received from the Defendants to the class members;
  - (f) costs on a substantial indemnity basis, plus applicable taxes;
  - (g) such further and other relief as to this Honourable Court may seem just.



**The Parties:**

3. The Plaintiff, Kenny is an individual residing in London, Ontario. Kenny was employed pursuant to a written contract of employment with the Defendant, SHS Services Management Inc. ("SHS") from March 2, 2013 until on or about December 13, 2013. Prior to that time, Kenny was employed by the Defendant, Sears Canada Inc. ("Sears") for thirty-five (35) years, ten (10) months and three (3) days.
4. SHS is a corporation incorporated in accordance with the provisions of the *Canada Business Corporations Act* and which carried on the business of selling, furnishing and installing home improvement and products, including windows, doors, roofing, heating, ventilation and air conditioning ("HVAC"), carpets and window coverings, as well as duct cleaning and carpet cleaning. SHS is no longer operating and went into interim receivership on or about December 13, 2013.
5. PricewaterhouseCoopers Inc. is a corporation incorporated pursuant to the provisions of *Canada Business Corporations Act* and is extra-provincially registered in Ontario. PricewaterhouseCoopers Inc. was appointed interim receiver and subsequently receiver of SHS on December 13, 2013 and January 9, 2014 respectively.
6. Sears is a corporation incorporated pursuant to the provisions of the *Canada Business Corporations Act* with head office in Toronto, Ontario and which carries on business as a retailer, among other things.
7. The Defendant, Micheal Clements ("Clements") is an individual and was at all material times, the sole director of SHS.

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8. The Defendant, Stephen Verhoeff (“S. Verhoeff”) is an individual who was, until October of 2013, a director of SHS.
9. The Defendant Paul Verhoeff (“P. Verhoeff”) is an individual who was, until October of 2013, a director of SHS.

#### **The Asset Transfer Agreement and Offer of Employment**

10. In or about March of 2013, pursuant to an Asset Transfer Agreement, SHS agreed to acquire certain assets and to operate certain businesses of Sears, particularly the business operating under the “Sears Home Services” banner (the “Asset Agreement”).
11. On or about February 18, 2013, Kenny was notified of the Asset Agreement and acquisition of the Sears Home Service assets by way of receipt of a Conditional Offers of Employment with SHS (the “Offer”).
12. The Offer was conditional upon the successful closing of the Asset Agreement transaction (the “Transaction”).
13. The offer to Kenny provided that he would hold the position and title of Sales Associate and would be compensated on a commission basis. In particular, Kenny was entitled to draw against commission paid on personal sales in the Home Services department. The rate of commission was set at a variable rate of 11% on Décor and 9% on exterior including Windows, Doors, and Roofing, 11% on Window Coverings, 8% on Flooring, 5% on Area Rugs, and 9% on HVAC. Kenny’s draw amount was set at \$12.40 per hour. Kenny’s position and responsibilities were to remain substantially unchanged from those with Sears.

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14. On or about February 24, 2013, Kenny signed the offer.
15. The transaction closed on or about March 2, 2013. Kenny continued employment with SHS upon completion of the transaction.
16. The Plaintiff states that he was never notified of the termination of his employment with Sears, nor was he provided with any notice or pay in lieu thereof.
17. As a Sales Associate, Kenny reported to the District Sales Manager and was responsible for among other things, selling HVAC and other household items.
18. On or about December 13, 2013, pursuant to an order of the Ontario Superior Court of Justice, PricewaterhouseCoopers Inc. ("PWC") was appointed as interim receiver and receiver, without security, of all the assets, undertakings and properties of SHS.
19. On that same date, all employees of SHS including Kenny were terminated without notice.
20. On January 9, 2014, pursuant to an Order of the Ontario Superior Court of Justice, PWC was relieved of its duties, obligations and liabilities as interim receiver and was appointed as receiver, without security, of all the assets, undertakings and property of SHS.
21. Kenny's employment contract provided that in the event SHS terminated him employment for any reason that does not constitute just cause, "*SHS will recognize your prior years of continuous service with Sears for the purposes of calculating your entitlement to working notice, or payment in lieu of working notice.*"
22. The Plaintiff states that at all material times, it was an express or, in the alternative, implied term of his contract of employment that such employment would not be terminated without reasonable notice.

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23. Kenny was not terminated for just cause and SHS failed to provide him with reasonable notice or pay in lieu thereof. The employment of other members of the class in Ontario and other provinces was also terminated.
24. As a result of their wrongful dismissal, Kenny and the rest of the class have suffered loss of salary, wages, bonus, benefits and incremental increases and income and benefits to which they would have been entitled during the period of reasonable notice.
25. The Plaintiff participated in a consolidated Sears defined benefit pension plan and Sun Life Insurance Company defined contribution plan. The Plaintiff's pension rights and entitlement were diminished and impaired as a result of the transfer of his position from Sears to SHS and the subsequent termination of his employment and that of other members of the class.
26. As a result of their wrongful dismissal, Kenny and other class members will incur relocation and other expenses while attempting to mitigate their losses by seeking suitable alternative employment.
27. The Plaintiff and other class membership are also entitled to benefits under the *Employment Standards Act, 2000*, S.O. 2000, c. 41, the *Labour Standards Code*, R.S.N.S. 1989, c. 246, *The Employment Standards Code*, C.C.S.M. c. E110, the *Employment Standards Act*, R.S.B.C. 1996, c. 113, the *Alberta Employment Standards Code*, R.S.A., 2000 c. E-9 and *The Saskatchewan Employment Act*, S.S. 2014, c. S-15.1, and the *Civil Code of Québec*, L.R.Q., c. C-1991 such as termination pay, severance pay and vacation pay.

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28. Notwithstanding the employer's obligations under the applicable provincial employment legislation, the Defendants failed or refused to pay the Plaintiff, and other class members, the minimum statutory amount owed in lieu of notice of termination and severance.
29. To date, Kenny has failed to secure suitable alternate employment.

#### **The Common Employer**

30. Pursuant to the Asset Agreement, Sears and SHS also entered into a "Sears Branded Concession Agreement" (the "Concession Agreement") whereby SHS became a licensee for the purpose of procurement, presentation and merchandising of Sears "Brand Name" products.
31. The Concession Agreement purported to control all aspects of the SHS and Sears' relationship and placed extensive constraints on SHS' ability to conduct business.
32. The Concession Agreement provided, *inter alia*, that employees and representatives of SHS must have available on his person, when present on Sears premises and designated stores, identification and security card issued by Sears.
33. SHS was also required to obtain the prior approval of Sears before (i) causing a reduction in workforce of more than 5% in any three month period; or (ii) causing a mass termination as recognized by applicable law. Likewise, SHS was required to inquire with Sears prior to employing any new employees as to whether or not that employee had been previously employed by Sears.

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34. SHS was required to adhere to any applicable Sears' policies regarding customer service and/or satisfaction and resolve any and all complaints in accordance with Sears' approved process.
35. The Plaintiff states that upon the closing of the transaction, SHS and Sears operated a closely intertwined business enterprise and were Kenny's and the class members' common employers. In particular, the Plaintiff states:
  - (a) The business and activities of SHS and Sears were closely and inextricably linked;
  - (b) Sears exerted a significant degree of operational control over SHS, including matters related to employment, remuneration and marketing;
  - (c) Sears and SHS operated from many of the same premises;
  - (d) Until September of 2013, SHS used Sears' IT system in the course of its operations. During this time, Sears collected payments from SHS customers and remitted to SHS its share of sales. Sears' procurement system was used by SHS throughout;
  - (e) Sears retained a commission from payments remitted to SHS for services and products;
  - (f) Payments made by customers for SHS services and products could be made on a Sears credit card and in such an event money was collected by Sears and subsequently remitted to SHS;
  - (g) SHS stock was warehoused at Sears warehouses in Sarnia, London and Windsor and other locations and such inventory was handled by Sears' receiving staff;

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- (h) SHS employees received an employee discount with Sears;
- (i) Any change SHS wished to make to its commission and remuneration structure had to be approved by Sears in advance;
- (j) Sears retained authority for resolving any consumer complaints regarding products or services supplied by SHS;
- (k) An operational committee was created and consisted of two members from each of Sears and SHS. The responsibilities of the operational committee was to focus and consult on matters of mutual concern to both SHS and Sears including gross revenue, marketing plan, the customer experience, and product and pricing optimization.
- (l) Sears occasionally injected cash into SHS to keep it viable;
- (m) Sears personnel had unfettered access to SHS premises;
- (n) Sears dedicated an employee or employees to act as marketing liaison with SHS. The marketing liaison was responsible, *inter alia*, for assisting SHS with any requests relating to the development and implementation of marketing and advertising strategies, monitoring of marketplace trends;
- (o) Sears dedicated an employee to act as a liaison for product management. Such liaison was responsible for providing SHS with assistance relating to strategy regarding the assortment of products and services and supplier base, including assistance with monitoring trends and identifying opportunities;

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- (p) Sears dedicated an employee or employees to act as operations liaisons for SHS. Such employees were responsible for, *inter alia*, providing SHS with assistance relating to customer service, customer resolution, the customer experience, suggestions regarding the development and monitoring of operation plans, and service and performance metrics;
  - (q) Sears had access to real-time reporting of all SHS' point of sale records; and
  - (r) Sears' employees who joined SHS were not permitted to exercise their Sears pension rights while they were employed by SHS.
36. The Plaintiff states that at all material times, Sears controlled the operation of SHS and therefore the employment condition of the Plaintiff and all other employees of the nominal employer, SHS.
37. The Plaintiff states that there existed a sufficient degree of control, direction and integration between SHS and Sears such that they ought to be regarded as one for the purpose of determining liability for obligations owed to their employees.
38. The Plaintiff also pleads and relies upon sections 4(1) and (2) of the *Employment Standards Act, 2000*, S.O. 2000, c. 41, section 95(1) and (2) of the *Employment Standards Act*, R.S.B.C. 1996, c. 113, section 134(1) and 134(2) of *The Employment Standards Code*, C.C.S.M. c. E110, and section 11 of the *Labour Standards Code*, R.S.N.S. 1989, c. 246.
39. As directors of SHS, the Defendants, Clements, S. Verhoeff and P. Verhoeff are jointly and severally liable to employees of the said corporation for all debts not exceeding six months' wages that became payable while they were directors for services performed for the corporation. The Plaintiff pleads and relies upon the provisions of the *Canada Business*



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*Corporations Act*, R.S.C. 1985, c. C-44, section 119, the *Employment Standards Act, 2000*, S.O. 2000, c. 41., section 81, *The Saskatchewan Employment Act*, S.S. 2014, c. S-15.1, section 2-68, the *Alberta Employment Standards Code*, R.S.A. 2000, c. E-9, section 112, the *Employment Standards Act*, R.S.B.C. 1996, c. 113, section 96, and *The Employment Standards Code*, C.C.S.M. c. E110, section 90(1).

40. The Defendants, Clements, S. Verhoeff and P. Verhoeff are accordingly indebted to the Plaintiff for the amounts claimed in this action against SHS and Sears, to the limit of liability fixed by the said statutory provisions.
41. Having regard to all of the relevant factors including Kenny's age, length of service, level of responsibilities, employment prospects and all of the circumstances associated with the termination of his employment, the Defendants, SHS and Sears were obligated in law to provide him with at least twenty-four (24) months' notice of dismissal or compensation in lieu thereof.
42. The Plaintiff anticipates that it may be necessary to serve this Statement of Claim upon one or more of the Defendants outside the Province of Ontario and in that regard pleads and relies upon the provisions of Rule 17.02 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 as amended and in particular,
  - (a) Rule 17.02(f) - a contract made and/or breached in Ontario;
  - (b) Rule 17.02(h) - damages sustained in Ontario;
43. The Plaintiff proposes that this action be tried at the City of London, in the County of Middlesex.

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Date: ~~July 9, 2015~~

Feb 3. 2015

**MCKENZIE LAKE LAWYERS LLP**

140 Fullarton Street, Suite 1800

London, Ontario N6A 5P2

John H. McNair

Michael J. Peerless

Michael Saelhof

Tel: 519-672-5666

Fax: 519-672-2674

Lawyers for the Representative Plaintiff,

Barry Patrick Kenny

**BARRY PATRICK KENNY**  
Plaintiff

-and-

**SHS SERVICES MANAGEMENT INC. et al.**  
Defendants

Court File No. 208/15

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**PROCEEDING COMMENCED AT**  
**LONDON**

**FRESH AS AMENDED STATEMENT OF CLAIM**

**MCKENZIE LAKE LAWYERS LLP**  
140 Fullarton Street, Suite 1800  
London, Ontario N6A 5P2

John H. McNair  
Michael J. Peerless  
Michael Saelhof  
Tel: 519-672-5666  
Fax: 519-672-2674

Lawyers for the Plaintiff,  
Barry Patrick Kenny

# **Tab D**

This is Exhibit "D" referred to in the Affidavit of John McNair

sworn before me, on this 24<sup>th</sup> day of March, 2016

A handwritten signature in cursive script, appearing to read "Shauldi". The signature is written in black ink and is positioned above a horizontal line.

A Commissioner for Taking Affidavits

Court File No.

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

**IN THE MATTER OF THE RECEIVERSHIP OF SHS SERVICES MANAGEMENT  
INC. / GESTION DES SERVICES SHS INC. AND SHS SERVICES LIMITED  
PARTNERSHIP**

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 47  
OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS  
AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,  
R.S.O. 1990, c. C.43, AS AMENDED**

**AFFIDAVIT OF MICHEAL CLEMENTS  
(Sworn December 12, 2013)**

I, MICHEAL CLEMENTS, of the City of Calgary, in the Province of Alberta, MAKE  
OATH AND SAY AS FOLLOWS:

1. I am the sole director of SHS Services Management Inc. / Gestion Des Services SHS Inc. ("SHS") and as such have knowledge of the matters to which I hereinafter depose, save and except where my knowledge is based on information and belief and where so stated I verily believe same to be true.

**Background**

2. SHS was founded by myself, Stephen Verhoeff and Paul Verhoeff and was formally incorporated after I was approached by Sears Canada Inc. ("Sears"), who was looking to outsource its home installation services business. Attached hereto and marked as Exhibit "A" is a true copy of a corporate search of SHS.

3. SHS Services Limited Partnership ("SHS LP") was formed in contemplation of SHS' acquisition of Sears' home installation services business, pursuant to a Limited Partnership

Agreement (the "Limited Partnership Agreement") dated February 25, 2013, between SHS and Alaris Income Growth Fund Partnership ("Alaris"). SHS is a General Partner under the Limited Partnership Agreement and Alaris is a Limited Partner. Attached hereto and marked as Exhibit "B" is a true copy of the Limited Partnership Agreement. Attached hereto and marked as Exhibit "C" is a true copy of a partnership search of SHS LP.

4. SHS has its head office in Calgary, Alberta and has an operations head office located at 125 Commerce Valley West, Suite 500, Markham, Ontario (the "Markham Office"). The only senior person based in Calgary is myself. In all respects the operations are run out of the Markham Office, which is where all senior management are located, except for myself, and where all of the books and records are located.

5. The President of SHS is Micheal Strachan, who is based in the Markham Office.

6. I am the sole director of SHS. Previously, SHS' board of directors was comprised of myself, Stephen Verhoeff and Paul Verhoeff. However, Stephen Verhoeff and Paul Verhoeff resigned as directors in or about October, 2013.

7. As of the date of the swearing of this Affidavit, the major secured creditors of SHS and SHS LP are Sears and Alaris.

8. This Affidavit is sworn in support of an application by SHS and SHS LP for the appointment of PricewaterhouseCoopers Inc. ("PwC") as interim receiver pursuant to section 47 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, C. B.-3 ("BIA") and as a receiver pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43, in respect of the entirety of the business, assets, property and undertaking of SHS and SHS LP.

#### **The Branded Concession Agreement**

9. SHS and Sears began negotiating the eventual sale of Sears' home installation services business in or about June 2012.

10. The business, assets, property and undertaking of SHS and SHS LP are all related to a transaction negotiated and entered into between SHS and Sears on December 20, 2012 under a Branded Concession Agreement ("BCA").

11. Under the BCA, SHS purchased the right from Sears to operate a business and sell certain "Products and Services" (the "Products and Services") through "Designated Channels" and at "Licensed Areas", under the "Sears Brand Name", in accordance with the terms of the BCA (the "Concession").

12. These Products and Services include a full suite of interior and exterior home renovations, repairs, and other home maintenance services provided under the Sears Brand Name in addition to the sale of air conditioners, furnaces, fireplaces and interior and exterior renovation related products. The Concession also entitles SHS to install and assemble products purchased at Sears retail outlets.

13. The final terms of the BCA were agreed to by SHS largely because of the \$208,000,000 in annual and likely sales projections initially represented by Sears to SHS.

14. While the BCA was executed by SHS and Sears on December 20, 2012, the formal transition of ownership, operation and control of the Concession took place on or about March 3, 2013.

15. Under the BCA, SHS was required to make a number of ongoing monthly, annual and other payments to Sears. Sears in return, was required to make certain payments to SHS.

#### **Ancillary Agreements and Secured Debt**

16. Related and necessary to the operation of the Concession were other agreements entered into between SHS and Sears, including an Asset Transfer Agreement dated December 20, 2012 (the "ATA"). Attached hereto and marked as Exhibit "D" is a true copy of the ATA.

17. Under the ATA, Sears transferred certain assets and property to SHS for a sum certain and in accordance with certain conditions.

18. SHS and Sears entered into a loan agreement to allow SHS to purchase the assets contemplated by the ATA (the "VTB Loan Agreement"). The VTB Loan Agreement was for \$5,676,525.80 and was repaid in full in early September, 2013.



19. In addition to funding from Sears, SHS' purchase and operation of the Concession under the BCA was funded in part by Alaris. The funding provided by Alaris to SHS was secured in a Guarantee and Indemnity (the "ISO Guarantee and Indemnity") dated March 1, 2013 under which Installation Services Org. Ltd. ("ISO"), an Alberta company in which Paul Verhoeff's family trust holds shares, provided a guarantee to Alaris for funding SHS received from Alaris.

20. Additionally, under the Limited Partnership Agreement, SHS and Alaris agreed that SHS would transfer beneficial title of its assets necessary to operate the Concession to SHS LP, in exchange for common voting units in SHS LP. SHS, together with ISO, obtained approximately \$15,000,000 in financing from Alaris. In return, Alaris received non-voting preferred units in SHS LP. Of the \$15,000,000, \$12,000,000 was earmarked for use by SHS.

21. SHS and SHS LP, who together have significant physical assets including inventory, equipment, and other property located at 9 SHS warehouses, Sears warehouses and 82 Sears stores across Canada, have each granted General Security Agreements dated March 2, 2013 (the "GSAs") in favour of Sears, along with Hypothecs on Moveable Property (the "Hypothecs") dated March, 2013. Attached hereto and marked as Exhibit "E" is a true copy of the GSAs and Hypothecs.

22. Finally, SHS, SHS LP, Sears, ISO and Alaris, entered into a Postponement Agreement (the "Postponement Agreement") dated February 25, 2013, whereby Alaris agreed to postpone and subordinate all debts, liabilities and obligations owed by SHS to Alaris in favour of all debts, liabilities and obligations owed by the parties to Sears. Attached hereto and marked as Exhibit "F" is a true copy of the Postponement Agreement.

#### **Revised Agreements with Sears and Alaris**

23. By late September, 2013 SHS and SHS LP were experiencing significant liquidity issues. In particular, the anticipated volume of revenue had never approached the amounts represented, anticipated or expected. The amounts owing under the VTB Loan Agreement to Sears had matured and required repayment, which, as noted above, was done. That said, by September, 2013, SHS and SHS LP needed a significant infusion of working capital to continue operations.

24. In order to obtain working capital to continue operations, in late September, 2013, SHS and SHS LP approached Sears and Alaris for further financing. A Letter of Understanding (the "Letter of Understanding") effective September 30, 2013, between SHS LP, Sears, ISO and Alaris was entered into whereby Sears and Alaris would provide term loans up to \$4,000,000 to SHS LP, each to fund up to \$2,000,000 (the "Further Loans"). A true copy of the Letter of Understanding is attached hereto and marked as Exhibit "G".

25. Pursuant to the Letter of Understanding and a Side Letter Agreement between Alaris and SHS LP dated October 31, 2013, the following documents, *inter alia*, were executed:

- (a) A Release and Acknowledgement Agreement dated September 30, 2013 by SHS and SHS LP in favour of Sears;
- (b) A Guarantee effective September 30, 2013 (the "ISO Guarantee"), whereby ISO guaranteed the amounts owed under the Further Loans to Alaris;
- (c) A Security Agreement effective September 30, 2013 (the "ISO Security Agreement") granted by ISO to Alaris as security for the amounts that ISO had guaranteed under the Further Loans;
- (d) A Guarantee effective September 30, 2013, whereby SHS guaranteed to Alaris the amounts owing under the Further Loans. A true copy of the aforesaid Guarantee is attached hereto and marked as Exhibit "H";
- (e) A Security Agreement effective September 30, 2013, granted by SHS LP to Alaris as security for the Further Loans. A true copy of the aforesaid Security Agreement is attached hereto and marked as Exhibit "I";
- (f) An Amendment Agreement between SHS, SHS LP and Alaris, amending the Limited Partnership Agreement to allow for the preferred distribution contemplated by the terms of the Limited Partnership Agreement;
- (g) A Net Profit Interest Agreement between SHS LP and Alaris whereby SHS LP granted to Alaris a 10% net profit interest on all profits of SHS LP; and

- (h) Formal Loan Agreements dated October 31, 2013 between, respectively, SHS LP and Alaris and between SHS LP and Sears which are attached hereto and marked respectively, as Exhibits "J" and "K".

26. Although the foregoing agreements with Alaris and Sears were made in a good faith attempt by SHS LP to remain solvent, with a view to continuing operations, as detailed below, SHS LP continued not to meet revenue projections, and as of the date of the swearing of this Affidavit, SHS LP has not been able to make any payments under the preferred distribution.

**Assets and Operations of SHS and SHS LP**

27. The assets of SHS LP related to the operation of the Concession are spread across 9 SHS warehouses, Sears warehouses and 82 Sears stores across Canada and include the following:

- i. New HVAC inventory in distribution centres in Calgary, Toronto, and Montreal;
- ii. Additional new inventory consisting of roofing products, flooring, custom décor and windows and doors located at SHS warehouses across Canada and at other locations;
- iii. Hot water heaters rented to customers in Ontario, Quebec, British Columbia, Alberta, Saskatchewan and Manitoba;
- iv. Computer equipment, including servers and desktops in the Markham Office;
- v. Approximately 285 SHS owned laptops, currently in the possession of SHS employees;
- vi. Accounts receivable representing ongoing contracts and Work In Progress ("WIP"), with a billing value upon completion of approximately \$8,000,000 and customer deposits of approximately \$3,000,000; and
- vii. Cash in an account at an HSBC branch in Alberta.

28. With regard to the approximately \$3,000,000 in customer deposits for various SHS products, as noted above, these amounts are currently held by Sears.

29. SHS' inventory is located in SHS warehouses, Sears warehouses and Sears stores across Canada. Attached hereto and marked as Exhibit "L" is true copy of a recent summary of inventory by location.

30. In addition to providing a full suite of home installation services and other services and products under the Concession, SHS operates a hot water heater rental business. SHS provides water heater rental units to customers and provides installation, maintenance and repair services to customers who rent or purchase water heater units outright.

31. Payments for the water heater rental business are made on a monthly basis to Sears, who then transfers the money to SHS. Nearly all other payments for SHS' services and products, including customer deposits, are also run through Sears' processing system before they are transferred to SHS.

32. As part of the Concession, SHS products and services that are paid for with Sears' credit cards are submitted to Sears, who then transmits the individual transactions to Chase Financial for processing. Chase Financial then provides payment settlement to Sears. In turn, Sears then provides payment to SHS. All non-Sears credit card transactions are processed through Sears' Moneris merchant account in a similar manner, with Sears receiving the funds and then providing them to SHS. Most customer payments for SHS products and services are by credit card, with a small percentage being paid directly to SHS by the customer.

33. SHS average monthly sales and revenue since March 2013 total \$13,970,000 per month.

34. SHS payroll issued to non-commission staff is issued weekly and payroll for commission staff is issued bi-weekly. The payroll is approximately \$570,000 per week. SHS does not have a payroll provider, rather, payroll is done by SHS.

35. SHS employs almost 643 employees at 9 SHS warehouses, Sears warehouses, and 82 Sears stores across Canada. Attached hereto and marked as Exhibit "M" is a true copy of a recently prepared headcount of SHS employees by location.

36. A significant number of SHS employees and personnel operate out of space in existing Sears' stores. Approximately 40% of SHS' sales leads are generated through the stores with the

rest obtained through advertising. Sears charges SHS for use of the space and for overhead through leases and other agreements. SHS schedules employees to be in Sears stores during key traffic hours. SHS uses its own computer systems to record customer leads and SHS is responsible for the displays and merchandise in the store space.

37. SHS operates a defined contribution pension plan for its employees. SHS is the administrator of the plan and is current with respect to all required contributions under the plan.

38. None of SHS' employees belong to a certified trade union, save and except for four employees between the ages of 68 and 82, who belong to CAW Local 40.

39. SHS also has contracts with private contractors.

#### **The Current State of SHS and SHS LP**

40. Despite receiving the amount of \$4,000,000 from Sears and Alaris pursuant to the Letter of Understanding, SHS LP continues to operate at a loss. The terms of the BCA are such that the Concession simply is not a viable business. During the past week meetings took place between Sears and SHS in an attempt by SHS LP to find a solution to its continuing financial problems. SHS has reached out to both Sears and Alaris for additional financing, has asked Sears to release its set-off, and has requested that regularly required payments from SHS to Sears under the BCA and payments from SHS to Alaris under the Limited Partnership Agreement be reduced, forgiven or deferred.

41. On December 10, 2013 a meeting was convened at Sears' office, among representatives of SHS, Sears and PwC, to further discuss the status of SHS and SHS LP. PwC was recently engaged by SHS to assist SHS and SHS LP with respect to its current financial challenges. Unfortunately, no acceptable solution for SHS LP's dire financial situation could be negotiated. I am advised by Roger Jaipargas, a partner with Borden Ladner Gervais LLP, lawyers for SHS and SHS LP, that Scott Bomhof at Torys LLP, counsel for Sears, has advised that Sears intends to issue a Notice of Intention to Enforce Security pursuant to section 244(1) of the BIA.

42. SHS has been in regular contact with Alaris to keep it informed of SHS LP's financial situation, and of the efforts SHS has been making to salvage the situation. Alaris has also made

it clear that it has no intention of advancing any further funds to SHS LP and that Alaris regards the Concession as no longer viable. Alaris has also not yet taken any steps to note SHS LP in default under the Loan Agreement between Alaris and SHS LP and has also not given any indication so far that it intends to take any formal legal steps against SHS LP. Having said that, by letter dated December 11, 2013, Alaris issued a notice of default under the Limited Partnership Agreement to each of SHS and SHS LP (the "Alaris Notice of Default"). A true copy of the Alaris Notice of Default is attached hereto and marked as Exhibit "N".

43. Despite SHS expressly raising the possibility of a receivership of SHS LP with both Sears and Alaris, as an orderly way in which to liquidate SHS LP, neither Sears nor Alaris have taken formal steps to apply to the Court to place SHS and SHS LP into receivership. This leaves SHS and SHS LP in the difficult situation that it is unable to continue trading, but without the ability to hand over its assets, property and undertaking to a receiver appointed at the request of its secured creditors. In light of the fact that all of SHS LP's assets are subject to the security of its secured creditors, SHS has been unable to find a trustee in bankruptcy which is prepared to accept an appointment as trustee in bankruptcy of SHS LP.

44. While SHS will be able to make its payroll on Friday, December 13, 2013, it will not be able to do so in the coming weeks.

45. Subject to what is noted further in this affidavit, SHS' remittances for HST and source deductions are as up to date as possible, considering the limited cash on hand.

46. Based on current projections prepared by management of SHS LP, it will run substantially short of operating capital by the end of the year. Projections indicate that by the end of December, 2013, SHS will be short approximately \$3,000,000. Losses are projected to continue into January, 2014. Based on these projections, absent further financing, which is extremely unlikely, SHS can no longer meet its present obligations, and in particular, will be unable to make its future payroll obligations. A true copy of the recently prepared projected cash flows are attached hereto and marked as Exhibit "O".

47. I intend to formally resign as a director of SHS on the date the receivership application is scheduled to be heard by the Court. As noted above, I am the sole director of SHS at this time.

### Summary of Claims of Creditors

48. The secured creditors of SHS and SHS LP include Sears and Alaris. The indebtedness owing to each of Sears and Alaris is approximately \$2 million each, plus further interests and costs thereon.

49. The unsecured creditors of SHS and SHS LP are numerous and include, among others, corporations, trade vendors, and individuals providing a variety of services and products to SHS. Attached hereto and marked as Exhibit "P" is a summary of the current unsecured creditors of SHS and SHS LP and the approximate amounts owing to each.

50. Attached hereto and marked as Exhibit "Q" is a true copy of *Personal Property Security Act* searches from relevant Canadian jurisdictions, in addition to corresponding searches from Quebec, in respect of each of SHS and SHS LP.

51. As of December 11, 2013, SHS LP has an estimated outstanding financial liability totalling approximately \$17,000,000.

52. SHS LP no longer has the ability to make payments on this outstanding financial liability.

53. SHS has thus decided to apply for the appointment of an interim receiver and a receiver to take control of SHS and SHS LP and to take possession of their assets, so that the assets and business can be placed under the control of a court-appointed receiver for the benefit of all stakeholders.

54. Given that the assets are located throughout the Country, SHS and SHS LP is seeking an order appointing an interim receiver, which I believe is necessary for the protection of the estate of SHS and SHS LP.


55. I believe that, under these circumstances, it is just and convenient to appoint a receiver and receiver and manager over the assets, property and undertaking of SHS and SHS LP.

56. SHS and SHS LP have approached PwC to act as interim receiver and as receiver. PwC is prepared to act in such capacities if so appointed by the Court.

57. I make this Affidavit in support of an application by SHS and SHS LP for an order appointing PwC as interim receiver and as receiver in respect of the assets, property and undertaking of SHS and SHS LP and for no other or improper purpose.

SWORN BEFORE ME at the City of )  
Calgary, in the Province of Alberta, )  
this 12<sup>th</sup> day of December, 2013 )  
\_\_\_\_\_)  
A Notary Public in and for the Province  
of Alberta.

**Nolan Ritzel**  
**Student-at-Law**



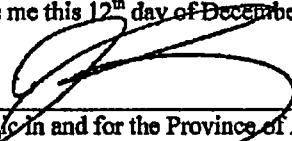
\_\_\_\_\_  
**MICHEAL CLEMENTS**



# Tab A

**EXHIBIT A**

This is the Exhibit marked "A" referred to  
in the Affidavit of Micheal Clements,  
sworn before me this 12<sup>th</sup> day of December, 2013.

  
\_\_\_\_\_  
Notary Public in and for the Province of Alberta

**Nolan Ritzel**  
**Student-at-Law**

## Government Corporation/Non-Profit Search of Alberta ■ Corporate Registration System

Date of Search: 2013/09/25  
Time of Search: 09:41 AM  
Search provided by: BORDEN LADNER GERVAIS LLP

Service Request Number: 20311920  
Customer Reference Number: 441209.01

Corporate Access Number: 2117302741  
Legal Entity Name: SHS SERVICES MANAGEMENT INC. GESTION DES SERVICES SHS INC.

Legal Entity Status: Active  
Extra-Provincial Type: Federal Corporation  
Registration Date: 2013/02/13 YYYY/MM/DD  
Date Of Formation in Home Jurisdiction: 2012/11/19 YYYY/MM/DD  
Home Jurisdiction: CANADA  
Home Jurisdiction CAN: 835415-4

### Primary Attorney:

Last Name	First Name	Middle Name	Firm Name	Street	City	Province	Postal Code
LEA	THERESA			245, 1209 - 59 AVENUE SE	CALGARY	ALBERTA	T2H 2P6

### Head Office Address:

Street: 245, 1209 - 59 AVENUE SE  
City: CALGARY  
Province: ALBERTA  
Postal Code: T2H 2P6

### Directors:

This is Exhibit "\_\_\_\_\_" referred to  
in the Affidavit of

Sworn before me this \_\_\_\_\_  
Day of \_\_\_\_\_ A.D. 20\_\_\_\_

A Commissioner for Oaths in and for  
the Province of Alberta

**Last Name:** CLEMENTS  
**First Name:** MICHEAL  
**Street/Box Number:** 222 CRANLEIGH VIEW SB  
**City:** CALGARY  
**Province:** ALBERTA  
**Postal Code:** T3M 0A2

**Last Name:** VERHOEFF  
**First Name:** STEPHEN  
**Street/Box Number:** 72 MIDVALLEY CRESCENT SE  
**City:** CALGARY  
**Province:** ALBERTA  
**Postal Code:** T2X 1N3

**Last Name:** VERHOEFF  
**First Name:** PAUL  
**Street/Box Number:** 63 BENT TREE COURT  
**City:** CALGARY  
**Province:** ALBERTA  
**Postal Code:** T3Z 3B2

**Associated Registrations under the Partnership Act:**

Trade Partner Name	Registration Number
SEARS HOME SERVICES	TN17593633
SHS SERVICES LIMITED PARTNERSHIP	LP17334525

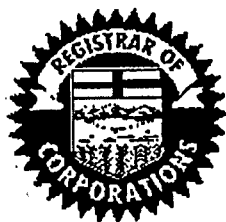
**Other Information:**

**Filing History:**

List Date (YYYY/MM/DD)	Type of Filing
2013/02/13	Register Extra-Provincial Profit / Non-Profit Corporation

This is to certify that, as of this date, the above information is an accurate reproduction of data

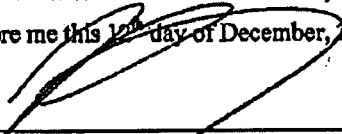
contained within the official records of the Corporate Registry.



# **Tab B**

**EXHIBIT B**

This is the Exhibit marked "B" referred to  
in the Affidavit of Micheal Clements,  
sworn before me this 12<sup>th</sup> day of December, 2013.

  
\_\_\_\_\_  
Notary Public in and for the Province of Alberta

**Nolan Ritzel**  
**Student-at-Law**

**ALARIS INCOME GROWTH FUND PARTNERSHIP**

as Initial Limited Partner

and

**SIIS SERVICES MANAGEMENT INC.**

as General Partner

and

**EACH PERSON WHO IS ADMITTED TO THE PARTNERSHIP AS A LIMITED PARTNER  
IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT**

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**LIMITED PARTNERSHIP AGREEMENT**

**February 25, 2013**

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**LIMITED PARTNERSHIP AGREEMENT**

**THIS LIMITED PARTNERSHIP AGREEMENT** made this 25<sup>th</sup> day of February, 2013 (the "Agreement").

**AMONG:**

**ALARIS INCOME GROWTH FUND PARTNERSHIP**, a general partnership formed under the laws of the Province of Alberta as initial limited partner ("Alaris Partnership")

- and -

**SHS SERVICES MANAGEMENT INC.**, a corporation formed under the federal laws of Canada, as general partner ("SHS")

- and -

Each Person who, from time to time, becomes a Limited Partner in accordance with the terms and conditions of this Agreement

**WHEREAS** SHS and the Alaris Partnership wish to form a limited partnership to be known as "**SHS Services Limited Partnership**" and wish to enter into this Agreement to set forth their respective rights and obligations in relation to the limited partnership and the matters presented herein.

**NOW THEREFORE THIS AGREEMENT WITNESSES** and in consideration of the covenants, representations and agreements contained herein, and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties agree as follows:

**ARTICLE 1  
DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement and the schedules attached hereto:

- (a) "**Accounting Change**" has the meaning given to it in Section 1.3;
- (b) "**Accounting Change Notice**" has the meaning given to it in Section 1.3;
- (c) "**Accounting Mediation**" means the mediation to be conducted by the Auditors for the purposes of determining the system of accounting to be utilized by the Limited Partnership for calculating the Financial Covenant in the event the applicable Partners have not reached an agreement on a revised method of calculation within the time period specified in the third paragraph of Section 1.3;
- (d) "**Additional Preferred Unit Contribution**" means the contribution of \$15,000,000 from Alaris Partnership to the Limited Partnership as consideration for 1,500,000 Preferred Units;
- (e) "**Additional Voting Unit Contribution**" means the contribution of assets from SHS to the Limited Partnership as consideration for 4,500,000 Voting Units pursuant to the terms of the SHS Contribution Agreement;

- 2 -

- (f) **"Advance"** has the meaning given to it in Section 4.8(a);
- (g) **"Affiliate"** shall have the meaning attributed to such term in National Instrument 45-106 of the Canadian Securities Administrators, as the same may be amended or replaced from time to time;
- (h) **"Agreement"** means this limited partnership agreement, as amended, amended and restated, or replaced from time to time;
- (i) **"Alaris"** means Alaris Royalty Corp.;
- (j) **"Alaris Contribution Agreement"** means the contribution agreement to be entered into by Alaris Partnership and the Limited Partnership in respect of the Additional Preferred Unit Contribution, in a form satisfactory to all Partners;
- (k) **"Alaris Partnership"** means Alaris Income Growth Fund Partnership;
- (l) **"Ancillary Agreements"** means, collectively, the Subordination or Consent Agreements, the ISO Guarantee, the ISO USA, the SHS Contribution Agreement, the Alaris Contribution Agreement and the Non-Competition Agreements;
- (m) **"Associate"** has the meaning ascribed thereto in the *Securities Act* (Alberta) as in effect on the date hereof;
- (n) **"Auditors"** means Collins Barrow LLP, or such other firm of chartered accountants whose partners are members of The Canadian Institute of Chartered Accountants, which is appointed from time to time pursuant to Section 7.2 as auditor of the Limited Partnership;
- (o) **"BDC Loan"** means all indebtedness owed to the Business Development Bank of Canada by any members of the SHS/ISO Group;
- (p) **"Business Day"** means any day on which commercial banks are open for business in Calgary, Alberta other than a Saturday, a Sunday or a day observed as a holiday in Calgary, Alberta;
- (q) **"Capital Account"** means an account as described in Section 8.1;
- (r) **"Capital Contribution"** means the total aggregate amount contributed to the capital of the Limited Partnership by a Partner for each Unit subscribed for by that Partner, which shall initially be the amount of \$10.00 for each issued Voting Unit and \$10.00 for each issued Preferred Unit;
- (s) **"Certificate"** means the certificate of limited partnership for the Limited Partnership to be filed under the Partnership Act and, where the context requires, all amendments thereto and renewals, replacements or restatements thereof;
- (t) **"Contribution Date"** means the date that the Additional Preferred Unit Contribution is made by Alaris Partnership;
- (u) **"Distribution Period"** means each twelve (12) month period following the First Distribution Period;
- (v) **"EBITDA"** means, in respect of any period, earnings of the Limited Partnership and SHS (on a consolidated basis in accordance with GAAP) for such period;

- (i) adding back amounts deducted to derive such earnings calculation during such period for, without duplication (A) interest expense, (B) income tax expense (whether paid or deferred), (C) depreciation, depletion or amortization expenses, (D) extraordinary and non-recurring losses, (E) non-cash foreign exchange translation losses arising from monetary assets and liabilities of the Limited Partnership (to the extent not treated as an extraordinary or other non-recurring loss and to the extent included in the calculation of earnings of the Limited Partnership), (F) non-cash losses on interest rate hedging arrangements, (G) Preferred Distributions, and (H) those one-time expenses for the start up of the business of SHS and SHS Partnership; and
- (ii) subtracting amounts added to derive such earnings calculation during such period for, without duplication: (A) extraordinary or non-recurring gains, (B) all dividend income earned or received, (C) all interest income earned or received during such period, (D) those one-time non-recurring revenues and profits by the Limited Partnership prior to the effective date of this Agreement, (E) non-cash foreign exchange translation gains arising from monetary assets and liabilities of the Limited Partnership (to the extent not treated as an extraordinary or other non-recurring gain and to the extent included in the calculation of earnings of the Limited Partnership, and (F) non-cash gains on interest rate hedging arrangements;
- (w) "Encumbrance" means any mortgage, charge, pledge, hypothecation, security interest, assignment, encumbrance, lien (statutory or otherwise), title retention agreement or arrangement, restrictive covenant and any other encumbrances of any nature or any other arrangement or condition that in substance secures payment or performance of an obligation;
- (x) "Event of Default" has the meaning given to it in Section 11.1;
- (y) "Fair Market Value" means the price in cash, or its equivalent, of the property in question as bona fide agreed by the parties at the time of the transaction in question, having regard to such property's highest and most profitable use, if then offered for sale in the open market, in competition with other similar properties, with a reasonable time allowed to find a purchaser;
- (z) "Financial Covenant" has the meaning given to it in Subsection 1.1(ooo)(xxv);
- (aa) "Financial Statements" means the financial statements prepared and delivered by the Auditors and described in Section 7.3(a)(i);
- (bb) "First Distribution Period" means the Tranche A Distribution Period, the Tranche B Distribution Period, and the Tranche C Distribution Period;
- (cc) "Fiscal Quarter" means each three month period during a Fiscal Year commencing on the first day of January, April, July or October;
- (dd) "Fiscal Year" means that period described in Section 2.5;
- (ee) "Free-Cash Flow" means any amount of cash available to the Limited Partnership to satisfy payment of the Preferred Distributions; which amount is equal to EBITDA minus:
  - (i) any scheduled principal and interest payments of debt permitted hereunder;
  - (ii) approved capital expenditures not funded by debt permitted hereunder; and

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- (iii) federal, provincial and foreign income taxes actually paid in cash by the Limited Partnership;
- (ff) **"Further Investment"** means the Capital Contribution to be made by Alaris Partnership pursuant to Section 4.3(c);
- (gg) **"Further Investment Amount"** means the amount equal to the aggregate subscription price payable in respect of a particular Further Investment;
- (hh) **"Further Investment Yield Factor"** means in respect of each Future Investment, such yield factor as may be agreed to from time to time by the General Partner and Alaris Partnership, as specified in the applicable Future Contribution Agreement;
- (ii) **"Future Contribution Agreement"** means each contribution agreement between Alaris Partnership and the Limited Partnership to be entered into from time to time in respect of any Further Investment;
- (jj) **"GAAP"** means, at any time, accounting principles generally accepted in Canada as recommended in the Handbook of the Canadian Institute of Chartered Accountants, at the relevant time applied on a consistent basis subject to Section 1.3;
- (kk) **"General Partner"** means SHS or any other Person who may from time to time, in accordance with the terms of this Agreement, become the general partner of the Limited Partnership in place of or in substitution for SHS;
- (ll) **"Governmental Entity"** means (i) any multinational, federal, provincial, state, municipal, local or other governmental or public department, central bank, court, commission, board, bureau, agency or instrumentality, domestic or foreign (ii) any subdivision or authority of any of the foregoing, or (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of or in lieu of any of the above;
- (mm) **"HSBC"** means HSBC Bank Canada;
- (nn) **"Income"** means, for each Fiscal Year of the Limited Partnership, an amount equal to the aggregate of the Limited Partnership's net income for such Fiscal Year from any source determined under the Tax Act, and the Limited Partnership's capital gains determined under the Tax Act;
- (oo) **"Initial Limited Partner"** means Alaris Partnership;
- (pp) **"Intentional Default"** means an Event of Default specified in subsections 11.1(h) or (i);
- (qq) **"Intentional Non-Payment"** means a deliberate failure or default by the Limited Partnership, the General Partner or SHS which causes an Event of Default specified in subsections 11.1(e) or (g) of this Agreement in circumstances in which SHS and ISO (on a combined consolidated basis) have adequate Free-Cash Flow available to satisfy the payment of any Preferred Distribution or the Prepayment, as applicable, owing to the holders of Preferred Units, but such Preferred Distribution or Prepayment, as the case may be, is not made;



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- (rr) **"Interest"** means, with respect to any of SHS Management at any time, such person's entire direct or indirect, legal or beneficial share ownership interest in SHS at such time (expressed as a percentage of the total shares issued and outstanding in SHS);
- (ss) **"Investment Canada Act"** means the *Investment Canada Act* (Canada), R.S., 1985, c. 28 (1st Supp.) as now enacted or as the same may from time to time be amended, re-enacted or replaced;
- (tt) **"ISO"** means Installation Services Org. Ltd.;
- (uu) **"ISO Guarantee"** means the continuing guarantee issued by ISO, to Alaris Partnership, dated on or about the date hereof, in respect of the obligations of SHS Services Limited Partnership to Alaris Partnership arising hereunder;
- (vv) **"ISO Senior Facility"** means the senior secured credit facility created by the credit agreement entered into between ISO and HSBC, dated June 28, 2012, as such agreement (and facilities) may be amended, amended and restated, or replaced from time to time (including, among other things, with another reputable financial institution), and as permitted hereunder;
- (ww) **"ISO USA"** means the unanimous shareholder agreement of ISO, dated on or about the date hereof;
- (xx) **"Limited Partner"** means each Person, other than the General Partner, who holds one or more Units, including the Initial Limited Partner and **"Limited Partners"** means all such Persons;
- (yy) **"Limited Partnership"** means the limited partnership formed pursuant to this Agreement;
- (zz) **"Liquidation Event"** means in respect of any Person:
  - (i) the institution by such Person of any proceeding to be adjudicated a bankrupt or insolvent, or to be reorganized, dissolved, liquidated or wound-up in conjunction with or as a result of such proceedings, or the consent of such Person to the institution of bankruptcy, insolvency, dissolution, liquidation or winding-up proceedings against it;
  - (ii) the filing of a petition, answer or consent seeking dissolution, liquidation, reorganization or winding-up of such Person under any federal, provincial or foreign bankruptcy, insolvency or analogous laws, and the failure by such Person to contest in good faith any such proceedings commenced in respect of such Person within sixty (60) days of becoming aware thereof;
  - (iii) the consent by such Person to the filing of any such petition or to the appointment of a receiver;
  - (iv) the making by such Person of a general assignment for the benefit of creditors;
  - (v) the admission in writing by such Person of its inability to pay its debts generally as they become due;
  - (vi) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for such Person or any of its subsidiaries or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue un-dismissed for sixty (60) days or an order or decree approving any of the foregoing shall be entered; or

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- (vii) the liquidation, dissolution or winding-up of such Person or other distribution of assets of such Person among its partners, shareholders or owners and/or creditors for the purpose of the liquidation of such Person's assets or the winding-up of its affairs pursuant to any of clauses (i) through (vi) of this definition;
- (aaa) "Loss" means, for each Fiscal Year of the Limited Partnership, an amount equal to the aggregate of the Limited Partnership's non-capital losses for such Fiscal Year from any source determined under the Tax Act and the Limited Partnership's capital losses determined under the Tax Act;
- (bbb) "Management Term" means the period commencing on the Contribution Date and ending on the third anniversary of the Contribution Date;
- (ccc) "Material Adverse Event" means any event, circumstance, occurrence or change which could reasonably be expected to be material and adverse to the business, operations, assets, condition (financial or otherwise) or results of operations of the Limited Partnership, the General Partner, ISO and SHS, taken as a whole;
- (ddd) "Non-Competition Agreements" means the management services and non-competition agreements to be entered into by the Limited Partnership with each of Paul Verhoeff, Stephen Verhoeff, and Micheal Clements, as such agreements may be amended, amended and restated, or replaced from time to time;
- (eee) "Non-Qualified Partner" means a partner who is:
- (i) a "financial institution" within the meaning of the *Income Tax Act* (Canada);
  - (ii) a "non-resident", "tax shelter", "tax shelter investment", or any entity an investment in which would be a "tax shelter investment" within the meaning of the Tax Act;
  - (iii) a partnership which is not a "Canadian partnership" within the meaning of the Tax Act; or
  - (iv) a partnership which does not prohibit investments by the Persons named in subsection (ii) or (iii) above;
- (fff) "Ordinary Resolution" means a resolution passed by more than 50% of the votes cast by Partners entitled to vote at a duly constituted meeting of the Partners or, alternatively, a resolution in writing signed in one or more counterparts by Partners holding more than 50% of the Units entitled to vote at such meeting;
- (ggg) "Partner" means any Limited Partner or the General Partner, and "Partners" means all Limited Partners and the General Partner;
- (hhh) "Partnership Act" means the *Partnerships Act* (Alberta), R.S.A. 2000, c. P-3 as now enacted or as the same may from time to time be amended, re-enacted or replaced;
- (iii) "Partnership Assets" means all assets and property, whether tangible or intangible and whether real, personal or mixed, at any time owned, either beneficially or legally, by the Limited Partnership, and including (but not limited to) those assets contributed to the Limited Partnership pursuant to the SHS Contribution Agreement;

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- (ljj) **"Partnership Business"** means the provision of full service residential and commercial installation service programs throughout Canada including, but not limited to, flooring, HVAC, windows & doors, roofing, window coverings, carpet cleaning, duct cleaning, appliances, together with ancillary maintenance and servicing related to such programs;
- (kkk) **"Person"** includes an individual, sole proprietorship, partnership, unincorporated association, unincorporated organization, unincorporated syndicate, trust, body corporate and an individual in his or her capacity as trustee, executor, administrator or other legal or personal representative;
- (lll) **"Pledgee"** has the meaning given to it in Section 6.13;
- (mmm) **"Preferred Distribution"** means:
- (i) in respect of the Tranche A Distribution Period, the amount of \$2,500,000;
  - (ii) in respect of the Tranche B Distribution Period, the product of:
    - (A) \$2,500,000; and
    - (B) (the number of calendar days in the Tranche B Distribution Period/365);
  - (iii) in respect of the Tranche C Distribution Period, the product of:
    - (A) one (1) plus the percentage change (if positive), or minus the percentage change (if negative), as applicable, in SHS/ISO Revenue (expressed as a decimal) for the most recent trailing twelve months, as determined on December 31, 2014, compared to SHS/ISO Revenue for the trailing twelve months, as determined on December 31, 2013 (as such trailing twelve month SHS/ISO Revenue may be determined, in each case, by a review level summary provided by the Auditors), and provided that for the purpose of calculating the Preferred Distribution for the Tranche C Distribution Period, such percentage change in SHS/ISO Revenue shall in no circumstances exceed an absolute value of 6%; and
    - (B) \$2,500,000;
  - (iv) in respect of each Distribution Period following the Tranche C Distribution Period, the product of:
    - (A) one (1) plus the percentage change (if positive), or minus the percentage change (if negative), as applicable, in (expressed as a decimal) for the most recent Fiscal Year, SHS/ISO Revenue compared to SHS/ISO Revenue for the immediately preceding Fiscal Year; as contained in ISO's and SHS's audited combined consolidated financial statements for the applicable period (provided that for the purpose of calculating the Preferred Distribution for any Distribution Period such percentage change in SHS/ISO Revenue shall in no circumstances exceed an absolute value of 6%); and
    - (B) the amount of the Preferred Distribution determined for the latter of the Tranche C Distribution Period or the immediately preceding Distribution Period.

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- (v) During the first 12 months after a Partner acquires any tranche of additional Preferred Units pursuant to a Further Investment, such Partner will also receive an amount equal to the Further Investment Amount multiplied by the Further Investment Yield Factor (the "Further Distribution Amount");
- (vi) For the period from the first anniversary of such Partner acquiring any tranche of additional Preferred Units to the end of the then current Tranche B Distribution Period, Tranche C Distribution Period, or Distribution Period (as the case may be), the applicable Further Distribution Amount described in (v) immediately above will be adjusted by multiplying such Further Distribution Amount by the number of days remaining in the then current Tranche B Distribution Period, Tranche C Distribution Period, or Distribution Period (as the case may be), divided by 365; and
- (vii) At all times following the period described in (vi) above, the Further Distribution Amount will be added to and become part of the Preferred Distribution as otherwise determined above in (iii) or (iv), as the case may be, for the purposes of calculating the Preferred Distribution.

Any adjustments arising from the adjustments outlined in subparagraphs (iii) to (vii) above will be paid in equal monthly instalments (or at such other times as may be agreed between the General Partner and the holders of Preferred Units) in the same manner and on the same terms as the previous monthly payments of the Preferred Distribution.

For the purposes of determining trailing twelve month SHS/ISO Revenue hereunder for the purposes of subparagraphs (iii)(A) or (vi)(A) above, such determination shall be made by the General Partner. At all times, Alaris shall have the right (at the cost of Alaris) to conduct its own review (together with its accounting advisors) of such calculations and determinations and the General Partner shall make all necessary supporting documents available for the purposes of such redeterminations. In the event of any discrepancy between the General Partner's determination of SHS/ISO Revenue and that of Alaris, the General Partner will engage the Auditor to conduct its own determination which, absent manifest error, shall be deemed conclusive.

Where required audit or review reports are not yet available in order to calculate SHS/ISO Revenue for the purposes of any of the calculations described above, the then current Preferred Distribution (and Further Distribution Amount, if applicable) shall continue and shall be adjusted (up or down, as the case may be), retroactively, immediately upon such Financial Statements becoming available and any such adjustment shall be applied to the next regular monthly payment of the Preferred Distribution.

Notwithstanding any of the foregoing, at no time shall the Preferred Distribution calculated above be less than zero.

#### *Sample Calculations*

The sample calculations included herein in Schedule C are included for illustrative purposes only in order to further clarify the calculation of Preferred Distribution described above by providing demonstrative examples;

- (nnn) "Preferred Unit Approval" means the written approval or consent of all of the Limited Partners holding Preferred Units, such consent not to be unreasonably withheld other than in respect of

Preferred Unit Consent Matters specifically determined to be in the sole and absolute discretion of the Limited Partners;

- (000) "Preferred Unit Consent Matter" means any action or proposal by the Limited Partnership, the General Partner, or SHS (as applicable) to implement or enter into any of the following, or any failure by the Limited Partnership to observe the financial covenant outlined in (xxv) below:
- (i) adding, changing or removing the rights, privileges, restrictions or conditions attaching to the Preferred Units in any manner;
  - (ii) adding, changing or removing the rights, privileges, restrictions or conditions attaching to the Voting Units in any manner;
  - (iii) amending this Agreement in any manner, including, but not limited to, the creation of additional classes of units or interests in the Limited Partnership, or the cessation or other termination of this Agreement or any of the terms of this Agreement (subject to the rights of SHS contained herein);
  - (iv) the Limited Partnership, the General Partner, or SHS, or a combination of the foregoing undertaking any direct or indirect acquisition or merger or any sale or other divestiture (either as one transaction or as a series of transactions) for consideration in excess of an amount equal to 25% of trailing twelve month EBITDA as determined on the date of such sale or other divestiture;
  - (v) undertaking any other transaction outside the ordinary course of the Partnership Business with a value in excess of an amount equal to 25% of trailing twelve month EBITDA as determined on the date of such transaction;
  - (vi) any Transfer of Units by a Partner, except in accordance with the terms of this Agreement;
  - (vii) except as otherwise contemplated herein, redeeming any Unit of the Limited Partnership in any manner;
  - (viii) except as otherwise contemplated herein, any transaction resulting in a change of control of any of the Limited Partnership, the General Partner, or SHS;
  - (ix) amending the terms or provisions of any confidentiality, non-solicitation or non-competition covenants contained in the Non-Competition Agreements;
  - (x) any transaction or arrangement (other than such transaction or arrangement that is not in existence at the date hereof and has been previously disclosed to Alaris Partnership) with a Person who does not deal at arm's length (as that term is defined with reference to the Tax Act) with the Limited Partnership, the General Partner, SHS, or any Person that owns Units (either as one transaction or a series of transactions):
    - (A) which individually has a value, liability, (either presently or in the future and either absolutely or contingently) or other obligation (except for the repayment of any Advances (or interest thereon) or as otherwise contemplated herein) in excess of \$150,000; or

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- (B) which, together with all other non arm's length transactions over the course of a particular Financial Year, has an aggregate value, liability (either presently or in the future and either absolutely or contingently), or other obligation (except for the repayment of any Advances (or interest thereon) or as otherwise contemplated herein) in excess of \$750,000;
- (xi) any new Encumbrance of Partnership Assets, Units, or the assets of SHS other than:
  - (A) in respect of securing *bona fide* indebtedness of the Limited Partnership or SHS otherwise permitted hereunder (including any security provided pursuant to the terms of the ISO Senior Facility or the Sears VTB Loan), or which exists on the date hereof and previously has been disclosed to Alaris Partnership; or
  - (B) purchase money security interests on Partnership Assets;
- (xii) any material change in the Partnership Business or legal organizational structure of SHS, the General Partner or the Limited Partnership, including, but not limited to, the creation of a new entity controlled directly or indirectly by SHS, the General Partner or the Limited Partnership;
- (xiii) incurring any increase to the current credit facilities available under the ISO Senior Facility, the Sears VTB Loan or any permitted SHS Senior Facility;
- (xiv) entering into a new SHS Senior Facility, new ISO Senior Facility or new Sears VTB Loan, or incurring new indebtedness or contingent obligation outside the scope of the ISO Senior Facility, the Sears VTB Loan, or any permitted SHS Senior Facility (as applicable);
- (xv) entering into any material amendment to or replacement of the any permitted SHS Senior Facility, the ISO Senior Facility or Sears VTB Loan, including, without limitation, any amendments to financial covenants included therein (and, for greater certainty, a waiver shall not constitute a change);
- (xvi) any capital expenditure or series of related capital expenditures in excess of \$2,000,000 in aggregate in any one Fiscal Year;
- (xvii) any new or revised capital lease or capital leases with an annual commitment value in excess of \$2,000,000 in aggregate;
- (xviii) dissolving the Limited Partnership, the General Partner, or SHS;
- (xix) declaring or making any distributions or payments of any kind (whether by way of cash, transfer of other assets of the Limited Partnership, or otherwise) to holders of Voting Units;
- (xx) any subscription by any Person for Preferred Units or any other issuance of Preferred Units, other than as contemplated herein;
- (xxi) the General Partner or SHS entering into or being involved in any manner in any business competitive with the Partnership Business during the term of this Partnership Agreement;

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- (xxii) causing or permitting the Limited Partnership, the General Partner or SHS or any of their Affiliates to enter into or become party to any transaction (by way of merger, amalgamation, arrangement, reorganization or otherwise) with any Person or entering into any transaction by way of transfer, sale or otherwise whereby all or substantially all of the undertaking, property or assets of the Limited Partnership, the General Partner or SHS would become the property of any other person;
- (xxiii) any change in the accounting policies, procedures, or practices of the Limited Partnership, the General Partner, ISO, or SHS, taken as a whole;
- (xxiv) any replacement by the Limited Partnership, the General Partner, or SHS of Paul Verhoeff, Stephen Verhoeff or Michael Clements (other than as a result of the death or unavailability of such person) or any change in their Interests in SHS, except as provided in Article 6 of this Agreement;
- (xxv) commencing April 1, 2014, any failure by the Limited Partnership, the General Partner and/or SHS to maintain the following financial covenant (with the financial ratio listed below to be tested at the times and for the periods indicated):

(A) Fixed Charge Coverage Ratio > 1.1:1;

(the "Financial Covenant"), where

"Fixed Charge Coverage Ratio" means, as at the end of each Fiscal Quarter, the ratio of: (i) EBITDA, minus cash taxes and minus distributions to any Partner (including any Preferred Distribution payable during such period) to (ii) the current portion of principal payable on any debt for borrowed money and interest and other payments payable under any debt or capital leases;

For the purposes of calculating the Fixed Charge Coverage Ratio, EBITDA and all payment obligations shall be determined on a rolling four Fiscal Quarter basis;

- (ppp) "Preferred Unit Liquidation Percentage" means the fraction, expressed as a percentage, with the numerator being the total aggregate amount of Capital Contributions made by the holders of Preferred Units, and the denominator being the total aggregate amount of Capital Contributions made by the holders of the all Units, as of the date of determination, or such amount as agreed to by the Partners from time to time.
- (qqq) "Preferred Units" means the Units described as such and having the terms set out herein and elsewhere in this Agreement;
- (rrr) "Prepayment" has the meaning given to it in Section 11.2;
- (sss) "Purchase Amount" means, at the time of any Sale, the product of the annualized Preferred Distribution payable to the holders of Preferred Units at the time of such Sale, multiplied by the lesser of:
  - (i) 7.5; and
  - (ii) the Total Enterprise Value to trailing twelve months EBITDA multiple offered and accepted in the applicable Sale;

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- (ttt) **"Receiver"** has the meaning given to it in Section 18.3;
- (uuu) **"Record Date"** means the date described in Section 16.4;
- (vvv) **"Repurchase Event"** means any event or transaction of any nature or kind whatsoever (other than a Sale) which in substance would result in retraction or repurchase of the Preferred Units, as permitted hereunder, whether in one transaction or a series of transactions;
- (www) **"Repurchase Price"** means, the aggregate dollar amount being the greater of:
- (i) the total amount of Capital Contributions made by the holders of Preferred Units; and
  - (ii) the product of:
    - (A) the then current, annualized Preferred Distribution, multiplied by
    - (B) 7.5;
- (xxx) **"Sale"** means, as applicable (and whether by way of one transaction or a series of transactions):
- (i) the sale of all or substantially all of the assets of the Limited Partnership;
  - (ii) the sale of more than 50% of the issued and outstanding Voting Units by the holders of such Units (including, without limitation, any recapitalization transaction involving the purchase of the majority of the Voting Units of the Limited Partnership by a Third Party);
  - (iii) a change of control or, or the sale of all or substantially all of the assets of, any member or members of the SHS Group which collectively generated at least 30% of SHS/ISO Revenues; or
  - (iv) an initial public offering in respect of the Units of the Limited Partnership or the voting securities of SHS,
- in each case to a Third Party;
- (yyy) **"Sears"** means Sears Canada Inc.;
- (zzz) **"Sears VTB Loan"** means the \$5,676,525.80 secured term vendor take back loan to be extended by Sears to SIIS on or about the date hereof;
- (aaaa) **"Securities Act"** means the *Securities Act* (Alberta), R.S.A. 2000 c. S-4, as now enacted or as the same may from time to time be amended, re-enacted or replaced;
- (bbbb) **"Securities Transfer Act (Alberta)"** means the *Securities Transfer Act* (Alberta), S.A. 2006, c. S-4.5, as now enacted or as the same may from time to time be amended, re-enacted or replaced;
- (cccc) **"SHS Contribution Agreement"** means the contribution agreement to be entered into by SHS and the Limited Partnership pursuant to which SHS will contribute the Additional Voting Unit Contribution to the Limited Partnership in a form satisfactory to all Partners;
- (dddd) **"SHS/ISO Group"** means the Limited Partnership, the General Partner, SHS, ISO, and any of their Subsidiaries;



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(eeee) **"SHS/ISO Revenues"** means, for any given Fiscal Year, all gross revenues of SHS and ISO, on a combined consolidated basis determined in accordance with GAAP, generated by:

- (i) any stores operated by ISO or SHS for at least 12 months; and
- (ii) full service residential and commercial installation service programs (individually, a **"Service Program"** and collectively **"Service Programs"**) operated by ISO or SHS for at least 12 months (including but not limited to flooring, HVAC, windows & doors, roofing, window coverings, carpet cleaning, duct cleaning and appliances that are sold by ISO or SHS, and any other residential and commercial installation service program as may be carried out by ISO or SHS from time to time);

provided that:

- (iii) in the event any store is opened by the Partnership or purchased from a third party (an **"Opened Store"**), the gross revenues attributable to such Opened Store will not be included in the calculation of SHS/ISO Revenues until such Opened Store has been open or a part of the Partnership for at least one year as measured on the first day of the relevant Fiscal Year in which the SHS/ISO Revenues are being determined;
  - (iv) in the event any store is closed by the Partnership (a **"Closed Store"**), the gross revenues from such Closed Store will not be included in the calculation of SHS/ISO Revenues for the Fiscal Year in which the SHS/ISO Revenues are being determined nor will the gross revenues of such Closed Store from any prior Fiscal Year be considered in calculating percentage change in SHS/ISO Revenues in accordance with clauses (iii)(A) or (iv)(A) under the definition of **"Preferred Distribution"** above;
  - (v) in the event any Service Program becomes effective (a **"New Program"**), the gross revenues attributable to such New Program will not be included in the calculation of SHS/ISO Revenues until such New Program has been effective for at least two years as measured on the first day of the relevant Fiscal Year in which the SHS/ISO Revenues are being determined;
  - (vi) in the event any Service Program is terminated (a **"Terminated Program"**), the gross revenues attributable to such Terminated Program will not be included in the calculation of SHS/ISO Revenues for the Fiscal Year in which the SHS/ISO Revenues are being determined nor will the gross revenues of such Terminated Program from any prior Fiscal Year be considered in calculating percentage change in SHS/ISO Revenues in accordance with clauses (iii)(A) or (iv)(A) under the definition of **"Preferred Distribution"** above; and
  - (vii) for the purposes of this definition, the flooring program to be operated by SHS shall be considered a New Program and shall be included in the calculation of SHS/ISO Revenues only in accordance with the terms of this definition.
- (ffff) **"SHS Management"** collectively means Paul Verhoeff, Stephen Verhoeff and Micheal Clements;

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(gggg) "SHS Senior Facility" means any future senior debt facility, between SHS, the General Partner or the Limited Partnership and *bona fide* financial institutions primarily engaged in the business of lending, as may be established from time to time and permitted hereunder and as the same may be amended, amended and restated, or replaced from time to time and permitted hereunder;

(hhhh) "Special Resolution" means:

- (i) prior to voting rights attaching to the Preferred Units in the manner set out in paragraph 2(b) of Schedule A, a resolution passed by 67% or more of the votes cast by Partners holding Voting Units at a duly constituted meeting of such Partners called for purposes of considering such resolution or, alternatively, a resolution in writing signed in one or more counterparts by Partners holding 67% or more of the Voting Units; and
- (ii) following voting rights attaching to the Preferred Units in the manner set out in paragraph 2(b) of Schedule A, a resolution passed by 67% or more of the votes cast by Partners holding Units entitled to vote at a duly constituted meeting of such Partners called for purposes of considering such resolution or, alternatively, a resolution in writing signed in one or more counterparts by Partners holding 67% or more of the outstanding Units so entitled to vote;

(iiii) "Subordination or Consent Agreements" means the various consents or subordination, priority, or like agreements, dated on or about the date hereof, and entered into between, among others, Alaris Partnership and, as applicable:

- (i) the Limited Partnership, Sears and SHS; and
- (ii) HSBC and ISO.

(jjjj) "Subsidiary" has the meaning ascribed thereto in the Securities Act;

(kkkk) "Tax Act" means the *Income Tax Act* (Canada), 1985, c. 1 (5th Supp.) and the regulations thereunder, as now enacted or as the same may from time to time be amended, re-enacted or replaced and, where appropriate, the applicable provincial counterpart;

(llll) "Third Party" means any Person other than an Affiliate of SHS or SHS Management;

(mmmm) "Total Enterprise Value" means the value actually to be received by the holders of equity in the Limited Partnership as part of a Sale, *plus* the amount of outstanding debt of the Limited Partnership or SHS to be repaid or assumed by such Third Party (or any Affiliates of such Third Party) in conjunction with the completion of such Sale;

(nnnn) "Tranche A Distribution Period" means the period from the Contribution Date to and including the first anniversary of the Contribution Date;

(oooo) "Tranche B Distribution Period" means the period from the first anniversary of the Contribution Date to and including December 31, 2014;

(pppp) "Tranche C Distribution Period" means the period from January 1, 2015 to December 31, 2015; and

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- (qqqq) **"Transfer"** includes, in reference to any securities (including the Units): (i) any transfer of such securities, directly or indirectly, by operation of law, by court order, by judicial process, or by foreclosure, levy or attachment; (ii) any sale, assignment, gift, donation, redemption, conversion or other disposition of such securities; directly or indirectly, pursuant to an agreement, arrangement, instrument or understanding by which legal title to or beneficial ownership of such securities passes from one Person to another Person or to the same Person in a different legal capacity, whether or not for value; and (iii) the granting, directly or indirectly, of any Encumbrance; and the words **"Transferred"**, **"Transferring"** and similar words have corresponding meanings;
- (rrrr) **"Transfer Form"** means the transfer form, power of attorney and counterpart execution substantially in the form attached to the form of Unit Certificate;
- (ssss) **"Unit Certificate"** means a certificate of ownership of Units issued in accordance with Section 5.1 and substantially in the form attached to this Agreement as Schedule B;
- (tttt) **"Units"** means the units in the Limited Partnership, being the Preferred Units and the Voting Units, with those rights and interests of a holder of such units in and to the revenues, income, loss and assets of the Limited Partnership as set out in this Agreement (including Schedule A), and all rights and benefits incidental thereto;
- (uuuu) **"Voting Unit Liquidation Percentage"** means the fraction, expressed as a percentage, of the remaining assets not to be distributed to the holders of Preferred Units in accordance with the Preferred Unit Liquidation Percentage. For clarity, and by way of example, if the Preferred Unit Liquidation Percentage is 35% then the Voting Unit Liquidation Percentage will be 65%;
- (vvvv) **"Voting Units"** means the Units described as such and having the terms set out in Schedule A and elsewhere in this Agreement; and
- (wwww) **"VTB Loans"** means the vendor take back loans extended by each of Tri-Jay Carpets (1989) and The Carpet Store Ltd, to members of the SHS/ISO Group.

## 1.2 Interpretation

In this Agreement:

- (a) all words and personal pronouns relating thereto shall be read and construed as the number and gender of the party or parties require, and the verb shall be read and construed as agreeing with the required word and pronoun;
- (b) the division of this Agreement into articles, sections and clauses and the use of headings is for convenience of reference only, and shall not modify or affect the interpretation or construction of this Agreement or any of its provisions;
- (c) all dollar amounts are expressed in Canadian funds;
- (d) each reference herein to 'combined consolidated' financials makes reference to financial statements where each entity referenced first consolidates its financials and then combines such financials with the other referenced entity or entities; and

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- (e) a reference to a statute shall include every regulation made pursuant thereto, all amendments to the statute or to any such regulation in force from time to time, and any statute or regulation which supplements or supersedes any such statute or regulation.

### 1.3 Accounting Terms

All accounting terms not specifically defined in this Agreement will be construed in accordance with GAAP. If there occurs a material change in GAAP, and such change would cause an amount required to be determined for the purposes of the Financial Covenant to be materially different than the amount that would be determined without giving effect to such change, the General Partner shall notify all of the Limited Partners holding Preferred Units of such change (an "Accounting Change"). Such notice (an "Accounting Change Notice") shall describe the nature of the Accounting Change, its effect on the current and immediately prior year's financial statements in accordance with GAAP and state whether the General Partner desires to revise the method of calculating the Financial Covenant (including the revision of any of the defined terms used in the determination of such Financial Covenant) in order that amounts determined after giving effect to such Accounting Change and the revised method of calculating such Financial Covenant will approximate the amount that would be determined without giving effect to such Accounting Change and without giving effect to the revised method of calculating such Financial Covenant. The Accounting Change Notice shall be delivered to all of the Limited Partners holding Preferred Units within sixty (60) days of the end of the Fiscal Quarter in which the Accounting Change is implemented or, if such Accounting Change is implemented in the fourth Fiscal Quarter or in respect of an entire Fiscal Year, within ninety (90) days of the end of such period.

If, pursuant to the Accounting Change Notice, the General Partner does not indicate that it desires to revise the method of calculating the Financial Covenant, the Limited Partners holding Preferred Units may within thirty (30) days of its receipt of the Accounting Change Notice, and by way of Preferred Unit Approval, notify the General Partner that it wishes to revise the method of calculating the Financial Covenant in the manner described above.

If either the General Partner or the Limited Partners holding Preferred Units (by way of Preferred Unit Approval) so indicate that they wish to revise the method of calculating the Financial Covenant, the Partners shall in good faith attempt to agree on a revised method of calculating the Financial Covenant. If, however, within sixty (60) days of the foregoing notice being delivered by the General Partner or the Limited Partners holding Preferred Units, the Partners have not reached agreement in writing on a revised method of calculating the Financial Covenant, such method of calculation shall be referred to Accounting Mediation which shall determine the method of calculation to be used for such Financial Covenant in order to best maintain the calculation of such Financial Covenant as of the date hereof. For greater certainty, if no notice of a desire to revise the method of calculating the Financial Covenant in respect of an Accounting Change is given by either the General Partner or the Limited Partners holding Preferred Units (by way of Preferred Unit Approval) within the applicable time period described above, the method of calculating the Financial Covenant shall not be revised in response to such Accounting Change and all amounts to be determined pursuant to the Financial Covenant shall be determined giving effect to such Accounting Change.

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**ARTICLE 2  
THE LIMITED PARTNERSHIP**

**2.1 Formation**

The General Partner and the Initial Limited Partner agree to form a limited partnership pursuant to the laws of the Province of Alberta and the provisions of this Agreement effective upon the filing of the Certificate in accordance with the Partnership Act.

**2.2 Name**

The name of the Limited Partnership shall be "SHS Services Limited Partnership" or such other name as the General Partner may from time to time deem appropriate. The General Partner shall promptly advise each Limited Partner of any change in the name of the Limited Partnership.

**2.3 Office**

The office of the Limited Partnership shall be located at 245, 1209 – 59<sup>th</sup> Avenue SE, Calgary, AB T2H 2P6, or at such other or additional locations as the General Partner may from time to time determine. The General Partner shall promptly advise each Limited Partner of any change in the location of the office of the Limited Partnership.

**2.4 Term**

The Limited Partnership shall commence on the date of filing of the Certificate in accordance with the Partnership Act, and shall continue until the earlier of:

- (a) the date on which the Limited Partnership is dissolved in accordance with the terms of this Agreement; or
- (b) February 25, 2093.

**2.5 Fiscal Year**

The first fiscal period of the Limited Partnership shall end on December 31, 2013 and thereafter each fiscal period shall commence on January 1 in each year and shall end on the earlier of December 31 in each subsequent year or on the date of dissolution or other termination of the Limited Partnership. Each fiscal period is herein referred to as a "Fiscal Year".

**ARTICLE 3  
BUSINESS OF THE LIMITED PARTNERSHIP AND NON-COMPETITION**

**3.1 Qualification of Limited Partnership**

The Limited Partnership shall qualify to do business in the Province of Alberta as a limited partnership under the applicable laws and regulations of the Province of Alberta. The Limited Partnership shall likewise qualify to engage in business in such other jurisdictions as the General Partner shall determine to be appropriate and in accordance with Section 3.4.

**3.2 Property Held by General Partner**

- (a) Beneficial title to the Partnership Assets shall be deemed to be owned by the Limited Partnership as an entity, and no Partner, individually or collectively, shall, prior to the dissolution of the Limited Partnership, have any beneficial ownership interest in the Partnership Assets or any portion of them.
- (b) Notwithstanding Section 3.2(a), for administrative convenience, and without altering or affecting the rights and interests provided in this Agreement, the Partnership Assets may be held in the name of the General Partner or a corporation incorporated, as a wholly-owned Subsidiary of either the Limited Partnership or the General Partner, for the sole purpose of holding title to Partnership Assets as bare trustee for the Limited Partnership, and for the use and benefit of the Partners in accordance with the terms and provisions of this Agreement, until such time as the General Partner shall determine that it is advisable for such Partnership Assets to be held or registered in the name of the Limited Partnership, another nominee or otherwise.
- (c) The Limited Partnership and the General Partner shall ensure at all times that beneficial title in all material assets (including, without limitation, any licences or lease interests) necessary for the operation of the Partnership Business shall be held by the Limited Partnership unless otherwise agreed to by the holders of Preferred Units by way of Preferred Unit Approval.

**3.3 Business of Limited Partnership**

The business of the Limited Partnership shall be activities which are directly or indirectly related to the Partnership Business, whether carried on directly or indirectly through a Subsidiary of the Limited Partnership. The Limited Partnership may also engage in such other necessary or related activities as the General Partner deems advisable in order to carry on the Partnership Business.

**3.4 Restrictions on Business**

- (a) The Limited Partnership shall not carry on any other business than as permitted in Section 3.3.
- (b) The Limited Partnership shall not carry on business in any jurisdiction unless the laws of that jurisdiction limit the liability of the Limited Partners to substantially the same extent that such Limited Partners enjoy limited liability under the laws of the Province of Alberta, and unless the General Partner has taken all steps which may be required by the laws of that jurisdiction for the Limited Partners to benefit from such limited liability.

**3.5 Non-Competition**

Each Partner hereby covenants and agrees with and in favour of each other Partner that, from and after the date hereof to the earlier of:

- (a) the date that Alaris Partnership ceases to be a holder of Preferred Units; and
- (b) the date that this Agreement is terminated,

such Partner will not, and they will cause each of their Affiliates to not, and they will use all commercially reasonable efforts to cause each of their officers and senior management to not, directly or indirectly, either individually or in partnership or jointly or in conjunction with any Person, as principal, agent, employee, shareholder or investor (other than as a passive shareholder holding less than 5% of a

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corporation or other entity whose equity securities are publicly traded on a stock exchange), partner, consultant, guarantor, lender, broker, or in any other manner, whatsoever, carry on business with, enter into or take part in the ownership or conduct of operations or management or control of, any business that is the same or similar to the Partnership Business or any substantial part of the Partnership Business anywhere within Canada or the United States of America (whether carried on or conducted through a corporation or otherwise) or in the case of the General Partner, any other business whatsoever where such involvement would result, or would reasonably be expected to result, in the General Partner or any other Partner (or their Affiliates) other than Alaris Partnership (or any of its Affiliates) or the officers and employees of the General Partner, failing to devote their material attention and efforts to the Partnership Business during the Management Term.

#### **ARTICLE 4 LIMITED PARTNERSHIP UNITS**

##### **4.1 Division into Units**

- (a) The Limited Partnership is authorized to issue:
- (i) one class of Units, to be designated as "Voting Units", in an unlimited number; and
  - (ii) one class of Units, to be designated as "Preferred Units", in an unlimited number.

##### **4.2 Initial Contributions for Units**

Concurrently herewith, the General Partner and the Initial Limited Partner shall each contribute cash in the amount of \$10.00 to the Limited Partnership, and upon such Capital Contribution being made, the Capital Account for each of the General Partner and the Initial Limited Partner shall be credited with \$10.00 and the Limited Partnership shall issue 1 Voting Unit to the General Partner and 1 Preferred Unit to Alaris Partnership.

##### **4.3 Further Contributions for Preferred Units and Voting Units**

###### **Additional Preferred Unit Contribution**

- (a) Upon and subject to the terms and conditions of this Agreement and the Alaris Contribution Agreement, Alaris Partnership shall make the Additional Preferred Unit Contribution on February 25, 2013 (or such other time as may be agreed upon by the Partners) and upon such Capital Contribution being made, the Capital Account of Alaris Partnership shall be credited with \$15,000,000 and the Limited Partnership shall issue 1,500,000 Preferred Units to Alaris Partnership.

###### **Additional Voting Unit Contribution**

- (b) SHS shall, concurrently with the timing of the Additional Preferred Unit Contribution, make the Additional Voting Unit Contribution and upon such Capital Contribution being made, the Capital Account of SHS shall be credited with \$45,000,000 and the Limited Partnership shall issue 4,500,000 Voting Units to SHS.

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#### **Further Investments**

- (c) Upon and subject to the terms and conditions of this Agreement (including, without limitation, the terms of Section 4.4(b)), and upon accepting a notice in writing issued by the General Partner to Alaris Partnership from time to time following the Additional Preferred Unit Contribution, Alaris Partnership may from time to time (in its sole and unfettered absolute discretion) agree to complete other Capital Contributions for Preferred Units, subject always to the provisions hereof and on such other terms as may be agreed to between the General Partner and Alaris Partnership in respect of such Capital Contribution.
- (d) Except as provided herein, no Limited Partner shall be required to make any further Capital Contribution to the Limited Partnership.

#### **4.4 Conditions Precedent to the Additional Preferred Unit Contribution and the Further Investment**

The obligation of Alaris Partnership to complete the Additional Preferred Unit Contribution or any Further Investment shall be subject to the satisfaction of, or compliance with each of the following conditions precedent, as applicable (each of which is hereby acknowledged to be inserted for the exclusive benefit of Alaris Partnership and may be waived by Alaris Partnership in whole or in part):

- (a) in respect of the Additional Preferred Unit Contribution:
  - (i) the Additional Preferred Unit Contribution shall close concurrently with the Additional Voting Unit Contribution;
  - (ii) the Ancillary Agreements must be fully executed and delivered by the relevant parties prior to or concurrently with the completion of the Additional Preferred Unit Contribution;
  - (iii) all of the transactions contemplated by the SHS Contribution Agreement shall have been finalized;
  - (iv) no Event of Default shall have occurred and be continuing;
  - (v) evidence that the VTB Loans and the BDC Loan have been repaid and satisfactory releases of all Encumbrances in respect thereof shall have been received; and
  - (vi) all material consents, approvals, orders and authorizations of or from Governmental Entities or Third Parties required in connection with the completion of the Additional Preferred Unit Contribution and the Additional Voting Unit Contribution shall have been obtained;
- (b) in respect of any Further Investment:
  - (i) Alaris Partnership shall have received notice in writing from either the General Partner on behalf of the Limited Partnership or SHS requesting the Further Investment. Such notice shall include the amount of the Capital Contribution to be made by Alaris Partnership in respect of the Further Investment;



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- (ii) Alaris Partnership and the Limited Partnership shall have entered into a Future Contribution Agreement in respect of each Future Investment;
- (iii) there shall be no ongoing Event of Default at the time the applicable Further Investment is to be made by Alaris Partnership to the Limited Partnership;
- (iv) no action or proceeding in Canada by law or in equity shall be pending or threatened by any Person or Governmental Entity to enjoin, restrict or prohibit the applicable Further Investment;
- (v) Alaris shall have received the approval of its board of directors to make the applicable Further Investment;
- (vi) no Event of Default shall have occurred and be continuing; and
- (vii) all consents, approvals, orders, authorizations of or from Governmental Entities or Third Parties required in connection with the completion of the applicable Further Investment shall have been obtained.

#### 4.5 Issuance of Additional Units

- (a) Other than as contemplated herein, no additional Units shall be issued to any Person without the consent of all Partners.
- (b) Each Person to whom Units are issued shall, as a condition thereof, contribute to the capital of the Limited Partnership the Fair Market Value of such Units. Every Person whose subscription for Units is accepted in whole or in part by the Partners and who executes a counterpart to this Agreement (in a form reasonably acceptable to the General Partner) agreeing to be bound by the provisions of this Agreement, shall be entered on the register of the Limited Partnership as a Limited Partner.

#### 4.6 No Further Classes of Units

No classes of Units other than the Preferred Units and the Voting Units shall be created.

#### 4.7 No Fractional Units

No fractional Units shall be issued.

#### 4.8 Advances To Limited Partnership

- (a) If any Partner or its Affiliate advances funds (each, an "Advance") to the Limited Partnership in excess of its Capital Contribution, that Advance shall not result in any increase in the Capital Contribution of the Partner. The amount of any such Advance shall be a debt of the Limited Partnership to that Partner or such Affiliate, as applicable, and shall be payable or collectable only out of the Partnership Assets in accordance with the terms and conditions upon which such Advance is made. No Partner shall be required to advance funds to the Limited Partnership in excess of an amount equal to that Partner's Capital Contribution.

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- (b) No repayment of principal or payment of interest in respect of an Advance may be made by the Limited Partnership: (i) during any month prior to payment of all Preferred Distributions payable to the holders of Preferred Units during such month, or (ii) at any time, without first obtaining Preferred Unit Approval, if such repayment or payment would result in a Preferred Unit Consent Matter.

## ARTICLE 5 UNIT CERTIFICATES

### 5.1 Issuance

The General Partner shall issue to each Partner a Unit Certificate, substantially in the form attached as Schedule B to this Agreement, indicating that the registered holder thereof is the owner of the number of Units set out on the Unit Certificate. Every Unit Certificate shall be manually signed by at least one signing officer of the General Partner.

### 5.2 Delivery

A Unit Certificate shall be delivered by courier to the registered holder thereof and neither the General Partner nor the Limited Partnership shall be liable for any loss by a Limited Partner that results from the loss of a Unit Certificate so sent.

### 5.3 Lost Certificates

If any Unit Certificate is lost, mutilated, stolen or destroyed, the General Partner shall issue a replacement Unit Certificate to the relevant Partner upon receipt of evidence satisfactory to the General Partner of such loss, mutilation, theft or destruction, and upon receiving such indemnification as it deems appropriate in the circumstances.

### 5.4 Registration

Units may only be registered in the name of one Person, unless otherwise determined by the General Partner.

## ARTICLE 6 TRANSFER OF UNITS

### 6.1 Restriction on Transfer of Units

No Partner may Transfer any of the Units owned by it except to Persons and in the manner expressly permitted in this Agreement. Any attempted Transfer of Units made in violation of this Agreement will be null and void and the General Partner will not approve any Transfer of Units made in contravention of this Agreement.

### 6.2 Form of Transfer

Any Transfer of Units by a Partner shall not be effective unless a Transfer Form is properly completed and submitted to the General Partner, together with the Unit Certificate representing such Units.

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### 6.3 Consent to Transfer

Any Transfer of Units by a Partner, other than a Transfer to an Affiliate of such Partner pursuant to Section 6.11, shall not be effective without Preferred Unit Approval and unless the General Partner has provided written consent to such Transfer, such consent not to be unreasonably withheld.

### 6.4 Effective Date of Transfer

If the General Partner has consented to a Transfer of any Units and such Transfer otherwise complies with all applicable provisions of this Agreement, the transferee's name will be entered on the register of holders of Units as at the date of Transfer, and the transferee, if not already a Partner or a Person who acquires an interest in Units pursuant to paragraph (iii) of the definition of "Transfer", will, subject to Section 6.2, become a Partner upon the filing and recording by the General Partner of all certificates and other documents required by law.

### 6.5 New Unit Certificates

A new Unit Certificate for Units transferred in accordance with the foregoing provisions shall be issued to the applicable transferee. In the case of a Transfer of less than all of the Units represented by a Unit Certificate, a new Unit Certificate for the balance of the Units retained by the transferor shall be issued.

### 6.6 No Recognition of Trusts

The General Partner shall not be bound to see to the execution of any trust, express, implied or constructive, or of any charge, pledge or equity to which any of the Units or any interests therein are subject, to ascertain or inquire whether any sale or other disposition of any such Units or interest therein by a Partner or its personal representative is authorized by such trust, charge, pledge or equity or to recognize any Person having any interest therein except for the Person recorded as the registered holder thereof.

### 6.7 Sale to a Third Party

- (a) Notwithstanding any provision of this Agreement to the contrary, any Sale shall be subject to and conditional upon the completion of the purchase of all the issued and outstanding Preferred Units by the Limited Partnership or other Person (or any combination of the foregoing) prior to or concurrently with the consummation of such Sale, for an aggregate purchase price equal to the Purchase Amount.
- (b) For greater certainty, no repurchase, retraction, or transfer of Units or Limited Partnership assets, other than a *bona fide* Sale, shall be permitted at any time prior to the time that is the third (3<sup>rd</sup>) anniversary following the Contribution Date.

### 6.8 Repurchase Events after Three Years

Subject to the provisions of Section 11.3, at any time following the date that is the third (3<sup>rd</sup>) anniversary of the Contribution Date, the Limited Partnership, the General Partner or any of its or their Affiliates may undertake a Repurchase Event which results in the repurchase or retraction of all (but not less than all) of the Preferred Units at a price equal to the Repurchase Price.

**6.9 Transferor to Remain Bound**

No Transfer of Units made in accordance with the provisions of this Article 6 shall relieve the transferor from any obligations to the Limited Partnership or the Partners incurred prior to such Transfer becoming effective.

**6.10 Transferee a Party to this Agreement**

Any transferee who has completed and delivered a Transfer Form shall have and shall be deemed to have:

- (a) requested the Transfer of the Units specified in the Unit Certificate to it;
- (b) agreed to comply with and be bound by all the terms and conditions of this Agreement;
- (c) granted to the General Partner the power of attorney described in Article 20 of this Agreement; and
- (d) made the applicable consents and waivers contained in this Agreement.

**6.11 Transfers to Affiliates**

Any Partner may, upon prior written notice thereof to all other Partners, Transfer all or any portion of its Units to an Affiliate of the Partner if the Partner and the Affiliate enter into an agreement with the other Partners to the effect that:

- (a) the Affiliate will remain an Affiliate of the Partner while the Affiliate holds the Units unless such requirement is waived by Preferred Unit Approval and the holders of Voting Units by Special Resolution;
- (b) before the Affiliate ceases to be an Affiliate of the Partner and unless such requirement is waived pursuant to Section 6.11(a), the Affiliate will Transfer the Units back to the Partner or to another Affiliate of the Partner provided that the other Affiliate enters into an agreement with the other Partners as contemplated by this Section 6.11; and
- (c) the Affiliate will otherwise be bound by, become a party to and have the benefit of this Agreement as a Partner.

Any Transfer referred to in this Section 6.11 will not release the Partner from any of its obligations under this Agreement.

**6.12 No Transfer of Voting Units if Change in Control**

In no event whatsoever may any Voting Units be Transferred without first obtaining Preferred Unit Approval if, after such Transfer, SHS or an Affiliate would or would likely own less than 51% of the issued and outstanding Voting Units.

**6.13 Encumbering of Units**

At any time and from time to time any Partner may, upon prior written notice thereof to the other Partners, grant an Encumbrance on any or all of the Units held by it, directly or indirectly, to a recognized and reputable financial institution (a "Pledgee") as security for any indebtedness of the Partner

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or any of its Affiliates, provided that such Pledgee must first enter into an agreement with the Partners acknowledging that, in the event that it realizes on such claim and acquires ownership of the pledged Units, such Pledgee shall become a party to and bound by this Agreement.

#### 6.14 Further Restrictions on Transfer

- (a) Notwithstanding any provision of this Agreement to the contrary, no Transfer of any Unit shall be made (and no purported Transfer shall be deemed effective for any purpose or vest any rights in the proposed transferee) if the Transfer:
- (i) would violate the applicable Canadian or other securities law or the rules, regulations and policies of the securities regulatory authorities or any other Governmental Entity with jurisdiction over the Transfer;
  - (ii) would result in the Limited Partnership being treated as an association taxable as a corporation for United States federal income tax purposes;
  - (iii) would affect the Limited Partnership's existence or qualification as a limited partnership under any applicable federal, provincial, state or local law; or
  - (iv) would result in the Transfer of any Unit to a Person who is a "non-resident" of Canada within the meaning of the Tax Act or a "non-Canadian" within the meaning of the Investment Canada Act.
- (b) All reasonable expenses incurred by the Limited Partnership or the General Partner in connection with a Transfer of Units shall be borne by the transferor and no Transfer shall be made until the expenses (in an amount determined by the General Partner, in its sole discretion, acting reasonably) are paid or provision is made, it being understood that the General Partner may require provision for the expenses (in an amount determined by the General Partner, in its sole discretion, acting reasonably) and will return the excess, if any, to the transferor after the Transfer of Units is completed.

#### 6.15 Continuation of Limited Partnership on Transfer

Notwithstanding the Transfer by any Partner of its interest in the Limited Partnership, the Limited Partnership shall be deemed to continue as though the transferee, assignee or purchaser (as the case may be) of the interest had been a party to it and no transferee, assignee or purchaser (as the case may be) will become a Limited Partner until all filings and recordings required by law have been duly made.

#### 6.16 Change of Residence

In the event a Partner becomes a "non-resident" of Canada, or in the case of a Partner that is a partnership, the Partner ceases to be a "Canadian partnership", within the meaning of the Tax Act or a "non-Canadian", within the meaning of the Investment Canada Act, it shall be disqualified from being a Partner and the Limited Partnership shall (subject always to the direction of the remaining Partner or Partners who are not non-residents of Canada or non-Canadians, as the case may be) have the right to, and the General Partner shall, redeem that Partner's Units for the lesser of:

- (a) the amount of such Partner's Capital Contribution in respect of such Units; or

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- (b) the amount of the current Capital Account in respect of such Units,

in either case as determined at the time that such Partner became disqualified from being a Partner pursuant to this Section 6.16, and such redemption of Units will be deemed to be effective immediately prior to such time. Any amounts owed to such Partner by the Limited Partnership as a result of such redemption of Units shall be deemed to be a debt owing by the Limited Partnership to such Partner until repaid in full.

## ARTICLE 7 AUDITING AND REPORTING

### 7.1 Books of Account

During the term of the Limited Partnership and for a period of six (6) years thereafter, the General Partner shall, at the expense of the Limited Partnership or joint and several expense of the Limited Partners thereafter, keep and maintain, or cause to be kept and maintained, at its principal place of business, full, complete and accurate books of account and records of the business of the Limited Partnership and of the General Partner. The Limited Partners may, upon written notice to the General Partner, inspect the books of account and records of the Limited Partnership and of the General Partner during normal business hours. In addition to the audit referred to in Section 7.3, and without limitation of any audit rights any Limited Partner may have pursuant to any other agreement among the parties hereto, a Limited Partner may, at its expense and upon ten (10) Business Days' written notice to the General Partner, audit the books of account and records of the business of the Limited Partnership and the General Partner.

### 7.2 Appointment of Auditors

The Limited Partnership will retain the Auditors to review, audit and report to the Partners upon the financial statements of the Limited Partnership for, and as at the end of each Fiscal Year. The Auditors may be replaced or new Auditors may be appointed by the General Partner.

### 7.3 Annual Report and Income Tax Information

- (a) Within ninety (90) days after the end of each Fiscal Year (or such shorter period of time as Alaris Partnership may require, acting reasonably), the General Partner will forward to each Partner and to each Person who was shown on the register of Units as a Partner during such Fiscal Year:

- (i) an annual report for such Fiscal Year containing:

- (A) audited financial statements of the Limited Partnership, and audited combined consolidated financial statements for SHS and ISO, as at the end of, and for, the most recent Fiscal Year (prepared in accordance with (a) GAAP, and (b) any necessary requirements of the applicable securities laws of Canada with comparative financial statements as at the end of, and for, the immediately preceding Fiscal Year) containing:

- (1) a balance sheet;
- (2) a statement of income;
- (3) a statement of changes in financial position; and

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- (4) a statement of changes in capital;
- (B) a report of the Auditors on such financial statements;
- (C) a report of allocations and distributions to Partners;
- (D) a detailed computation of Income or Loss of the Limited Partnership and of all amounts described in Section 9 hereof (as these are defined with reference to the Tax Act);
- (E) a report in respect of a projected budget with anticipated cash flow for the Limited Partnership and SHS in respect of the forthcoming Fiscal Year;
- (F) copies of any reporting material required to be delivered by the Limited Partnership to any of its senior lenders, including any such materials required to be delivered pursuant to the ISO Senior Facility or any SHS Senior Facility; and
- (G) such other information as is required to be provided to Limited Partners pursuant to applicable law, or is material to the business of the Limited Partnership or as requested by Alaris Partnership, acting reasonably.

#### 7.4 Additional Financial Information

Within thirty (30) days after the end of each month during each Fiscal Year of the Limited Partnership, the General Partner will forward to each holder of Units shown on the register at the end of each such month:

- (a) The monthly financial and management reports of the Limited Partnership ordinarily prepared in respect of the Limited Partnership and in respect of ISO and SHS (on a combined consolidated basis);
- (b) A certificate from the General Partner and the Limited Partnership certifying that no Event of Default has occurred and is continuing and there has been no Material Adverse Event since the date of the last certificate delivered hereunder; and
- (c) Such other information as is required to be provided to Limited Partners pursuant to applicable law, or is material to the business of the Limited Partnership or as requested by Alaris Partnership, acting reasonably.

#### 7.5 Accounting Policies

Subject to Sections 1.1(ooo)(xxiii), 1.3, 7.3, 7.4 and 7.6, the General Partner may establish, from time to time, accounting policies with respect to the financial statements of the Limited Partnership and may change, with the approval of all Partners, from time to time, any policy that has been so established provided that such policies are consistent with the provisions of this Agreement, with GAAP and with any requirements of the applicable securities laws of Canada or the requirements of the Toronto Stock Exchange or any other stock exchange on which the shares of Alaris are listed that may be necessary to enable Alaris to comply with its obligations under such applicable securities laws or stock exchange requirements. Provided that any changes required to enable Alaris to comply with its obligations under such applicable securities laws or stock exchange requirements shall be at the cost of Alaris Partnership.

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## 7.6 Additional Information

The General Partner and the Limited Partnership acknowledge that Alaris is a reporting issuer under applicable laws regarding securities in the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador and its securities are listed on the Toronto Stock Exchange and in that regard will have continuous and other disclosure obligations. The General Partner and the Limited Partnership shall, at the cost of Alaris Partnership, provide to Alaris, on a timely basis, all information related to the Partnership Business, operations, results of operations and conditions (financial or otherwise) and events that may reasonably be expected to impair the ability of the Limited Partnership to continue to make the Preferred Distributions so as to enable Alaris to comply with such obligations. The General Partner and the Limited Partnership further acknowledge that the Limited Partnership may be an "operating entity" of Alaris under such applicable securities laws, including, without limitation, under the Securities Act and under National Policy 41-201 of the Canadian Securities Administrators, both as amended from time to time, and the General Partner and the Limited Partnership agree to comply, at the cost of Alaris Partnership, with all requirements of such laws and policies applicable to it as an operating entity as in force from time to time.

## ARTICLE 8 CAPITAL ACCOUNTS

### 8.1 Capital Accounts

An individual Capital Account shall be established and maintained by the General Partner for each Partner, and each Partner shall be credited with the amount of its Capital Contributions to the Limited Partnership. All allocations of Income or Loss hereunder shall be credited or debited to the Capital Account of the Partner for whom the allocation was made and all amounts distributed to a Partner shall be debited from that Partner's Capital Accounts.

### 8.2 Negative Balance

The interest of a Partner in the Limited Partnership shall not terminate by reason of a negative or zero balance in any accounts maintained on the books of the Limited Partnership with respect to such Partner.

### 8.3 No Interest Payable on Accounts

Except as provided herein, no Partner has the right to receive interest on any credit balance in accounts maintained on the books of the Limited Partnership and no Partner is liable to pay interest to the Limited Partnership on any deficit in any accounts maintained on the books of the Limited Partnership.

### 8.4 Withdrawal

No Partner has the right to withdraw any of its Capital Contribution or any other amount or to receive any cash or other distribution from the Limited Partnership except as provided for in this Agreement and except as permitted by law.



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**8.5 Return of Capital**

No Partner shall be entitled to a return, or to demand a return, of any of such Partner's Capital Contribution or entitled to any distribution or allocation thereof except upon the dissolution of the Limited Partnership. The foregoing shall not preclude the General Partner from returning any of a Partner's Capital Contribution to such Partner at any time in its discretion, or from making a distribution or allocation in accordance with the terms of this Agreement.

**ARTICLE 9  
ALLOCATION OF INCOME AND LOSS****9.1 Method of Allocation**

The General Partner will allocate to each Partner its share of the Income and Loss of the Limited Partnership for each Fiscal Year as determined in accordance with the terms hereof. All Partners agree to be bound by such allocations of Income, Loss and all items which are separately allowable for income tax purposes, tax credits and other income tax related amounts provided for in this Agreement, and expressly acknowledge that such allocations are reasonable having regard to all circumstances at the time each Partner acquired any Units in the Limited Partnership.

**9.2 Preferred Unit Allocation**

- (a) At the end of each Fiscal Year of the Limited Partnership, holders of Preferred Units will be allocated an amount of Income or Loss, as the case may be, equal to the lesser of:
- (i) The aggregate amount of Preferred Distributions made to holders of Preferred Units in respect of such Preferred Units during the Fiscal Year; and
  - (ii) The Limited Partnership's Income or Loss (expressed as a positive number), as the case may be, for that Fiscal Year.
- (b) The aggregate amount of Preferred Distributions made during the Fiscal Year that exceeds the Limited Partnership's Income or Loss (expressed as a positive number), as the case may be, for that Fiscal Year, shall be added to the amount otherwise determined under Section 9.2(a)(i) for the purpose of calculating the Preferred Unit's allocation of the Limited Partnership's Income or Loss for the next subsequent Fiscal Year of the Limited Partnership.

**9.3 Voting Unit Allocation**

At the end of each Fiscal Year, that amount of Income or Loss of the Limited Partnership, if any, that was not allocated to holders of Preferred Units pursuant to Section 9.2, or any other amount allocable for income tax purposes, will be allocated to holders of Voting Units in respect of such Voting Units.

**9.4 All Unitholders of Each Class Equal**

Allocations of Income, Loss and all items which are separately allowable for income tax purposes, tax credits and other income tax related amounts shall be made among the holders of each class of Units in the proportion which the number of Units of that class held by a Partner bears to the aggregate number of Units in such class held by all Partners.

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**ARTICLE 10**  
**OBLIGATIONS AND AUTHORITY OF THE PARTNERS**

**10.1 Authority of the Partners**

In addition to all other powers conferred on them by this Agreement, the Partners may by Special Resolution and Preferred Unit Approval:

- (a) waive any default on the part of the General Partner on such terms as they may determine and release the General Partner from any claims in respect thereof;
- (b) notwithstanding any provision of the Partnership Act, approve any transaction proposed to be made outside the normal course of the Partnership Business;
- (c) alter the interests of the Limited Partners in Limited Partnership distributions or allocations, other than as a result of the issuance of additional Units or other actions specifically provided for in this Agreement;
- (d) cause the Limited Partnership to acquire, sell, transfer or otherwise dispose of, mortgage, pledge, encumber, hypothecate or exchange any or all of the Partnership Assets or merge into or merge or consolidate with another entity, subject to applicable law;
- (e) remove the General Partner and appoint a replacement pursuant to Article 17 of this Agreement; and
- (f) require the General Partner on behalf of the Limited Partnership to enforce any obligation or covenant on the part of a Partner.

Except as otherwise specifically provided in this Agreement, all other decisions required of Partners shall be made by Ordinary Resolution.

**10.2 Authority of General Partner**

Subject to any specific restrictions otherwise created under this Agreement (including, without limitation, any matter which is a Preferred Unit Consent Matter), the General Partner shall have exclusive authority to manage the operations and affairs of the Limited Partnership, to make all decisions regarding the business of the Limited Partnership and to bind the Limited Partnership. The General Partner shall have all rights and powers which may be possessed by a general partner pursuant to the Partnership Act and such rights and powers otherwise conferred by law. No Person dealing with the Limited Partnership shall be required to verify the power of the General Partner to take any action or make any decision in the name of the Limited Partnership. Without limiting the foregoing, the General Partner shall have the authority (provided the following would not constitute a Preferred Unit Consent Matter and subject to any other specific restrictions otherwise created under this Agreement) to:

- (a) manage all the activities of the Limited Partnership and to take all action necessary or appropriate, but in all circumstances in pursuance of the business of the Limited Partnership or ancillary thereto, including, without limiting the generality of the foregoing:

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- (i) employ personnel, agents or representatives including a management company with such powers and duties, upon such terms and conditions, at such places and for such compensation as in the judgment of the General Partner may be necessary or advisable in carrying on the Partnership Business;
- (ii) employ such legal, accounting, management, marketing and evaluation services and advice as in the judgment of the General Partner may be appropriate in the conduct of the affairs of the Limited Partnership;
- (iii) purchase and maintain equipment and materials of all kinds for use in the Partnership Business;
- (iv) use the Partnership Assets (including, without limitation, cash on hand) for any purpose and on any terms it sees fit, including, without limitation: the financing of Limited Partnership operations; the lending of funds to other Persons other than the General Partner; the repayment of obligations of the Limited Partnership; the conduct of additional Limited Partnership operations and the purchase or acquisition of interests in properties or other assets; or the acquisition of any other assets or interests in property as may be deemed appropriate in its sole discretion in connection with Limited Partnership operations;
- (v) negotiate and execute on terms deemed desirable in its sole discretion, and to cause the Limited Partnership to perform any contracts, conveyances, or other instruments that it considers useful or necessary to the conduct of Limited Partnership operations or the implementation of its powers under this Agreement;
- (vi) qualify the Limited Partnership to do business in any province or territory of Canada or any state, territory, dependency or other territorial division of the United States or any other country or territorial division;
- (vii) distribute cash or Partnership Assets to the Partners in accordance with the provisions of this Agreement;
- (viii) borrow money and from time to time, to draw, make, execute and issue promissory notes, evidences of indebtedness and all other negotiable or non-negotiable instruments and guarantee the obligations of others, provided such guarantees are made in furtherance of the Partnership Business;
- (ix) maintain or cause to be maintained records of all rights and interests acquired or disposed of by the Limited Partnership, all correspondence relating to the Partnership Business and the original records (or copies on media as the General Partner may deem appropriate) of all statements, bills and other information furnished to the Limited Partnership in connection with the Partnership Business;
- (x) secure the payment of money borrowed for the Limited Partnership or other indebtedness or liability of the Limited Partnership by a mortgage or other security;
- (xi) open and operate any bank account(s);
- (xii) file tax and other returns required by governmental or like authority;

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- (xiii) pay costs and expenditures reasonably incurred by the Limited Partnership;
  - (xiv) enter into agreements to carry on the Partnership Business;
  - (xv) bring or defend on behalf of the Limited Partnership any actions or proceedings in connection with the Partnership Business;
  - (xvi) make any election that may be made under the Tax Act or any other applicable tax or other relevant legislation;
  - (xvii) purchase, lease or otherwise acquire equipment and premises in connection with the Partnership Business;
  - (xviii) take steps as may be necessary to obtain support from government assistance programs; and
  - (xix) carry insurance in such amounts and with such coverage as in the judgment of the General Partner may be necessary or advisable with respect to the Partnership Assets and the risks and the business of the Limited Partnership;
- (b) make all operating decisions concerning the Partnership Business and, in general, all decisions concerning the business and activities to be carried on by the Limited Partnership and the manner of operation of all business and activities; and
  - (c) engage in any and all acts or activities appropriate, advisable or necessary in the judgment of the General Partner in pursuing the Partnership Business.

### 10.3 Delegation

The General Partner may contract with any Person to carry out any of the duties of the General Partner under this Agreement and may delegate to a Person any power and authority of the General Partner under this Agreement, but no contract or delegation shall relieve the General Partner of any of its obligations or duties under this Agreement.

### 10.4 Discharge of Duties of General Partner

The General Partner shall exercise its powers and discharge its duties under this Agreement honestly, in good faith and in the best interests of the Limited Partnership and in connection therewith must exercise the standard and degree of care, diligence and skill that a reasonably prudent Person experienced in the Partnership Business would exercise in comparable circumstances.

### 10.5 Restriction on Power of General Partner

The General Partner shall have no authority, without first obtaining a Special Resolution and Preferred Unit Approval, to:

- (a) undertake any act in contravention of this Agreement;
- (b) undertake any act which makes it impossible to carry on the Partnership Business;
- (c) consent to a judgment against the Limited Partnership; or

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- (d) possess Partnership Assets, or assign any rights in Partnership Assets, other than for a purpose necessary for the conduct of the Partnership Business.

In addition, the General Partner shall have no authority to do any act that is a Preferred Unit Consent Matter without first obtaining Preferred Unit Approval.

#### 10.6 Restrictions on Business Conduct of General Partner

The General Partner shall conduct the Partnership Business in the following manner:

- (a) Funds of the Limited Partnership and the Partnership Assets shall not be commingled with the funds of the General Partner or of any other Person, provided, however, that if such funds or Partnership Assets are wrongfully commingled, then, without in any way derogating from all remedies available at law to the Limited Partners, the General Partner declares that such funds and assets are the property of the Limited Partnership and are held in trust for the sole benefit of the Limited Partnership.
- (b) The General Partner shall not, without a Special Resolution and Preferred Unit Approval, cause or permit the Limited Partnership, the General Partner, SHS or any Affiliate of the Limited Partnership to enter into or become party to any transaction of merger, amalgamation, consolidation, winding-up, plan of arrangement, reorganization or reconstruction with any Person or enter into any transaction by way of transfer, liquidation, sale, lease, disposition or otherwise whereby all or substantially all of its undertaking, property or assets would become the property of any other Person, or take any corporate or partnership action in pursuance of any of the foregoing, except that a Special Resolution and Preferred Unit Approval shall not be required with respect to a sale in connection with the liquidation of the Limited Partnership pursuant to Section 18.4 of this Agreement.

#### 10.7 Non-Arm's Length Contracts

- (a) Except as otherwise included as a Preferred Unit Consent Matter, the General Partner may enter into contracts with Third Parties that do not deal at arm's length (as that term is defined with reference to the Tax Act) with either of the General Partner or the Limited Partnership, so that products and services may be rendered to the Limited Partnership. The General Partner or other Persons associated with it may render such products and services to the Limited Partnership, provided that the products and services so rendered or provided by or to the General Partner or by any other Person associated with it are charged to the Limited Partnership at rates no less favourable to the Limited Partnership than with those that would be demanded by a third party dealing at arm's length, as defined in the Tax Act, with the General Partner and furnishing similar services or products in the same region.
- (b) The Limited Partnership shall not sell any asset of the Limited Partnership to a Partner, or any Associate or Affiliate of a Partner, (i) for an amount less than the Fair Market Value of such asset, determined by the General Partner, acting reasonably, and (ii) without Preferred Unit Approval if such sale constitutes a Preferred Unit Consent Matter.

#### 10.8 Interim Investments

The General Partner shall invest or cause to be invested funds not immediately required for the operation of the Limited Partnership, only in securities of, or those guaranteed by, the Government of Canada or any province of Canada, or in prime commercial paper, or certificates of deposit, or interest

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bearing accounts of Canadian chartered banks or Canadian trust companies, provided that such obligations and certificates of deposit mature not more than one year from the date of such investment and, in the case of certificates of deposit and interest bearing accounts (except for the Limited Partnership's operating account) the full amount on deposit shall be insured by the Canadian Deposit Insurance Corporation or a successor agency or body thereof.

#### 10.9 Insurance

The General Partner shall, on behalf of the Limited Partnership, purchase and maintain, or cause to be purchased and maintained, for the benefit of the Limited Partnership and the operation of the Partnership Business, fire, liability, casualty, business interruption, and other insurance of such type and coverage as are customary in Canada for similar property and projects.

#### 10.10 Filings Required

The General Partner shall file on behalf of the Limited Partnership such certificates, instruments and documents as may be required under the laws of the Province of Alberta, including the Certificate, recording the name and the amount of Capital Contributions by each Limited Partner, and thereafter on a timely basis, whenever required, file any amendment thereto and any other declarations, certificates or amendments thereto that might be required by the laws of the Province of Alberta or any other jurisdiction in which the Limited Partnership may carry on business. If required, the General Partner shall file with Canada Revenue Agency on behalf of the Limited Partners an annual information return or any related information slips with respect to the Limited Partnership.

#### 10.11 No Control by Limited Partners

No Limited Partner shall:

- (a) take part in the control or management of the Partnership Business;
- (b) execute any document which binds or purports to bind the Limited Partnership or any other Partner as such;
- (c) purport to have the power or authority to bind the Limited Partnership or any other Partner as such;
- (d) have any authority to undertake any obligation or responsibility on behalf of the Limited Partnership;
- (e) bring any action for partition or sale or otherwise in connection with any interest in the Partnership Business or other property of the Limited Partnership, whether real or personal, or register, or permit to be filed or registered or remain un-discharged against the Partnership Business or Partnership Assets, any lien or charge in respect of the interest of the Partner in the Limited Partnership;
- (f) compel or seek a partition, judicial or otherwise, of any of the assets of the Limited Partnership distributed or to be distributed to the Partners in kind; or
- (g) take any action which will jeopardize or eliminate the status of the Limited Partnership as a limited partnership.

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**ARTICLE 11  
EVENTS OF DEFAULT****11.1 Events of Default**

Unless otherwise agreed to by the Partners in writing, each of the following shall be considered an "Event of Default" under this Agreement:

- (a) the occurrence of a Liquidation Event of the Limited Partnership, the General Partner, or SHS;
- (b) the Limited Partnership, the General Partner, or SHS, ceases or threatens to cease to carry on business in the normal course;
- (c) without first obtaining Preferred Unit Approval, the Limited Partnership, the General Partner, or SHS is in default under any term, condition or provision of:
  - (i) any agreement evidencing or securing indebtedness or liability for borrowed money between itself and any Person (other than under this Agreement) which results in acceleration and demand of such indebtedness or liability for borrowed money. For greater certainty, a default under a third party banking covenant will not in and of itself constitute an Event of Default unless it results in acceleration and demand of such third party credit facility; or
  - (ii) any other agreement to which the Limited Partnership, the General Partner or SHS is a party, the breach of which would cause a Material Adverse Event and such breach or default shall not be remedied within the cure period (if any) allowed in the relevant agreement;
- (d) the Limited Partnership, the General Partner, or SHS fails to comply with any laws or regulations applicable to its business, the failure of which would cause a Material Adverse Event, and such failure to comply is not cured within ninety (90) days of the occurrence of such failure to comply;
- (e) the Limited Partnership or the General Partner fails to make payment of any Preferred Distributions to any of the Limited Partners when due, and such default is not cured within thirty (30) days of the occurrence of such default;
- (f) the Limited Partnership, SHS or the General Partner fails to obtain any Preferred Unit Approval (other than in respect of the Financial Covenant) with respect to any Preferred Unit Consent Matter as required pursuant to this Agreement;
- (g) the failure of the Limited Partnership to pay any Prepayment owing pursuant to Section 11.2 and such Prepayment remains unpaid for a period of thirty (30) days;
- (h) any act of fraud or Intentional Non-Payment committed by the Limited Partnership, the General Partner, or SHS;
- (i) the Limited Partnership, the General Partner, or SHS proceeds with a matter that is a Preferred Unit Consent Matter to which Alaris has withheld its consent; or

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- (j) the Limited Partnership or the General Partner fails to keep, observe or perform any of the other covenants, agreements, terms, conditions or provisos on the Limited Partnership's or General Partner's part to be kept, observed or performed pursuant to this Agreement (other than a failure to maintain the Financial Covenant) and such failure is not cured within ninety (90) days of the date of such failure.

#### 11.2 Prepayment for Failure to Maintain the Financial Covenant

Notwithstanding (as applicable) any ability to cure the following defaults before they become Events of Default, if on two (2) separate occasions within any twelve (12) month period during the term of this Agreement, the Limited Partnership, the General Partner or SHS does or fails to do any of the following:

- (a) fails to maintain the Financial Covenant;
- (b) defaults under the terms of the ISO Senior Facility;
- (c) defaults under any SHS Senior Facility;
- (d) defaults under the terms of the Sears VTB Loan; or
- (e) defaults in making any Preferred Distribution as and when due,

then the holders of the Preferred Units may cause the Limited Partnership to pay, and if so caused, the Limited Partnership shall have the obligation to pay, an amount equal to six (6) months of the then current monthly aggregate Preferred Distributions as a prepayment of future Preferred Distributions (the "Prepayment"). The holders of the Preferred Units shall invest such Prepayment in a segregated trust account for the benefit of the Limited Partnership and all interest earned on that invested Prepayment shall accrue to the benefit of, and be paid annually to, the Limited Partnership. In the event that the Limited Partnership cures the failure contemplated under this Section 11.2 and the Limited Partnership has made the Prepayment, and there has been no further failure for a period of twelve (12) consecutive months, the Limited Partnership shall be entitled to direct the holders of the Preferred Units to apply the Prepayment to the current Preferred Distribution payable as they become due until the Prepayment has been reduced to nil; provided that, in the event of a further failure under this Section 11.2 for more than twelve (12) consecutive months, the terms of this Section shall apply to such failure. For greater certainty, the payment of the Prepayment shall not relieve the Limited Partnership or the General Partner of their obligation to pay the Preferred Distributions and to make such payments on a monthly basis.

#### 11.3 Rights and Obligations upon an Event of Default

Upon the occurrence of an Event of Default, the following shall occur:

- (a) if the Event of Default is due to an Intentional Default, then the holders of Preferred Units may cause the Limited Partnership to repurchase (or, if such repurchase exercised, at the discretion of SHS, the General Partner, or any combination thereof, they may elect to repurchase) the outstanding Preferred Units, as more particularly set forth in paragraph 2(d) of Schedule A;
- (b) if the Event of Default is not an Intentional Default or an Event of Default which is a Liquidation Event of the Limited Partnership, then the holders of Preferred Units may cause the Limited Partnership to repurchase (and, if such repurchase is exercised under this section 11.3(b), then, at the discretion of SHS, the General Partner or any combination thereof, SHS, the General Partner



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or any combination thereof may elect to complete such repurchase for and on behalf of the Limited Partnership) the outstanding Preferred Units, subject to and as more particularly set forth in paragraph 2(e) of Schedule A;

- (c) if the Event of Default is a Liquidation Event of the Limited Partnership which results in the liquidation of the Limited Partnership and is not an Intentional Default, then the liquidation procedure set forth in Section 18.4 shall apply; provided that, if such Event of Default is resolved without the Limited Partnership being liquidated, the holders of Preferred Units may cause the Limited Partnership to repurchase (and, if such repurchase is exercised under this section 11.3(c), then, at the discretion of SHS, the General Partner or any combination thereof, SHS, the General Partner or any combination thereof may elect to complete such repurchase for and on behalf of the Limited Partnership) the outstanding Preferred Units, as more particularly set forth in paragraph 2(f) of Schedule A;
- (d) if the resolution of a Liquidation Event is a *bona fide* Sale, then, notwithstanding Section 11.3(c), the provisions set forth in Section 6.7 "Sale to a Third Party" will apply; and
- (e) if the Event of Default occurs and results in the holders of Preferred Units exercising the purchase option under Section 11.3(a), (b) or (c), as applicable, and the Preferred Units are not purchased as set forth in Section 11.3(a), (b) or (c), as applicable, within one hundred and twenty (120) days of the occurrence of such Event of Default, then:
  - (i) notwithstanding any provision to the contrary contained in Article 17, the holders of Preferred Units shall be entitled to remove the existing General Partner and shall have the exclusive right to appoint a new General Partner. The release of the retiring General Partner set forth in Section 17.5 shall not apply in respect of a General Partner removed pursuant to this Section 11.3(e). In addition, for greater certainty, the failure of the holders of Preferred Units to appoint a new General Partner shall not result in a dissolution of the Limited Partnership, notwithstanding the provisions of Section 18.1(c); and
  - (ii) the Preferred Units shall have the voting rights as more particularly set forth in paragraph 2(b) of Schedule A.

## ARTICLE 12 REMUNERATION OF GENERAL PARTNER

### 12.1 Fees Payable to General Partner

Except as expressly provided for in this Agreement, the General Partner shall not be compensated for its services rendered as General Partner of the Limited Partnership.

### 12.2 Out-of-Pocket Expenses

Except as otherwise specifically provided for in this Agreement, the General Partner shall be entitled to be reimbursed by the Limited Partnership for all reasonable out-of-pocket expenses incurred by the General Partner in relation to the Partnership Business, including, without limitation, all expenses incurred in the course of issuing and selling Units, the cost of establishing the Limited Partnership and preparing and executing this Agreement and the costs of complying with the provisions of Article 7.

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**ARTICLE 13  
CONFLICTS OF INTEREST**

**13.1 Other Activities of the General Partner**

Except as otherwise contemplated in Section 3.5 of this Agreement, the General Partner shall devote its full time and attention exclusively to or for the benefit of the Limited Partnership and the Partnership Business and shall not engage in or hold an interest in other businesses, ventures, investments or activities.

**13.2 Confidentiality**

Each partner (in this context a "Recipient") hereby agrees that, during the term of this Agreement and for a period of two (2) years following the termination of this Agreement, to maintain in confidence and not disclose to any other party all Confidential Information received from any other Partner (in this context a "Disclosing Partner"). Confidential Information means all commercial, technical, financial, business, product and market-related information, intellectual property, research, development information, business plans, operations or systems, all regardless of form, format or media including, without limitation, written, oral, graphic, or information reduced to tangible form, and also includes information communicated or obtained through meetings, documents, correspondence or inspection of tangible items of a Disclosing Partner which such Disclosing Partner, given its nature and the circumstances of its disclosure, would reasonably be considered by such Disclosing Partner to be subject to the provisions of this section (the "Confidential Information"). The Recipient shall protect the Confidential Information from unauthorized dissemination or publication and from unauthorized use by using the same degree of care as such Recipient to protect its own commercially sensitive information of a like nature and importance.

The foregoing obligations imposed on the Recipient shall not apply to any Confidential Information which such Recipient can prove:

- (a) was already in their possession of the Recipient at the time of receiving the same from the Disclosing Partner, without any obligation of confidentiality;
- (b) was published or became available within the public domain other than as a result of a breach by such Recipient of its obligations hereunder;
- (c) was lawfully received by the Recipient from any third party without restriction on disclosure or use;
- (d) was approved in writing by the Disclosing Partner for release or other use by the Recipient according to terms stipulated in such approval; or
- (e) is required to be disclosed pursuant to any applicable laws, rules or regulations, or direction of statutory or regulatory authority or stock exchange, or order of a relevant court of law; provided, however, that the Recipient shall disclose only that portion of the information required to be disclosed and only to the extent required and, unless prohibited by law, shall endeavour to provide the Disclosing Partner with prompt written notice of such request or requirement so that the Disclosing Partner may seek a protective order or such other remedy as it deems appropriate. Notwithstanding the foregoing, in connection with any disclosure required pursuant to any applicable securities laws, the Recipient shall provide the Disclosing Partner with the proposed

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disclosure and obtain the prior approval of the Disclosing Partner to such disclosure, such consent not to be unreasonably withheld.

### 13.3 Confidentiality

Notwithstanding any other provision of this Agreement, the General Partner may keep confidential from the Limited Partners, other than Alaris Partnership, for such period of time as the General Partner deems reasonable:

- (a) any information which the General Partner reasonably believes to be in the nature of trade secrets relating to the Partnership Business;
- (b) information the disclosure of which the General Partner in good faith believes is not in the best interests of the Limited Partnership or could damage the Limited Partnership or the Partnership Business; or
- (c) information which the Limited Partnership is required by law or by agreement with third parties to keep confidential.

## ARTICLE 14 AMENDMENT

### 14.1 Special Resolution Required

Except as otherwise provided in Section 14.2, this Agreement may only be amended in writing and with the consent of the Partners given by Special Resolution and Preferred Unit Approval, provided that:

- (a) this Section 14.1 may not be amended without the unanimous consent of the Partners present in person or represented by proxy at a meeting held for such purpose; and
- (b) no amendment shall be made to this Agreement which would have the effect of reducing the interest in the Limited Partnership of the General Partner or Limited Partners, changing the liability of any Limited Partner, allowing any Limited Partner to exercise control over the business of the Limited Partnership, or changing the right of a Limited Partner to vote at any meeting or changing the Limited Partnership from a limited partnership to a general partnership.

### 14.2 Amendments by General Partner

The General Partner may, pursuant to the General Partner's powers of attorney from the Limited Partners pursuant to Article 20 and without the consent or approval at the time of any Limited Partner (each Limited Partner, by acquiring a Unit, being deemed to consent to any amendment) amend from time to time any provision of this Agreement, and execute, swear to, acknowledge, deliver, file and record all documents required or desirable in connection with it to:

- (a) add any provision which is, in the opinion of the solicitors for the Limited Partnership and the solicitors for Alaris Partnership, for the protection or benefit of the Limited Partners or of the Limited Partnership;
- (b) effect a change in the name of the Limited Partnership or the location of the principal place of business of the Limited Partnership or the General Partner;

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- (c) effect the admission, substitution, termination or withdrawal of any Partner in accordance with this Agreement;
- (d) effect a change that in the opinion of the solicitors for the Limited Partnership and the solicitors for Alaris Partnership, is not adverse to the interests of the Limited Partners and is necessary to qualify the Partnership as a limited partnership or a partnership in which the Limited Partners have limited liability under the laws of any province or state;
- (e) effect a change that is:
  - (i) necessary or desirable to satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, ruling or regulation or any Governmental Entity or authority having jurisdiction over the Limited Partnership or contained in any applicable statute, or
  - (ii) required or specifically contemplated by this Agreement to be accomplished by the General Partner acting alone;
- (f) effect a change in any provision of this Agreement which requires any action to be taken by or on behalf of the General Partner or the Limited Partnership pursuant to the requirements of applicable Alberta law if the provisions of applicable Alberta law are amended, modified or revoked so that the taking of action is no longer required. The authority set forth in this Clause shall specifically include the authority to make amendments to this Agreement and to the Certificate as the General Partner deems necessary or desirable in the event the Partnership Act is amended to eliminate or change any provision now in effect; and
- (g) cure an ambiguity or to correct or supplement any provisions contained in this Agreement which may be defective or inconsistent with any other provision contained herein,

provided that the amendment does not and will not, in the opinion of the solicitors for the Limited Partnership and the solicitors for Alaris Partnership, materially adversely affect the interest of any Limited Partner. Each Limited Partner, by acquiring a Unit, is deemed to consent to any amendment made in accordance with this Section 14.2.

#### 14.3 Notice of Amendments

Limited Partners shall be notified of the full details of any amendment to this Agreement within thirty (30) days of the effective date of the amendment.

### ARTICLE 15 LIABILITIES OF THE PARTNERS AND INDEMNIFICATION

#### 15.1 Liability of General and Limited Partners

- (a) The General Partner has unlimited liability for the undertakings, liabilities and obligations of the Limited Partnership.
- (b) The liability of each Limited Partner for the undertakings, liabilities and obligations of the Limited Partnership shall be limited to the amount of such Limited Partner's Capital Contribution together with any difference between the amount so contributed and the amount stated in the current record of Limited Partners as having been so contributed or agreed to be contributed by

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such Limited Partner, plus its share of the undistributed Income of the Limited Partnership. A Limited Partner shall have no further personal liability or obligation and following the payment in full of the subscription price for its Units it will not be liable for any further calls or assessments or further Capital Contributions to the Limited Partnership.

#### 15.2 Limitation on General Partner Liability

The General Partner and its officers, directors, shareholders and employees shall not be liable to the Limited Partnership or the Limited Partners for any act or omission that does not constitute actual fraud, gross negligence, wilful misconduct, a breach of fiduciary duty to the Limited Partnership or to the Limited Partners or a breach of this Agreement if the General Partner or the relevant Person acted (or failed to act) in good faith and in a manner the General Partner or the relevant Person believed to be in the interests of the Limited Partnership.

#### 15.3 Indemnity of Limited Partnership and Limited Partners

- (a) The General Partner will indemnify and hold harmless the Limited Partnership and the Limited Partners from any costs, damages, liabilities or expenses (including reasonable legal fees and expenses) suffered or incurred by the Limited Partnership or the Limited Partners for an act or omission other than in the circumstances where the General Partner is excluded from liability in accordance with Section 15.2.
- (b) The General Partner will operate the Limited Partnership to ensure to the greatest extent possible the limited liability of the Limited Partners and, subject to the provisions of Section 15.2, will indemnify and hold harmless each Limited Partner (including former Limited Partners) from any costs, damages, liabilities or expenses (including reasonable legal fees and expenses) suffered or incurred by such Limited Partner as a result of the liability of such Limited Partner not being limited in the manner provided in Section 15.1(b) unless the liability of such Limited Partner is not so limited as a result of or arising out of any act of such Limited Partner.

#### 15.4 Indemnity of General Partner

The Limited Partnership shall indemnify the General Partner and its officers, directors, shareholders, and employees from any costs, damages, liabilities or expenses (including reasonable legal fees and expenses) suffered or incurred by them arising out of or incidental to the sale of Units, including, without limitation, liabilities under Canadian securities legislation, or in furtherance of the Partnership Business, in the circumstances where the General Partner is excluded from liability in accordance with Section 15.2.

The Limited Partnership will be responsible for all costs and expenses associated with establishing and maintaining appropriate directors' and officers' insurance for the directors and officers of the General Partner and its applicable Affiliates.

### ARTICLE 16 LIMITED PARTNERSHIP MEETINGS

#### 16.1 Calling of Meetings

The General Partner may at any time and shall, upon the written request of Limited Partners representing 10% or more of the Units in any class outstanding stating the purpose for which the meeting is to be held, call a meeting of Partners. If the General Partner fails or neglects to call such a

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meeting within fifteen (15) days after receipt of the written request, any Limited Partner who was a party to the request may call the meeting. Meetings of Partners shall be held at such place in Alberta as the General Partner may designate or, in the event of a meeting called by a Limited Partner as set out above, at such place in Calgary, Alberta as such Limited Partner may designate.

#### 16.2 Annual Due Diligence Meetings

The General Partner shall, within sixty (60) days after the end of each fiscal year of the Limited Partnership, hold a meeting with the Limited Partners to discuss the business of the Limited Partnership, at such place in Calgary, Alberta (or such other place as may be determined by the General Partner) and during such time as the General Partner may designate.

#### 16.3 Notice

Notice of any meeting of Partners shall be given to each Limited Partner, to the General Partner and to the Auditors. The notice shall be mailed, postage prepaid, at least ten (10) and not more than sixty (60) days prior to the meeting and shall specify the time and place of the meeting and, in reasonable detail, the nature of all business to be transacted. No notice of adjourned meetings need be given. Accidental failure to give notice to one or more Partners shall not invalidate a meeting or any proceeding thereof.

For greater certainty, the holders of Preferred Units shall be given notice hereunder of, and be entitled to attend at, every meeting of Partners, irrespective of whether such holders of Preferred Units are entitled to vote thereat pursuant to the terms of this Agreement.

#### 16.4 Record Date

For the purposes of determining the Partners entitled to vote at a meeting or to give consents without a meeting as provided in Section 16.12, the General Partner may set a Record Date, which Record Date shall not be less than ten (10) days nor more than sixty (60) days prior to the date of the meeting or consent. If no Record Date is set, the Record Date shall be deemed to be the date notice of the meeting is sent to the Partners or the date a Partner first signs the consent, as the case may be.

#### 16.5 Adjournment

When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting and a new Record Date need not be fixed if the time and place of the adjourned meeting are announced at the meeting at which adjournment is taken, unless the adjournment shall be more than thirty (30) days. At the adjourned meeting, the Limited Partnership may transact business that would have been permitted to be transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if a new Record Date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given in accordance with Section 16.3 of this Agreement.

#### 16.6 Waiver of Notice

The transactions of any meeting of Partners, however called and noticed, and wherever held, are as valid as though they had been approved at a meeting duly held after regular call and notice if a quorum is present either in person or by proxy and if, either before or after the meeting, each of the Partners entitled to vote, not present in person or by proxy, signs a waiver of notice, a consent to the holding of the meeting, or an approval of the minutes thereof. All waivers, consents and approvals shall be filed with the Limited Partnership records or made a part of the minutes of the meeting. Attendance of

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a Partner at a meeting shall constitute a waiver of notice of the meeting; provided, however, that no waiver shall occur when the Partner objects, at the beginning of the meeting, to the transaction of any business at the meeting because the meeting is not lawfully called or convened; and provided further, that attendance at a meeting is not a waiver of any right to object to the consideration of any matters required to be included in the notice of the meeting, but not so included, if the objection is expressly made at the meeting.

#### 16.7 Chair

The chair of all meetings shall be chosen by the General Partner unless those Partners present in person or represented by proxy at the meeting choose, by Ordinary Resolution, some other person present to chair the meeting.

#### 16.8 Quorum

All Partners present in person or represented by proxy shall constitute a quorum at any meeting of the Partners. If a quorum is not present for a meeting of Partners within thirty (30) minutes after the time fixed for holding the meeting, the meeting, if convened pursuant to the written request of Limited Partners referred to in Section 16.1, shall be terminated, but otherwise will be adjourned to the same time and place on the next business day. Those Limited Partners present in person or proxy at such adjourned meeting shall be deemed to constitute a quorum. For greater certainty, for so long as Alaris Partnership or any Affiliate is the holder of any Preferred Units in the Limited Partnership or SHS or any Affiliate is the holder of any Voting Units in the Limited Partnership, a quorum shall not exist unless a representative of Alaris Partnership and SHS is present at any such meeting of the Partners.

#### 16.9 Votes

Except as otherwise set out in this Agreement and subject to the provisions of Schedule A, at all meetings of Partners, each Partner shall be entitled to one vote for each Unit held. The chair of the meeting shall not have a casting vote. Every question submitted to a meeting shall be decided by a show of hands unless a poll is demanded by a Partner or the chair of the meeting before the question is called or after the result of the show of hands has been announced and before the meeting proceeds to the next item of business, in which case a poll shall be taken. On each matter voted upon at any meeting of the Partners:

- (a) for which no poll is requested; a declaration made by the chair of the meeting as to the voting on any particular resolution shall be conclusive evidence thereof; or
- (b) for which a poll is requested, the result of the poll shall be deemed to be the decision of the meeting on the question or resolution in respect of which the poll was taken.

#### 16.10 Proxies

At any meeting of Partners, any Partner entitled to vote may vote by proxy in a form acceptable to the General Partner, provided the proxy shall have been received by the General Partner for verification prior to the commencement of the meeting. Any individual may be appointed as proxy. A proxy given on behalf of joint holders must be executed by all of them and may only be revoked by all of them. If more than one of several joint holders is present at a meeting and they do not agree which of them is to exercise any vote to which they are jointly entitled, they will for the purposes of voting be deemed not to be present. The chair of the meeting shall determine the validity of any challenged instrument of proxy. A Partner which is a corporation or a partnership may appoint an officer, director or

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other authorized individual as its representative to attend, vote and act on its behalf at meetings of Partners, and may revoke any such appointment, and for all purposes of meetings of Partners, other than the giving of notice, an individual so appointed will be deemed to be the holder of every Unit held by the corporation he represents.

#### **16.11 Revocation of Proxies**

A vote cast in accordance with the terms of an instrument of proxy shall be valid notwithstanding the death, incapacity, insolvency, bankruptcy or incompetency of the Partner giving the proxy or the revocation of the proxy, provided that no written notice of such death, incapacity, insolvency, bankruptcy, incompetency or revocation shall have been received by the chair at the place of the meeting prior to the time fixed for the holding of the meeting.

#### **16.12 Action Without A Meeting**

Any action that may be taken at a meeting of the Partners may be taken without a meeting if a consent in writing setting forth the action so taken is signed by Partners representing not less than the minimum number of Units that would be necessary to authorize or take action at a meeting at which all of the Partners were present and voted. Prompt notice of the taking of action without a meeting shall be given to the Partners who have not consented to it in writing.

#### **16.13 Minutes**

Minutes and proceedings of every meeting of the Partners shall be made and recorded by the General Partner. Minutes, when signed by the chair of the meeting, shall be prima facie evidence of the matters therein stated. Until the contrary is proved, every meeting in respect of which minutes have been made shall be taken to have been duly held and convened and all proceedings referred to in the minutes shall be deemed to have been duly passed.

#### **16.14 Binding Effect of Resolutions**

Any Special Resolution or Ordinary Resolution shall be binding on all Partners and their respective heirs, legal representatives, successors and permitted assigns, whether or not such Partner was present or represented by proxy at the meeting at which such resolution was passed and whether or not such Partner voted against such resolution provided that such meeting was properly called and such resolution was properly passed in accordance with this Agreement.

#### **16.15 Additional Meeting Regulations**

To the extent that the rules and procedures for the conduct of a meeting of the Partners are not prescribed in this Agreement, such rules and procedures shall be determined by the chair of the meeting.

### **ARTICLE 17 CHANGE OF GENERAL PARTNER**

#### **17.1 Removal of General Partner**

In addition to the rights of the holders of Preferred Units to remove the General Partner pursuant to Section 11.3(e), in the event that the General Partner is dissolved or becomes insolvent or bankrupt or any trustee or liquidator is appointed for the business of the General Partner, the Partners



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may, by Special Resolution and Preferred Unit Approval, remove the General Partner as general partner of the Limited Partnership and appoint a new General Partner. Any new General Partner shall not be a "non-Canadian" within the meaning of the Investment Canada Act nor a "non-resident" within the meaning of the Tax Act.

#### **17.2 Assignment of Interest of General Partner**

Subject to Section 11.3(e), the rights and obligations of the General Partner under this Agreement may not be assigned without the consent of the Partners given by Special Resolution and by Preferred Unit Approval.

#### **17.3 Transfer of Management to New General Partner**

A new General Partner shall execute a counterpart of this Agreement and shall forthwith assume the obligations of the General Partner as and from the date of its appointment and shall thereafter have the sole right to exercise all rights of the General Partner as manager of the Limited Partnership. The retiring General Partner shall do all things and take all steps necessary to effectively transfer the management of the Limited Partnership to the new General Partner and shall execute all deeds, certificates, declarations and other documents necessary or desirable to effect such transfer.

#### **17.4 Issuance of Voting Units to the New General Partner**

Notwithstanding any provision of the Agreement to the contrary, if the new General Partner to be appointed does not own Units, the new General Partner shall be required to, concurrently with the execution of a counterpart of this Agreement (as required by Section 17.3), subscribe for one (1) Voting Unit at a subscription price equal to the Fair Market Value thereof.

#### **17.5 Release of Retiring General Partner**

Except as specifically provided for in this Agreement or by any Special Resolution or Preferred Unit Approval, as applicable, in the event of a change of the General Partner, the Limited Partnership and the Limited Partners hereby release the retiring General Partner from and shall hold harmless the retiring General Partner from all actions, claims, costs, demands, losses, damages and expenses with respect to events which occur in relation to the Limited Partnership after the effective date of the change of General Partner.

### **ARTICLE 18 DISSOLUTION**

#### **18.1 Triggering Events**

The Limited Partnership shall be dissolved upon the occurrence of any of the following events:

- (a) the Limited Partnership having disposed of all its property in compliance with this Agreement;
- (b) upon request of the General Partner, if such request is approved by the Partners by Special Resolution and by Preferred Unit Approval;
- (c) the removal of the General Partner in compliance with this Agreement and the failure to appoint a new General Partner within ninety (90) days;

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- (d) the conversion or reconstitution of the Limited Partnership into another entity as permitted by law and in compliance with this Agreement; or
- (e) the expiry of the term of the Limited Partnership set out in Section 2.4(b).

#### 18.2 No Dissolution on Partner Dissolution or Disability

The Limited Partnership shall not be dissolved or terminated by reason of the dissolution, death, liquidation, bankruptcy, insolvency, incompetency or other disability of any General Partner or Limited Partner or upon the Transfer or issuance of any Units.

#### 18.3 Appointment of Receiver

Upon the occurrence of an event described in Section 18.1, but excepting the event described in Section 18.1(d), the General Partner shall act as the receiver (the "Receiver") of the Limited Partnership. If the General Partner is unable or unwilling to act as the Receiver, the Limited Partners shall, by Ordinary Resolution, appoint some other appropriate Person to act as Receiver. The Receiver shall proceed diligently to wind up the affairs of the Limited Partnership and to liquidate the Limited Partnership Assets and to distribute the net proceeds from the sale of the Partnership Assets in accordance with this Agreement (for greater certainty, including Schedule A) unless otherwise required by mandatory provisions of applicable law. During the course of such liquidation, the Receiver shall operate the Limited Partnership business and in so doing, shall be vested with all of the powers and authority of the General Partner in relation to the Limited Partnership under the terms of this Agreement. The Receiver shall be paid reasonable fees and disbursements incurred in carrying out such duties.

#### 18.4 Liquidation Procedure

Upon the dissolution of the Limited Partnership (except in the circumstances provided for in Section 18.1(d)), the General Partner shall, in the following order:

- (a) sell or otherwise dispose of all Partnership Assets; all Income, Loss and all items which are separately allowable for income tax purposes, tax credits and other income tax related amounts resulting from such sales or dispositions shall be allocated among the Partners in accordance with the provisions of Section 9;
- (b) pay or provide for the payment of the debts and liabilities of the Limited Partnership and liquidation expenses;
- (c) repay any Advances which are outstanding (including any related interest payments) that have been made pursuant to Section 4.8 hereof, which have priority to the payment of the Preferred Distributions; and
- (d) pay all Preferred Distributions due and owing up until the date of dissolution of the Limited Partnership;

and thereafter:

- (e) distribute the remaining funds of the Limited Partnership, if any, in the manner specified in Schedule A; and

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- (f) file the notice of dissolution prescribed by the Partnership Act and satisfy all applicable formalities in such circumstances as may be prescribed by the laws of other jurisdictions where the Limited Partnership is registered.

Notwithstanding the dissolution of the Limited Partnership, each party's obligations under this Agreement, other than to carry on the business in common, shall not terminate until all the provisions of this Section 18.4 have been complied with.

#### 18.5 Reasonable Time for Liquidation

A reasonable time shall be allowed for the orderly winding up of the business and affairs of the Limited Partnership and the liquidation of its assets.

#### 18.6 Restrictions on Dissolution

Except as provided in this Article 18, no Partner shall have the right to request the dissolution of the Limited Partnership, the winding-up of its affairs or the distribution of its assets.

### ARTICLE 19 REPRESENTATIONS AND WARRANTIES

#### 19.1 General Partner's Representations

The General Partner represents, warrants and covenants to and with the Limited Partners that:

- (a) if a corporation, it is properly incorporated, organized, continued or recognized under the laws of the jurisdiction of its incorporation, continuance or recognition and that it is and shall continue to be duly existing and in good standing under such laws and under the laws of any jurisdiction where it carries on business;
- (b) it has and shall continue to have the capacity to act as the general partner of the Limited Partnership, and that its obligations under this Agreement do not conflict with or constitute a default under the agreement governing its existence and operation or any other agreement by which it is bound;
- (c) this Agreement constitutes a valid and legally binding obligation of the General Partner, enforceable against the General Partner in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization and other laws of general application limiting the enforcement of creditors' rights generally and to the fact that specific performance is an equitable remedy available only in the discretion of the court;
- (d) it shall exercise the powers conferred upon it by this Agreement in pursuance of the Limited Partnership Business;
- (e) it holds and shall maintain the registrations necessary for the conduct of its business, and that it has and shall continue to have the licences and permits necessary to conduct the Partnership Business in all jurisdictions where the activities of the Limited Partnership require such licensing or other form of registration;

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- (f) the General Partner will make in a timely manner all filings respecting the Limited Partnership which may be required to be made pursuant to the terms of this Agreement or applicable legislation;
- (g) it will devote to the conduct of the affairs of the Limited Partnership such time as may be reasonably required for the proper management of the affairs of the Limited Partnership;
- (h) it will notify the Limited Partners of any material change in the affairs of the Limited Partnership;
- (i) the General Partner is not a "non-Canadian" within the meaning of the Investment Canada Act nor a "non-resident" within the meaning of the Tax Act;
- (j) it shall ensure that its status as described in Section 19.1(i) shall not be modified, and that it shall not transfer its Units in whole or in part in a manner that would not conform with Section 19.1(i); and
- (k) the execution, delivery and performance by the General Partner of this Agreement:
  - (i) has been duly authorized by all necessary corporate or partnership action (as applicable) on the part of the General Partner;
  - (ii) does not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) require any consent or approval under, result in a breach or a violation of, or conflict with, any of the terms or provisions of its constating documents or by-laws or any contracts or instruments to which it is a party or pursuant to which any of its assets or property may be affected; and
  - (iii) will not result in the violation of any applicable law.

## 19.2 Limited Partners' Representations

Each Limited Partner hereby represents, warrants and covenants to and with the General Partner and all the other Limited Partners that:

- (a) it has the capacity to enter into this Agreement;
- (b) it, or such other beneficial owner of the Units registered in its name, is not a "non-Canadian" within the meaning of the Investment Canada Act nor a "non-resident" within the meaning of the Tax Act;
- (c) if it is a partnership, it is a "Canadian partnership" within the meaning of the Tax Act;
- (d) it shall ensure that its status as described in Section 19.2(b) or 19.2(c) (as applicable) shall not be modified, and that it shall not transfer its Units in whole or in part in a manner that would not conform with Section 19.2(b) or 19.2(c) (as applicable);
- (e) if a corporation, it is properly incorporated, organized, continued or recognized under the laws of the jurisdiction of its incorporation, continuance or recognition and if a partnership, it is a partnership duly organized, validly subsisting and in good standing under the laws of the jurisdiction of recognition and in each such case that it is and shall continue to be duly existing

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and in good standing under such laws and under the laws of any jurisdiction where it carries on business;

- (f) it has and shall continue to have the capacity to act as a limited partner of the Limited Partnership, and that its obligations under this Agreement do not conflict with or constitute a default under the agreement governing its existence and operation or any other agreement by which it is bound;
- (g) this Agreement constitutes a valid and legally binding obligation of the Limited Partner, enforceable against the Limited Partner in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization and other laws of general application limiting the enforcement of creditors' rights generally and to the fact that specific performance is an equitable remedy available only in the discretion of the court;
- (h) the execution, delivery and performance by the Limited Partner of this Agreement:
  - (i) has been duly authorized by all necessary corporate or partnership action (as applicable) on the part of the Limited Partner;
  - (ii) does not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) require any consent or approval under, result in a breach or a violation of, or conflict with, any of the terms or provisions of its constating documents or by-laws or any contracts or instruments to which it is a party or pursuant to which any of its assets or property may be affected; and
  - (iii) will not result in the violation of any applicable law;
- (i) it is not a Non-Qualified Partner; and
- (j) it has not borrowed on a line of credit, demand loan or otherwise incurred any debt to purchase any Units, where such debt would constitute a "limited-recourse amount" within the meaning of the Tax Act.

### 19.3 Survival of Representations

The representations and warranties contained in this Article 19 shall remain valid after the execution of this Agreement, and each Partner covenants with the other Partners that each representation and warranty made pursuant to the foregoing provisions will remain valid, binding and in full force and effect for so long as it remains a Partner.

## ARTICLE 20 POWER OF ATTORNEY

### 20.1 Appointment of General Partner

Each Limited Partner hereby irrevocably appoints the General Partner and any successor to the General Partner as its true and lawful attorney and agent, with full power of substitution and authority, in its name, place and stead to:

- (a) execute, swear to, acknowledge, deliver, file and record in the appropriate public offices in any jurisdictions where the General Partner considers it appropriate:

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- (i) all certificates and other instruments necessary or appropriate to qualify or to continue the qualification of the Limited Partnership as a limited partnership in the Province of Alberta and in each jurisdiction where the Limited Partnership may conduct business;
  - (ii) all instruments and certificates necessary or appropriate to reflect any amendment of this Agreement made in accordance with the provisions of this Agreement;
  - (iii) all conveyances and other documents necessary to reflect the dissolution and liquidation of the Limited Partnership, including cancellation of any Certificate, in accordance with the provisions of this Agreement;
  - (iv) all instruments relating to the admission of additional or substituted Limited Partners and a substituted General Partner;
  - (v) transfer forms and such other documents or instruments as may be necessary to effect the transfer of any Unit in accordance with the terms of this Agreement;
  - (vi) all elections, determinations or designations under the Partnership Act, Tax Act or other legislation or laws of like import of Canada or of any provinces or jurisdictions in respect of the affairs of the Limited Partnership or of a Partner's or former Partner's interest in the Limited Partnership; and
  - (vii) such other documents on behalf of and in the name of the Limited Partnership and the Limited Partners as may be required to give effect to this Agreement; and
- (b) execute and file with any Governmental Entity any documents necessary and appropriate to be filed in connection with the Partnership Business or in connection with this Agreement.

#### **20.2. Limited Partners Bound**

Each Limited Partner agrees to be bound by any representation and action of the General Partner made or taken in good faith in conformity with this power of attorney.

#### **20.3 Successors Bound**

The power of attorney referred to in Section 20.1 shall be irrevocable and shall bind each Limited Partner and its heirs, successors, legal representatives, successors and permitted assigns, notwithstanding the death, dissolution, liquidation, insolvency, bankruptcy, incompetency or other disability of the Limited Partner.

#### **20.4 General Partner May Act for all Limited Partners**

The General Partner shall have the power to execute documents in the name of all the Limited Partners pursuant to the power of attorney referred to in Section 20.1 by affixing its signature thereto with the indication that it is acting on behalf of all the Limited Partners.

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**20.5 Execution of Documents by Limited Partners**

Each Partner will take or cause to be taken further actions, execute, acknowledge, deliver and file every certificate or other document necessary to fulfil the terms and purposes of this Agreement and comply with any law or regulation of any jurisdiction for the continuation and good standing of the Limited Partnership.

**ARTICLE 21  
NOTICES****21.1 Deemed Receipt**

Any notice or other written communication which may be given or sent under this Agreement shall be in writing and given by delivering it or sending it by fax:

(a) in the case of the General Partner, to:

Private and Confidential  
245, 1209 – 59<sup>th</sup> Avenue S.E.  
Calgary, AB T2H 2P6

Attention: Paul Verhoeff, Director

Fax: (403) 255-2839

(b) in the case of the Limited Partners, to the address and fax number recorded in the register of Limited Partners maintained by the General Partner.

Any such communication will be deemed to have been validly and effectively given (i) if personally delivered, on the date of such delivery if such date is a Business Day and such delivery was made prior to 4:00 p.m. (Calgary time); and (ii) otherwise on the next Business Day, following the date of transmission provided the transmitter receives a confirmation of successful transmission.

**21.2 Change of Address**

A Limited Partner may, at any time, change his address for service by written notice to the General Partner. The General Partner may, at any time, change its address for service by written notice to all the Limited Partners.

**21.3 Inadvertent Failure to Give Notice**

An accidental omission in the giving of, or failure to give, a notice required by this Agreement will not invalidate or affect in any way the legality of any meeting or other proceeding in respect of which such notice was or was intended to be given unless failure to give such notice results in all Limited Partners not receiving such notice.

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**ARTICLE 22**  
**MISCELLANEOUS**

**22.1 Securities Transfer Act**

Each Unit constitutes a "Security" within the meaning of the *Securities Transfer Act* (Alberta).

**22.2 Severability**

Each of the provisions of this Agreement is severable and distinct from the others and if at any time one or more of such provisions is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

**22.3 Waiver of Partition**

The Partners hereby waive any right of partition or any right to take any other action which otherwise might be available to them for the purpose of severing their relationship with the Limited Partnership or their interest in the assets held by the Limited Partnership from the interest of the other Partners.

**22.4 Governing Law**

This Agreement and all subscriptions for Units shall be governed by and construed in accordance with the laws in force in the Province of Alberta and the federal laws of Canada applicable therein, and the General Partner and each of the Limited Partners hereby irrevocably attorn to the non-exclusive jurisdiction of the courts of Alberta.

**22.5 Counterpart Execution**

This Agreement may be executed in several counterparts (including counterparts by facsimile or pdf electronic copy), each of which shall be deemed to be an original and all of which shall be construed together as one agreement.

**22.6 Entire Agreement**

This Agreement constitutes the entire agreement among the parties and there are no other written or verbal agreements or representations. This Agreement replaces and supersedes any prior agreement pertaining to the subject matter hereof.

**22.7 Further Assurances – SHS Contribution Agreement**

The Limited Partnership and SHS shall do all such further acts and things and execute and deliver all such further documents as shall be reasonably required in order to effect the transactions contemplated by the SHS Contribution Agreement, including, without limitation, obtaining any necessary consents, approvals or waivers of any Person or Governmental Entity in order to transfer, convey or assign any or all of the Partnership Assets to the Limited Partnership and entering into any trust arrangement for the sole benefit of the Limited Partnership, as Alaris Partnership may direct.



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**22.8 Further Assurances – Tax Planning**

Each Partner shall do all such further acts and things and execute and deliver all such further documents as shall be reasonably required in order to assist the tax, estate and corporate planning of the other Partners or the Limited Partnership, provided always that no Partner will be compelled to assist where in the opinion of tax counsel for the Limited Partnership and the other Partner seeking such planning, such assistance would prejudice such Partner or would cause a material adverse change to the Units held by such Partner.

**22.9 Enurement**

This Agreement shall be binding upon and enure to the benefit of the respective heirs, legal representatives and, to the extent permitted under this Agreement, respective successors and assigns of the parties hereto.


**22.10 Time of the Essence**

Time shall be of the essence of this Agreement and any future amending agreements in all respects.

*[Remainder of Page Intentionally Left Blank]*

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

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

Per:   
Name: Rachel Colabella  
Title: General Counsel & Corporate Secretary

Per: \_\_\_\_\_  
Name:  
Title:

**SHS SERVICES MANAGEMENT INC.**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

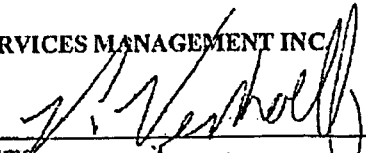
IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

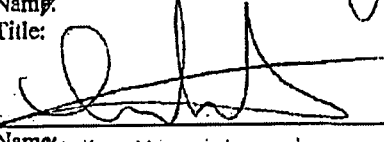
**ALARIS INCOME GROWTH FUND PARTNERSHIP**, by one of its partners, **ALARIS IGF CORP.**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

**SHS SERVICES MANAGEMENT INC.**

Per:  \_\_\_\_\_  
Name:  
Title:

Per:  \_\_\_\_\_  
Name:  
Title:

**SCHEDULE A****CERTAIN ATTRIBUTES OF PREFERRED UNITS AND VOTING UNITS****1. Auditors to Prepare and Deliver**

Concurrently with the delivery of the Financial Statements in respect of each Fiscal Year pursuant to Section 7.3 of the Agreement and subject to the variations set provided for in connection with the Tranche B Distribution Period and the Tranche C Distribution Period, the General Partner will cause the Auditors to prepare and deliver to the Limited Partners holding Preferred Units a calculation of each of the SHS/ISO Revenue, and the Preferred Distribution in respect of such Fiscal Year.

**2. Preferred Units**

In addition to the rights, privileges, restrictions and conditions attaching to the Preferred Units as set forth elsewhere in the Agreement and in this Schedule A, the Preferred Units will have the following rights, privileges, restrictions and conditions:

- (a) holders of Preferred Units shall be entitled to receive cumulative, preferential cash distributions in priority to any distributions to holders of Voting Units equal to the Preferred Distribution amount applicable for the First Distribution Period or a particular Distribution Period, as applicable, and holders shall receive any such distributions (if any) in equal monthly instalments on the fifteenth (15<sup>th</sup>) Business Day occurring during the First Distribution Period or Distribution Period, as applicable (or at such other times or in such other instalment amounts as may be agreed between the General Partner and the holders of Preferred Units, from time to time, including but without limitation, as set out in Schedule C);
- (b) subject to those matters which require Preferred Unit Approval or are Preferred Unit Consent Matters, holders of Preferred Units will not, as such, have any right to vote at any meetings of Partners. Notwithstanding the foregoing, if an Intentional Default occurs and the Limited Partnership (or some other Person on behalf of the Limited Partnership) does not repurchase all of the Preferred Units as may be required under paragraph 2(d) below within one hundred and twenty (120) days of the occurrence of such Intentional Default, the holders of Preferred Units as of the date of such Intentional Default shall have the right to be convened, to attend, and to vote at any meeting of the Partners. Upon such event and so long as the holders of Preferred Units as of the date of such Intentional Default shall be entitled to one hundred (100) votes for each Preferred Unit held until 75% of the amount owing to the holders of Preferred Units in respect of such repurchase described in paragraph 2(d) below has been paid to the holders of Preferred Units as at the date of such Intentional Default. Thereafter, all decisions required of Partners shall be made by way of the unanimous resolution of all Partners until such time as all the Preferred Units have been repurchased (or purchased, as the case may be) by the Limited Partnership, SHS or a combination of both;
- (c) subject to the payment of any unpaid Preferred Distribution owing in respect of the Preferred Units (and unless otherwise agreed by the Partners), on liquidation or dissolution of the Limited Partnership holders of Preferred Units will be entitled to receive, on a pro-rata basis, the Preferred Unit Liquidation Percentage of the remaining assets of the Limited Partnership;

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- (d) upon the occurrence of an Intentional Default, each holder of Preferred Units as at the date of such Intentional Default will be entitled to require the Limited Partnership to repurchase (or, if such option is exercised, at SHS's discretion, SHS may elect to purchase) within sixty (60) days of such Intentional Default all, but not less than all, of the Preferred Units held by such holder at an aggregate purchase price to be determined as follows:
- (i) if the Intentional Default occurs during the period of time commencing on the Contribution Date and ending on the date that is the third (3<sup>rd</sup>) anniversary of the Contribution Date, the aggregate purchase price shall be equal to the sum of the Repurchase Price plus any unpaid Preferred Distributions that are then due and payable or would be due and payable up to and including the third (3<sup>rd</sup>) anniversary of the Contribution Date (and, solely for this purpose, an amount equal to the last paid Preferred Distribution will be annualized over the remainder of the three year period to determine the amount of unpaid Preferred Distributions payable in respect of the remainder of such period); and
  - (ii) if the Intentional Default occurs after the date that is the third (3<sup>rd</sup>) anniversary of the Contribution Date, the aggregate purchase price shall be the Repurchase Price plus any Preferred Distributions that are then due and payable.
- (e) upon the occurrence of an Event of Default (other than an Intentional Default or an Event of Default which is a Liquidation Event of the Limited Partnership and subject always to Section 11.3(d) of the Agreement) each holder of Preferred Units will be entitled to require the Limited Partnership to repurchase (or, if such option is exercised, at SHS's discretion, SHS or a Third Party may elect to purchase) within sixty (60) days of such Event of Default all but not less than all of the Preferred Units held by such holder at an aggregate purchase price equal to the Repurchase Price plus the amount of any Preferred Distributions that are then due and payable, provided that; if an intervening Event of Default, which is a Liquidation Event of the Limited Partnership (and is not an Intentional Default), occurs within such sixty (60) day period and such Liquidation Event results in the liquidation of the Limited Partnership, then the liquidation provisions set forth in Section 18.4 of the Agreement shall prevail;
- (f) upon the occurrence of an Event of Default which is or results in a Liquidation Event of the Limited Partnership (and is not an Intentional Default or caused by an Intentional Default), then subject always to Section 11.3(d) of the Agreement, if such Event of Default is resolved without the Limited Partnership being liquidated or a Sale occurring, then upon such resolution, each holder of Preferred Units as at the date of such Event of Default will be entitled to require the Limited Partnership to repurchase (or, if such option is exercised, at SHS's discretion, it may elect to purchase) within 15 days all but not less than all of the Preferred Units held by such holder at an aggregate purchase price as follows:
- (i) if such Event of Default occurs during the period of time commencing on the Contribution Date and ending on the date that is the third (3<sup>rd</sup>) anniversary of the Contribution Date, the aggregate purchase price shall be equal to the Repurchase Price plus the amount of any unpaid Preferred Distributions that are then due and payable up to and including the third (3<sup>rd</sup>) anniversary of the Contribution Date;  
or

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- (ii) if such Event of Default occurs after the date that is the third (3<sup>rd</sup>) anniversary of the Contribution Date, the aggregate purchase price shall be the Repurchase Price plus any Preferred Distributions that are then due and payable; and
- (g) notwithstanding any provision of this Agreement, neither the Limited Partnership, the General Partner, SHS nor any of their Affiliates shall be permitted to enter into any reorganization or other transaction or other series of transactions (whether for tax planning or other purposes) which would create a Repurchase Event or have the effect or result of reducing the Repurchase Price that is payable under this Agreement in any scenario.
- (h) for greater certainty, the holders of Preferred Units shall also have the rights set out in Section 11.1, 11.2 and 11.3 of the Agreement.

### 3. Voting Units

In addition to the rights, privileges, restrictions and conditions attaching to the Voting Units as set forth elsewhere in the Agreement and in this Schedule A, the Voting Units will have the following rights, privileges, restrictions and conditions:

- (a) holders of Voting Units will be entitled to one vote for each Unit held at all meetings of Partners, other than meetings of the holders of Preferred Units;
- (b) holders of Voting Units will be entitled to receive cash distributions from time to time in an amount determined in the sole discretion of the General Partner. The Voting Units will be entitled to receive such cash distributions only if all current monthly and arrears of Preferred Distributions have been paid in full. In no event shall a cash distribution be made to holders of Voting Units where an Event of Default has occurred and is continuing or would arise as a result of such distribution;
- (c) holders of Voting Units will be entitled on liquidation or dissolution of the Limited Partnership to receive, on a pro-rata basis, the Voting Unit Liquidation Percentage of the remaining assets of the Limited Partnership.

**SCHEDULE B**

Unit Certificate  
Number:

Number of Units:

Class of Units:  
[Voting or Preferred]

**UNIT CERTIFICATE**

OF

**SHS SERVICES LIMITED PARTNERSHIP**

[Name of Unitholder]:

THIS IS TO CERTIFY THAT the registered holder of this Unit Certificate is a [Limited] Partner of SHS Services Limited Partnership (the "Limited Partnership") owning the number and class of [Voting or Preferred] Units set out above and as such is entitled to all of the rights and privileges and is subject to all of the obligations of a [Limited] Partner in the Limited Partnership. This Certificate and the Unit(s) represented hereby are subject to the conditions and restrictions contained in the Limited Partnership Agreement dated as of \_\_\_\_\_, 2013 (the "Partnership Agreement"), as it may be amended, amended and restated, or replaced from time to time, and any transfer of the Unit(s) represented by this Certificate is subject to the restrictions contained in the Partnership Agreement and all the terms and conditions as set forth below and on the reverse.

The liability of the holder of this Unit Certificate is limited to the holder's capital contribution to the Limited Partnership plus the holder's share of the undistributed income of the Limited Partnership as provided in the Partnership Agreement. Limited Partners may lose the protection of limited liability by taking part in the control of the business of the Limited Partnership or may be liable to third parties as a result of false statements in the public filings made pursuant to the *Partnerships Act* (Alberta) and applicable legislation of Canadian provinces and territories other than the Province of Alberta. There is also a possibility for unlimited liability to the extent that the principles of Canadian law recognizing the limitation of liability of limited partners have not been authoritatively established with respect to limited partnerships formed under the laws of one province, but operating, owning property or incurring obligations in another province.

**OWNERSHIP AND TRANSFER OF UNITS** - The registered owner hereof, by acceptance of this Unit, agrees that this Unit and all rights hereunder are only transferable in accordance with applicable securities legislation and the Partnership Agreement. The Limited Partnership may treat the registered owner of this Unit for all purposes as the absolute owner thereof and shall not be affected by any notice or knowledge to the contrary.

IN WITNESS WHEREOF, the Limited Partnership has caused this Unit Certificate to be signed as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

SHS Services Limited Partnership, by its general partner, SHS Services Management Inc.

Per: \_\_\_\_\_

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**TRANSFER FORM**

**TO: SHS Services Limited Partnership (the "Limited Partnership")**

Subject to the acceptance of the transfer by the General Partner of the Limited Partnership, unless otherwise permitted under the limited partnership agreement of the Limited Partnership dated \_\_\_\_\_, 2013, as it may be amended, amended and restated, or replaced from time to time (the "Partnership Agreement"), the undersigned (the "Transferor"), a Partner of the Limited Partnership, hereby transfers, assigns and sells to \_\_\_\_\_ (the "Transferee") all of the Transferor's right, title and interest in and to \_\_\_\_\_ [Voting or Preferred] Unit(s) in the Limited Partnership. The Transferee agrees to execute or furnish to the General Partner any documents, certificates, assurances and other instruments that the General Partner may reasonably require to effect this transfer and to continue and keep in good standing the Limited Partnership as a limited partnership. The Transferee agrees that the power of attorney previously granted by the Transferee to the General Partner shall continue in full force and effect and shall be irrevocable, until all certificates of limited partnership, all amendments to all such certificates and all other instruments required to effect this transfer and to continue and keep in good standing the Limited Partnership as a limited partnership have been furnished to the General Partner as aforesaid and have been filed and recorded as and where reasonably required.

Capitalized terms used but not otherwise defined herein shall have the meaning ascribed thereto in the Partnership Agreement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Witness of Signature

\_\_\_\_\_  
Transferor's Signature (same as on certificate)

\_\_\_\_\_  
Print full name

**[if a Corporation:]**  
**[Name]**

Per: \_\_\_\_\_

Name:  
Title:



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**POWER OF ATTORNEY AND COUNTERPART EXECUTION**

Subject to the acceptance of this transfer by the General Partner, the undersigned (the "Transferee") accepts the above transfer and assignment and agrees:

1. capitalized terms used herein but not otherwise defined shall have the meaning ascribed thereto in the limited partnership agreement of SHS Services Limited Partnership (the "Limited Partnership") dated as of \_\_\_\_\_, 2013 between SHS Services Management Inc., as general partner (the "General Partner") and Alaris Income Growth Fund Partnership, as initial limited partner and those parties referred to as Limited Partners therein (collectively, the "Limited Partners"), as the same may from time to time be amended, amended and restated, or replaced (the "Partnership Agreement");
2. to be bound as a party to the Partnership Agreement and as a Limited Partner in the Limited Partnership, by the terms of the Partnership Agreement;
3. to assume the obligations of the above named transferor to the Limited Partnership under the Partnership Agreement or otherwise; and
4. to pay to the General Partner all reasonable costs and expenses incurred in connection with the transfer.

The Transferee acknowledges receipt of a true copy of the Partnership Agreement.

To the full extent permitted by law, the Transferee hereby irrevocably nominates, constitutes and appoints the General Partner and its successors and assigns, with full power of substitution, as agent and true and lawful attorney to act for and on behalf of the Transferee with full power and authority, in the name, place and stead of the Transferee to execute (under seal or otherwise), swear to, acknowledge, deliver, register, file or record as and where required:

- (a) all certificates and other instruments necessary or appropriate to qualify or to continue the qualification of the Limited Partnership as a limited partnership in the Province of Alberta and in each jurisdiction where the Limited Partnership may conduct business;
- (b) all instruments and certificates necessary or appropriate to reflect any amendment of the Partnership Agreement made in accordance with the provisions of the Partnership Agreement;
- (c) all conveyances and other documents necessary to reflect the dissolution and liquidation of the Limited Partnership, including cancellation of any Certificate, in accordance with the provisions of the Partnership Agreement;
- (d) all instruments relating to the admission of additional or substituted Limited Partners and a substituted General Partner;
- (e) transfer forms and such other documents or instruments as may be necessary to effect the transfer of any Unit in accordance with the terms of the Partnership Agreement;

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- (f) all elections, determinations or designations under the Partnership Act, Tax Act or other legislation or laws of like import of Canada or of any provinces or jurisdictions in respect of the affairs of the Limited Partnership or of a Partner's or former Partner's interest in the Limited Partnership;
- (g) such other documents on behalf of and in the name of the Limited Partnership and the Limited Partners as may be required to give effect to the Partnership Agreement; and
- (h) with any Governmental Entity any documents necessary and appropriate to be filed in connection with the business of the Limited Partnership or in connection with the Partnership Agreement.

The power of attorney granted herein is irrevocable, is a power coupled with an interest, and shall survive the disability of the Transferee or the transfer by the Transferee of the whole or any part of the interest of the Transferee in the Limited Partnership and extends to and shall be binding upon the heirs, executors, administrators and other legal representatives and successors and assigns of the Transferee and shall survive the death or disability of the Transferee until actual notice of such death or disability is delivered to the General Partner, and may be exercised by the General Partner on behalf of the Transferee in executing any instrument by listing all the Limited Partners thereon and executing such instrument with a single signature as attorney and agent for all of them.

The Transferee agrees to be bound by any representation or action made or taken by the General Partner in good faith pursuant to this power of attorney and hereby waives any and all defences which may be available to contest, negate or disaffirm any action of the General Partner taken in good faith under this power of attorney.

The Transferee represents, warrants and covenants that the Transferee:

1. is not a "non-resident" of Canada within the meaning of the *Income Tax Act* (Canada);
2. has and will have the capacity and competence to enter into and be bound by the Partnership Agreement;
3. will not transfer or purport to transfer its Units other than to a Person which complies with the Partnership Agreement;
4. is subject to and hereby gives all of the representations, warranties and covenants set forth in Section 19.2 of the Partnership Agreement and, without limitation, will not change his or its status for the purposes of Section 19.2(b) or 19.2(c) (as applicable) of the Partnership Agreement without first transferring its Units to a Person which complies with Section 19.2 of the Partnership Agreement; and

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- 5. will, at the request of the General Partner, provide any evidence of compliance with this representation, warranty and covenant that the General Partner may reasonably request.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Witness of Signature

\_\_\_\_\_  
Transferee's Signature (same as on certificate)

\_\_\_\_\_  
Print full name

\_\_\_\_\_  
Print Full address including postal code

[if a Corporation:]  
[Name]

Per: \_\_\_\_\_

Name:

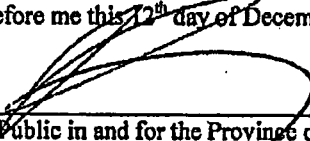
Title:

**SCHEDULE C**

# Tab C

**EXHIBIT C**

This is the Exhibit marked "C" referred to  
in the Affidavit of Micheal Clements,  
sworn before me this 12<sup>th</sup> day of December, 2013.

  
\_\_\_\_\_  
Notary Public in and for the Province of Alberta

**Nolan Ritzel**  
**Student-at-Law**

## Government Trade Name / Partnership Search of Alberta ■ Corporate Registration System

Date of Search: 2013/09/26  
 Time of Search: 12:54 PM  
 Search provided by: BORDEN LADNER GERVAIS LLP

Service Request No: 20321551  
 Customer Reference No: 441209.01

Registration No: LP17334525  
 Current Business Name: SHS SERVICES LIMITED PARTNERSHIP  
 Status of Business Name: Active  
 Trade Name / Partnership Type: Limited Partnership  
 Date of Registration: 2013/03/01 YYYY/MM/DD  
 Home Jurisdiction: ALBERTA  
 Termination Date: 2093/02/25 YYYY/MM/DD

### Current General Partner:

Last/Legal Entity Name: SHS SERVICES MANAGEMENT INC. GESTION DES SERVICES SHS  
 INC.  
 Street: 245, 1209 - 59 AVENUE S.E.  
 City: CALGARY  
 Province: ALBERTA  
 Postal Code: T2H 2P6

### Other Information:

### Filing History:

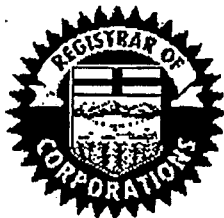
List Date	Type of Filing
2013/03/01	Register Limited Partnership
2013/05/02	Amend Limited Partnership

### Attachments:

Attachment Type	Microfilm Barcode	Date Recorded (YYYY/MM/DD)
Certificate of Limited Partnership (AB)	10000707106492540	2013/03/01

Statutory Declaration	10000207115282762	2013/03/06
Notice to Amend	10000907111139379	2013/05/02

Alberta Registries certifies that the information contained in this search is the most recent information filed in the Register of Corporations.

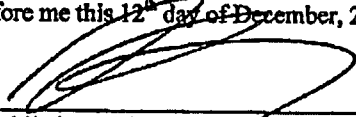




# Tab D

**EXHIBIT D**

This is the Exhibit marked "D" referred to  
in the Affidavit of Micheal Clements,  
sworn before me this 12<sup>th</sup> day of December, 2013.



---

Notary Public in and for the Province of Alberta

**Nolan Ritzel**  
**Student-at-Law**

**SEARS CANADA INC.**

as Transferor

and

**SHS SERVICES MANAGEMENT INC.**

as Transferee

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**ASSET TRANSFER AGREEMENT**

December 20, 2012

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**ASSET TRANSFER AGREEMENT**

Asset Transfer Agreement dated December 20, 2012 between Sears Canada Inc. (the "Transferor") and SHS Services Management Inc. (the "Transferee").

**ARTICLE 1  
INTERPRETATION****Section 1.1 Defined Terms.**

As used in this Agreement, the following terms have the following meanings:

"Accounting Standards" means accounting principles generally accepted in Canada as contemplated by the handbook of the Canadian Institute of Chartered Accountants (the "Handbook"), as amended from time to time, applied on a consistent basis and which incorporates International Financial Reporting Standards under Part 1 of the Handbook for periods beginning on and after January 1, 2011, and Canadian generally accepted accounting principles under Part V of the Handbook prior to January 1, 2011; if the Handbook contains more than one recommendation as to treatment of a matter, the recommendation that shall constitute Accounting Principles shall be the one most appropriate in the context of the Transferor.

"Affected Employees" means the Home Services Employees who will, pursuant to this Agreement, be provided with Offers of Employment by the Transferee.

"Affiliate" has the meaning ascribed thereto in National Instrument 45-106 as of the date hereof.

"Agreement" means this Asset Transfer Agreement, as it may be amended, and all Schedules to it.

"ARC" means a certificate issued by the Commissioner pursuant to subsection 102(1) of the Competition Act in respect of the transactions contemplated by this Agreement.

"Assumed Liabilities" has the meaning specified in Section 2.11.

"Assumed Warranty Work" has the meaning specified in Section 2.11(c).

"Authorization" means, with respect to any Person, any order, permit, approval, consent, waiver, licence or similar authorization of any Governmental Entity having jurisdiction over the Person.

"BlackBerrys" has the meaning specified in Section 2.8(e).

"Branded Concession Agreement" means the Branded Concession Agreement between Transferor and Transferee dated of even date herewith.

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"Business" means the Transferor's business operating under the 'Sears Home Services/Services résidentiels Sears' banner, relating to the retail sale of goods for installation in or about private residences as well as the provision of home-related services to be conducted in private residences, but excluding

- (i) services relating to home delivery of goods purchased in Sears retail outlets (other than delivery of Products);
- (ii) parts and services relating to repair of goods located in residential housing (including, for greater certainty, parts and services relating to repair of Products);
- (iii) business conducted under the 'Sears Floor Covering Centre / Centre de revêtements de sol Sears' banner; and
- (iv) any business related to fuel oil-powered equipment, including parts and service related thereto.

"Business Books and Records" means copies of books, records, files and documents relating to the Business, including, without limitation, any books of account, ledgers, journals, records of accounts receivable and payable, cost and pricing information, inventory records, maintenance asset history records, blueprints, drawings, technical papers, business reports, plans and projections, credit information, files, lists, data and other information relating to customers of and suppliers to the Business, and other correspondence, data and information in any format or media whatsoever.

"Business Day" means any day of the year, other than a Saturday, Sunday or any day on which major banks are closed for business in Toronto, Ontario.

"Business Personal Information" means (i) the Home Services Employee Personal Information; (ii) information about an identifiable individual who is a customer of the Business; and (iii) information about an identifiable individual who is one of the Licensees or Contractors or who is an employee of any of the Licensees or Contractors.

"Closing" means the completion of the transaction of purchase and sale contemplated in this Agreement.

"Closing Cash Payment" has the meaning specified in Section 2.2.

"Closing Date" means March 2, 2013, if such date is at least one day subsequent to the day on which all conditions precedent set forth in Sections 6.1 and 6.2 have been satisfied or waived by the Parties (other than those that, by their terms, cannot be satisfied until the time of Closing), or, if such conditions precedent have not been so satisfied or waived at least one Business Day prior to such date, the last day of the Fiscal Month (as such term is defined in the Branded Concession Agreement) during which such conditions are satisfied or waived as aforesaid, or, in any event, such earlier or later date as the Parties may mutually agree in writing.



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"Closing Time" has the meaning given in Section 7.1.

"Commissioner" means Commissioner of Competition appointed under subsection 7(1) of the Competition Act or a person designated or duly authorized under the Competition Act to exercise the powers and perform the duties of the Commissioner of Competition.

"Competition Act" means the *Competition Act (Canada)* and the regulations promulgated thereunder, as amended.

"Competition Act Clearance" means that, with respect to the transactions contemplated by this Agreement, either (a) (i) the applicable waiting period under subsection 123(1) of the Competition Act shall have expired or shall have been terminated under subsection 123(2) of the Competition Act, or the Commissioner shall have waived the requirement to submit a notification pursuant to paragraph 113(c) of the Competition Act, and (ii) the Transferee shall have received a No Action Letter and the form of and any terms and conditions attached to the No Action Letter are acceptable to the Transferee, acting reasonably; or (b) the Transferee shall have received an ARC.

"Contracts" has the meaning specified in Section 2.8(f).

"Contractors" means the counterparties to the following agreements with the Transferor with respect to the Business only: "Sell, Furnish & Install" agreements, "Furnish and Install" agreements, and contracts regarding the installation of Products and Services.

"Customer Contracts" has the meaning specified in Section 2.8(f).

"Customer Deposit Value" means the total, as at the Closing Time, of deposits received by Transferor from counterparties to the Open Customer Contracts.

"Damages" means any actual losses, liabilities, damages or out-of-pocket expenses (including reasonable legal fees and expenses, but excluding loss of profits and special, indirect, consequential, punitive or aggravated damages) whether resulting from an action, suit, proceeding, arbitration, claim or demand that is instituted or asserted by a third party, including a Governmental Entity, or a cause, matter, thing, act, omission or state of facts not involving a third party.

"Direct Claim" means any cause, matter, thing, act, omission or state of facts not involving a Third Party Claim which entitles an Indemnified Party to make a claim for indemnification under this Agreement.

"Distressed Inventory" means any inventory that is distressed, obsolete or damaged.

"Employee Claims" means the claims, pending claims, and potential claims referenced under Section 3.1(t).

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**"Employee Plans"** means all the employee benefit, fringe benefit, supplemental unemployment benefit, bonus, incentive, profit sharing, termination, change of control, pension, retirement, stock option, stock purchase, restricted stock rights, stock appreciation, health, welfare, medical, dental, disability, life insurance and similar plans, programmes, arrangements or practices relating to the Home Services Employees maintained, sponsored or funded by the Transferor, whether written or oral, funded or unfunded, insured or self-insured, registered or unregistered.

**"Employee Personal Information"** has the meaning specified in Section 3.1(v).

**"Environmental Laws"** means all applicable Laws and agreements with Governmental Entities and all other statutory requirements relating to public health or the protection of the environment and all Authorizations issued pursuant to such Laws, agreements or statutory requirements.

**"Estimated Customer Deposit Value"** has the meaning specified in Schedule 2.2.

**"Estimated Inventory Purchase Price"** has the meaning specified in Schedule 2.2.

**"Estimated Rental Equipment Purchase Price"** has the meaning specified in Schedule 2.2.

**"Estimated Vacation Pay Accrual"** has the meaning specified in Schedule 2.2.

**"Estimated Work In Progress Price"** has the meaning specified in Schedule 2.2.

**"Excluded Assets"** has the meaning specified in Section 2.9.

**"Furniture & Equipment Purchase Price"** has the meaning specified in Schedule 2.2.

**"Governmental Entity"** means (i) any international, multinational, national, federal, provincial, state, municipal, local or other governmental or public department, central bank, court, commission, board, bureau, agency or instrumentality, domestic or foreign, (ii) any subdivision or authority of any of the above, (iii) any stock exchange and (iv) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the above.

**"Hired Employees"** means those Home Services Employees who become employees of the Transferee effective at the Closing Time.

**"Home Services Employees"** means the following employees of the Transferor as at the signing of this Agreement: Divisional Vice-President, Home Improvements and all employees of Transferor reporting directly or indirectly to him (other than Director, Oil and all employees of Transferor reporting directly or indirectly to him and other than the following six employees: National Installation Manager; Installation Manager, BC; Installation Manager, Toronto; Senior Director, HVAC; District Sales Manager, HVAC; Product Manager, In-Home Service); plus the

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following three employees: District Operations Manager, Quebec; Associate Vice-President, Digital Marketing, Home Services; and Manager, Home Services Finance.

"Home Services Employee Personal Information" has the meaning specified in Section 5.9(2).

"Home Shows" has the meaning specified in Section 2.8(h).

"Home Shows Assumption Price" means the "Total Cost to Sears" as set out in Schedule 2.8(h).

"Indemnification Cap" has the meaning specified in Section 9.4(6).

"Indemnified Party" means a Party with indemnification rights or benefits under Section 9.2 or Section 9.3, or otherwise under this Agreement.

"Indemnifying Party" means a Party against which a claim may be made for indemnification under this Agreement, including pursuant to Article 9.

"Intellectual Property" means domestic and foreign intellectual property rights, including: (i) patents, applications for patents and reissues, divisions, continuations, renewals, extensions and continuations-in-part of patents or patent applications; (ii) copyrights, copyright registrations and applications for copyright registration; (iii) designs, design registrations, design registration applications and integrated circuit topographies; (iv) trade names, business names, corporate names, domain names, website names and world wide web addresses, common law trade-marks, trade-mark registrations, trade mark applications, trade dress and logos; and (v) the goodwill associated with any of the foregoing.

"Interim Period" means the period between the close of business on the date of this Agreement and the Closing.

"Inventory Purchase Price" means the depreciated value, in accordance with Accounting Principles, of the Working Inventory at the Closing.

"ISO" means Installation Services Org. Ltd., an Alberta corporation that is an Affiliate of Transfreee.

"Laws" means any and all applicable (i) laws, constitutions, treaties, statutes, codes, ordinances, orders, decrees, rules, regulations, by-laws, and (ii) judgments, orders, writs, injunctions, decisions, awards and directives of any Governmental Entity.

"Liabilities" means any and all liabilities, whether known or unknown, including, without limitation, all obligations and other liabilities, whether absolute, accrued, contingent, fixed or otherwise, or whether due or to become due.

"Licensed Areas" has the meaning specified in the Branded Concession Agreement.

"Licensee Contracts" has the meaning specified in Section 2.8(f).

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"Licensees" means the counterparties to the following agreements with the Transferor with respect to the Business only: "Sears Carpet and Upholstery Services" license agreements and "Sears Indoor Clean Air Services" license agreements.

"Lien" means any mortgage, charge, pledge, hypothec, security interest, assignment, lien (statutory or otherwise), easement, title retention agreement or arrangement, conditional sale, deemed or statutory trust, restrictive covenant or other encumbrance of any nature which, in substance, secures payment or performance of an obligation.

"Loan" means a vendor take-back loan granted by Transferor to Transferee, the key terms of which are as set out in Schedule 2.3.

"Loan Documents" means the "Documentation" as set out in Schedule 2.3.

"Material Adverse Effect" means any effect that, when considered either individually or in the aggregate, is material and adverse to the financial condition of the Business taken as a whole, except to the extent that the material adverse effect results from or is caused by (i) worldwide, national or local conditions or circumstances whether they are economic, political, regulatory or otherwise, including war, armed hostilities, acts of terrorism, emergencies, crises and natural disasters, (ii) changes in the markets or industry in which the Business operates, (iii) the announcement of this Agreement and the transactions contemplated by it, (iv) any act or omission of the Business prior to the Closing Date taken with the prior consent or at the request of the Transferee, (v) general economic, regulatory or political conditions or changes, (vi) changes in the law or accounting standards, (vii) compliance with the terms of this Agreement, (viii) the failure of the Business to meet or achieve the results set forth in any internal projection, (ix) military action or any act of terrorism, (x) any natural disaster, (xi) any matter or event that is known by the Transferee (or of which the Transferee has been notified) as of the date hereof, or (xii) any matter set forth in the Schedules attached hereto.

"No Action Letter" means a written notice from the Commissioner confirming that she does not, at that time, intend to make an application under Section 92 of the Competition Act in respect of the transactions contemplated by this Agreement.

"Non-Quebec Home Services Employees" means the Home Services Employees who are not Quebec Home Services Employees.

"Non-Transferring Employees" means the Non-Quebec Home Services Employees who, in accordance with the procedures set out in this Agreement, will not be provided Offers of Employment.

"Notice" has the meaning specified in Section 11.1.

"Notices of Continuation of Employment" means notices given by the Transferee to Quebec Home Services Employees of the continuation of their employment with Transferee, on terms and conditions substantially similar, in the aggregate, to those

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upon which such Quebec Home Services Employees are employed by the Transferor at the time of the execution of this Agreement, conditional upon Closing and effective at the Closing Time, substantially in the French and English forms attached hereto as Schedule 5.11(4).

"Offers of Employment" means offers of employment by the Transferee to the Affected Employees on terms and conditions substantially similar, in the aggregate, to those upon which such Affected Employees are employed by the Transferor at the time of the execution of this Agreement, conditional upon Closing and effective at the Closing Time, substantially in the form attached hereto as Schedule 5.11(3).

"Open Customer Contracts" means Customer Contracts entered into prior to the Closing Time for which Transferor's work has not yet been completed at the Closing Time.

"Ordinary Course of Business" means an action taken by a Person where that action:

- (a) is consistent in nature, scope and magnitude with the past practices of such Person and is taken in the ordinary course of the normal, day-to-day operations of such Person;
- (b) does not require authorization by the board of directors or shareholders of such Person (or by any Person or group of Persons exercising similar authority) and does not require any other separate or special authorization of any nature; and
- (c) is similar in nature, scope and magnitude to actions customarily taken, without any separate or special authorization, in the ordinary course of the normal, day-to-day operations of other Persons that are in the same line as such Person.

"Parties" means the Transferor and the Transferee and any other Person who becomes a party to this Agreement.

"Permits" means all permits, licenses, approvals, consents, registrations and qualifications relating to the Business required by any Governmental Authority or by any Person.

"Permitted Liens" means

- (i) easements, encroachments and other minor imperfections of title which do not, individually or in the aggregate, materially detract from the value of or impair the use or marketability of any real property,
- (ii) mechanics', carriers', workers', repairers' and similar statutory liens arising or incurred in the Ordinary Course of Business for amounts which are not delinquent, or which are being contested in good faith

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by appropriate proceedings and which are not, individually or in the aggregate, significant,

- (iii) zoning, entitlement, building and other land use regulations imposed by governmental agencies having jurisdiction over leased property which are not violated by the current use and operation of the leased property,
- (iv) covenants, conditions, restrictions, easements and other similar matters of record affecting title to leased property which do not materially impair the occupancy or use of leased property for the purposes for which it is currently used in connection with the Business.

"Person" means a natural person, partnership, limited partnership, limited liability partnership, corporation, limited liability corporation, unlimited liability company, joint stock company, trust, unincorporated association, joint venture or other entity or Governmental Entity, and pronouns have a similarly extended meaning.

"Products and Services", "Products" and "Services" have the meanings specified in the Branded Concession Agreement.

"Purchase Price" has the meaning specified in Section 2.2.

"Purchase Price Certificate" has the meaning specified in Section 2.4(1).

"Quebec Home Services Employees" means the Home Services Employees who are employed in the Province of Quebec.

"Rental Equipment" means equipment owned by the Business which is rented by customers of the Business.

"Rental Equipment Purchase Price" means the depreciated value, in accordance with Accounting Principles, of the Rental Equipment at the Closing.

"Sales Taxes" has the meaning specified in Section 2.5.

"Sears Trademarks" has the meaning specified in the Branded Concession Agreement.

"Source Revenue" means revenue obtained by Transferee from manufacturers and suppliers of inventory purchased by Transferee in conjunction with the completion of work-in-progress transferred to the Transferee at Closing.

"Tax Act" means the *Income Tax Act* (Canada), as amended.

"Tax Benefit" has the meaning specified in Section 9.4(4).

"Tax Returns" means any and all returns, reports, declarations and elections, filed or required to be filed in respect of Taxes.

"Taxes" means (i) any and all taxes, duties, fees, excises, premiums, assessments, imposts, levies and other charges or assessments of any kind whatsoever imposed by any Governmental Entity, and (ii) all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Entity on or in respect of amounts of the type described in clause (i) above or this clause (ii).

"Terminated Employee" has the meaning specified in Section 10.1.

"Termination Pay Formula" means the formula used by Sears to determine the Termination Payment for each Terminated Employee.

"Termination Payment Contribution" has the meaning specified in Section 10.1(2).

"Termination Payments" has the meaning specified in Section 10.1(2).

"Third Party Claim" means any action, suit, proceeding, arbitration, claim or demand that is instituted or asserted by a third party, including a Governmental Entity, against an Indemnified Party which entitles the Indemnified Party to make a claim for indemnification under this Agreement.

"Transferee" means SHS Services Management Inc., a corporation incorporated pursuant to the laws of Canada.

"Transferor" means Sears Canada Inc., a corporation incorporated pursuant to the laws of Canada.

"Transferor Pension Plan" means the Sears Canada Inc. Registered Retirement Plan, Financial Services Commission of Ontario Registration No. 0360065.

"Transferred Assets" has the meaning specified in Section 2.8.

"Vacation Pay Accrual" has the meaning specified in Section 2.11(d).

"Warranty Work" means the Transferor's warranty obligations to Transferor's customers related to Products and Services sold by the Business, in accordance with the contracts with such customers and in accordance with applicable Law.

"Warranty Work Reserve (Non-HVAC)" means the reserve established by the Transferor in accordance with Accounting Principles with respect to Warranty Work obligations related to Products and Services sold by the Business that are not heating, ventilation and air conditioning equipment.

"Working Inventory" means new inventory pertaining to the Business which is still in the original packaging, saleable at market margins and is not Distressed Inventory or otherwise incomplete, reconditioned, altered, damaged, defective, non-functional, discontinued or obsolete.

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**"Work-in-Progress Price"** means the amount that is the result of the following formula: 5.532% of the total Customer payment obligations (excluding Sales Taxes) (including any amount of Customer Deposit Value) pursuant to the Open Customer Contracts.

**Section 1.2 Gender and Number.**

Any reference in this Agreement to gender includes all genders. Words importing the singular number only include the plural and vice versa.

**Section 1.3 Headings, etc.**

The provision of a table of contents, the division of this Agreement into articles and sections and the insertion of headings are for convenience of reference only and do not affect the interpretation of this Agreement.

**Section 1.4 Currency.**

All references in this Agreement to dollars, or to \$ are expressed in Canadian currency, unless otherwise specifically indicated.

**Section 1.5 Certain Phrases, etc.**

In this Agreement (i) the words "including", "includes" and "include" mean "including (or includes or include) without limitation", and (ii) the phrase "the aggregate of", "the total of", "the sum of", or a phrase of similar meaning means "the aggregate (or total or sum), without duplication, of". Unless otherwise specified, the words "Article" and "Section" followed by a number mean and refer to the specified Article or Section of this Agreement.

**Section 1.6 Knowledge.**

Where any representation or warranty contained in this Agreement is qualified by reference to the knowledge of the Transferor or of the Transferee, it refers to the actual knowledge (without further inquiry) of the appropriate employees and/or officers of the Transferor or of the Transferee, as applicable, without personal liability on the part of any of such individuals.

**Section 1.7 Accounting Terms.**

All accounting terms not specifically defined in this Agreement are to be interpreted in accordance with Accounting Standards.

**Section 1.8 Schedules.**

- (1) The Schedules attached to this Agreement form an integral part of this Agreement for all purposes of it.
- (2) The purpose of the Schedules is to set out the qualifications, exceptions and other information called for in this Agreement. The Parties acknowledge and agree that the Schedules and the information and disclosures contained in them do not constitute or imply, and will not be construed as:



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- (a) any representation, warranty, covenant or agreement which is not expressly set out in this Agreement;
  - (b) an admission of any liability or obligation of the Transferor;
  - (c) an admission that the information is material;
  - (d) a standard of materiality, a standard for what is or is not in the ordinary course of business, or any other standard contrary to the standards contained in the Agreement; or
  - (e) an expansion of the scope of effect of any of the representations, warranties and covenants set out in the Agreement.
- (3) Disclosure of any information in the Schedules that is not strictly required under this Agreement has been made for informational purposes only and does not imply disclosure of all matters of a similar nature. Inclusion of an item in any section of the Schedules is deemed to be disclosure for all purposes for which disclosure is required under this Agreement.
- (4) The Schedules themselves are confidential information and may not be disclosed by the Transferee unless (i) any such information is required to be disclosed pursuant to applicable Law, unless such Law permits the Transferee to refrain from disclosing the information for confidentiality or other purposes, or (ii) the Transferee needs to disclose it in order to enforce or exercise its rights under this Agreement.

**Section 1.9 Statutes.**

Except as otherwise provided in this Agreement, any reference in this Agreement to a statute refers to such statute and all rules and regulations made under it, as it or they may have been or may from time to time be amended or re-enacted.

**Section 1.10 Non-Business Days.**

Whenever payments are required to be made or an action is required to be taken on a day which is not a Business Day, such payment shall be required to be made or such action shall be required to be taken on or not later than the next succeeding Business Day.

**ARTICLE 2**

**TRANSFERRED ASSETS, ASSUMED LIABILITIES AND PURCHASE PRICE**

**Section 2.1 Asset Transfer.**

In consideration of payment of the Purchase Price, Transferor does hereby grant, bargain, transfer, sell, assign, convey and deliver to Transferee, and its successors and assigns, good and valid right, title and interest in and to the Transferred Assets to have and to hold such Transferred Assets to and for its and their own use forever.

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**Section 2.2 Purchase Price and Closing Cash Payment.**

The "Purchase Price" means the Furniture & Equipment Purchase Price plus the Inventory Purchase Price plus the Rental Equipment Purchase Price plus the Work In Progress Price plus the Home Shows Assumption Price minus the Warranty Work Reserve (Non-HVAC) minus the Customer Deposit Value minus the Vacation Pay Accrual.

The "Closing Cash Payment" means the Furniture & Equipment Purchase Price plus the Estimated Inventory Purchase Price plus the Estimated Rental Equipment Purchase Price plus the Estimated Work In Progress price plus the Home Shows Assumption Price minus the Warranty Work Reserve (Non-HVAC) minus the Estimated Customer Deposit Value minus the Estimated Vacation Pay Accrual.

**Section 2.3 Satisfaction of the Closing Cash Payment.**

The Closing Cash Payment shall be satisfied by the Transferee delivering to the Transferor the executed Loan Documents.

**Section 2.4 Reconciliation of the Purchase Price.**

- (1) No later than 22 days after Closing (or such other time as agreed to by the Parties), the Transferor shall deliver to the Transferee a certificate ("Purchase Price Certificate") setting out the Purchase Price, the amount of the Inventory Purchase Price, Rental Equipment Purchase Price, Work-in-Progress Price, Customer Deposit Value, Vacation Pay Accrual as well as the Open Customer Contract Value, together with the reconciled amount to the Closing Cash Payment (as well as any amount owing pursuant to Section 5.6(9)) owing by one Party to the other.
- (2) No later than the later of (i) 30 days after Closing; or (ii) five days after delivery of the Purchase Price Certificate; the reconciled amount shall be paid by the Party owing to the Party owed. Where the Transferor is the party owing, the reconciled amount shall be used to reduce the principal amount of the Loan, retroactive to the Closing. Where the Transferee is the party owing, the reconciled amount shall be added to the principal amount of the Loan, retroactive to the Closing.
- (3) If the Transferee does not agree with the Purchase Price as provided in the Purchase Price Certificate, the Transferee shall so inform the Transferor in writing within fifteen (15) Business Days after the Transferee's receipt of the Purchase Price Certificate, such writing to set forth the objections of the Transferee in reasonable detail. If the Transferee and the Transferor cannot reach agreement as to the Purchase Price within fifteen (15) Business Days after notification by the Transferee to the Transferor of a dispute, they shall forthwith refer the dispute to an accounting firm of recognized standing in Canada and mutually agreeable to the Transferee and the Transferor for resolution (the "Independent Accountant"). If the Transferee and the Transferor are unable to agree on the accounting firm that should serve as the Independent Accountant, then, no later than 15 Business Days after the first Party notified the other Party of its choice of Independent Accountant, each of the Transferee and the Transferor shall select a representative from the proposed accounting firm selected by it, and those two individuals shall select a third accounting firm of recognized standing in Canada (other than a firm which serves as

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the accountants or independent auditors of either of the Parties or any of its Affiliates) that shall serve as the Independent Accountant. If one of the Parties fails to select such a representative within the time set out therefor in the previous sentence, then the choice of Independent Accountant shall be made solely by the representative that was duly designated within the time provided therefor. The Independent Accountant shall offer the Parties the opportunity to provide written submissions regarding their positions as to the amount of, and computation of, the Purchase Price, which written submissions shall be provided to the Independent Accountant, if at all, no later than ten (10) Business Days after the date of referral of the dispute to the Independent Accountant. The determination of the Independent Accountant shall be made as an expert and not as an arbiter and shall be based solely on the written submissions by the Parties and their respective representatives, and the determination shall not be by independent review. The Independent Accountant shall deliver a written report resolving only the amount of the Purchase Price and setting forth the basis for such resolution within twenty (20) Business Days after the Parties have submitted in writing (or have had the opportunity to submit in writing but have not submitted) their positions as to the amount of, and computation of, the Purchase Price. In preparing its report, the Independent Accountant shall not assign a value to the Purchase Price other than one submitted by the Transferee, on the one hand, or the Transferor, on the other hand. The decision of the Independent Accountant under this Section 2.4(3) with respect to the Purchase Price shall be deemed final and conclusive and shall be binding upon the Parties. In addition, if the Transferee does not object to the Purchase Price within the fifteen (15) Business Day period referred to in the first sentence of this Section 2.4(3), the Purchase Price as set forth in the Purchase Price Certificate shall be deemed final and conclusive and binding upon the Parties.

- (4) The Transferee shall be entitled to have reasonable access to the books and records of the Transferor and the work papers of the Transferor prepared specifically in connection with the Purchase Price Certificate and, upon reasonable prior notice, shall be entitled to discuss such books and records and work papers with the Transferor and those persons responsible for the preparation thereof.
- (5) The Transferee and Transferor shall pay their own respective costs and expenses incurred in connection with the matters described in this Section 2.4, provided that the fees and expenses of the Independent Accountant selected to calculate the Purchase Price pursuant to this Section 2.4 shall be borne entirely by the Party whose assertion regarding the Purchase Price is not selected by the Independent Accountant.

**Section 2.5 Source Revenue.**

No later than 15 months after Closing (or such other time as agreed to by the Parties), the Transferee shall deliver to the Transferor a certificate setting out the Source Revenue, and the Transferee shall pay the Source Revenue to the Transferor by wire transfer of immediately available funds.

**Section 2.6 Sales Taxes.**

All amounts payable by Transferee to Transferor pursuant to this Agreement do not include any value-added, sales, use, consumption, multi-staged, personal property, customs, excise, stamp, transfer, or similar taxes, duties, or charges, (collectively "Sales Taxes"). If Transferor is required by law or by administration thereof to collect any applicable Sales Taxes from Transferee, then Transferee shall pay such Sales Taxes to Transferor concurrent with the payment of any consideration payable pursuant to this Agreement, unless Transferee qualifies for an exemption from any such applicable Sales Taxes, in which case Transferor shall accept, in lieu of payment of such applicable Sales Taxes, delivery by Transferee of such certificates, elections, or other documentation required by law or the administration thereof to substantiate and effect the exemption so claimed. The Parties will use commercially reasonable efforts in good faith to minimize any Sales Taxes payable under the Excise Tax Act (Canada) and similar acts in other jurisdictions on or before the Closing Date by, among other things, making such elections, providing such purchase exemption certificates and taking such steps as may be provided under such Laws (including making a joint election in a timely manner under Section 167 of the Excise Tax Act (Canada)). In the event the Canada Revenue Agency does not accept in whole or in part the election made under Section 167 of the Excise Tax Act (Canada), the Transferee shall pay to the Transferor, in addition to any amounts payable by the Transferee under this Agreement, all Sales Taxes payable pursuant to the Excise Tax Act (Canada) on or in respect of the property and services supplied hereunder and shall indemnify and save harmless the Transferor from any penalties and interest which may be payable by or assessed against the Transferor under the Excise Tax Act (Canada) as may be reasonably requested by Transferee or Transferor in connection with the Closing.

**Section 2.7 Income Tax Act Section 20(24) Election.**

The Transferor and Transferee shall, in accordance with the requirements of the Income Tax Act (Canada) and any applicable equivalent or corresponding provincial tax legislation, make and file, in a timely manner, a joint election to have the rules of subsection 20(24) of the Income Tax Act (Canada), and any equivalent or corresponding provision under applicable provincial tax legislation, apply to the obligations of the Transferor in respect of undertakings which arise from the operation of the Business and to which paragraph 12(1)(a) of the Income Tax Act (Canada) applies.

**Section 2.8 Transferred Assets.**

The Transferred Assets consist of the property, assets, rights and interests of the Transferor in the following only (collectively, the "Transferred Assets"):

- (a) *Inventory.* All of the Business's inventories held for resale or lease to customers in the Ordinary Course of Business, including (a) all Working Inventory and; (b) all Distressed Inventory.
- (b) *Rental Equipment.* All of the Business's heating and cooling equipment (including water heaters) leased or rented by customers of the Business.
- (c) *Work-in-Progress.* All of the raw materials, work in process, spare parts, finished products, wrapping, supply and packaging items, manufacturing

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supplies, and all other materials and supplies used or consumed in the production of finished goods.

- (d) *Furniture & Equipment.* All chattels (other than computer or telephone equipment) used in the Business and located in Licensed Areas or in premises leased or sub-leased from Transferee under leasing agreements effective at Closing, including office supplies and similar materials of Transferor used in the Business containing Sears Trademarks.
- (e) *BlackBerrys.* Provided the conditions in Section 5.14 are met, all "BlackBerry" branded hand-held communication devices assigned to and used by Hired Employees just prior to the Closing Time, and the telephone numbers associated therewith ("BlackBerrys").
- (f) *Contracts.* All of Transferor's right, title and interest in and to all contracts, agreements, instruments and arrangements at the Closing Time with (i) customers of the Business ("Customer Contracts"); (ii) Contractors; and (iii) Licensees ("Licensee Contracts") (but the Transferred Assets shall not include any right, title or interest in Intellectual Property of the licensor in the Licensee Contracts) (collectively, the "Contracts").
- (g) *Customer and Contractor Information.* Copies of all files, lists, data and other information relating to customers of the Business and relating to Licensees or Contractors at the Closing Time.
- (h) *Home Show Booths & Exhibition Space.* All of Transferor's right, title and interest in and to all contracts, agreements and arrangements at the Closing Time in respect of the exhibition shows set out at Schedule 2.8(h), as well as three exhibition booths constructed by Transferor for use at such shows ("Home Shows").
- (i) *Warranty Rights.* All warranty rights against manufacturers or suppliers relating to any of the Transferred Assets.

#### Section 2.9 Excluded Assets.

Notwithstanding anything in this Agreement to the contrary, the following assets, properties, rights and interests of Transferor (the "Excluded Assets") shall be excluded from and shall not constitute the Transferred Assets:

- (a) *Cash.* All cash, certificates of deposits, bank deposits, commercial paper, treasury bills and other cash equivalents of Transferor.
- (b) *Cheques.* All of Transferor's cheques and cheque books.
- (c) *Tax Refunds.* All refunds or credits of Taxes due to Transferor.
- (d) *Actions, etc.* All rights of action and claims of Transferor against third persons in the conduct of the Business arising before the Closing Time,

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other than rights of action and claims that relate to any of the Transferred Assets or the Assumed Liabilities.

- (e) *Corporate Records.* All of Transferor's corporate charters, minute and share record books, documents and records and corporate seals of Transferor.
- (f) *Intellectual Property.* All of Transferor's right, title and interest in and to its Intellectual Property.
- (g) *Goodwill.* The goodwill of Transferor relating to the Business at the Closing Time, including, without limitation, any goodwill associated with the right to use the Sears Trademarks;
- (h) *Real Property.* All of Transferor's real property rights, including under any lease or sub-lease, and any fixtures and leasehold improvements located at any Sears premises including, for greater certainty, in any Licensed Area;
- (i) *Computer & Telephone Equipment.* Subject to Section 2.8(e), all computer and telephone equipment
- (j) *Customer Deposits.* Any deposits provided by customers of the Business in relation to Open Customer Contracts;
- (k) *Oil Business.* All right, title and interest in Transferor's fuel oil business;
- (l) *Sears Floor Covering Centre Business.* All right, title and interest in the business operated under the "Sears Floor Covering Centre" / "Centre de revêtements de sol Sears" banner; and
- (m) *Rights Under Agreement.* All of Transferor's rights under this Agreement.

#### Section 2.10 Post-Closing Receipts.

If at any time following the Closing Time, Transferor or any of its Affiliates receives, or comes into possession of any of the Transferred Assets or any receipts, proceeds, cheques, securities or other property of any kind comprising, arising out of or derived from the Transferred Assets, Transferor shall immediately deliver the same to Transferee, with such endorsements, transfers or assignments as may be necessary or desirable to ensure that Transferee receives the immediate and full benefit thereof.

#### Section 2.11 Assumed Liabilities.

On and subject to the terms and conditions contained in this Agreement, Transferee shall at the Closing Time, assume and agree to pay, perform and discharge when due the Assumed Liabilities, and Transferee will at the Closing Time only assume and agree to pay, perform and discharge when due the Assumed Liabilities. For further clarity, Transferee will not assume or become responsible for any Liability of Transferor not constituting an Assumed Liability. The Assumed Liabilities consist of the following (collectively, the "Assumed Liabilities"):

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- (a) *Contractor and Licensee Contracts.* All Liabilities of Transferor accruing on or after the Closing Time under the Licensee Contracts and Contracts with Contractors (excluding only those Liabilities owing to Licensees or Contractors occurring on or after the Closing Time due to a breach of such Contract prior to the Closing Time).
- (b) *Work in Progress.* All Liabilities of Transferor related to Open Customer Contracts.
- (c) *Warranty Work.* All Liabilities in respect of Warranty Work after the Closing Time; all Liabilities in respect of Warranty Work related to Open Customer Contracts; and all Liabilities in respect of Warranty Work before the Closing time related to Products and Services that are not related to heating, ventilation and air conditioning equipment (collectively, the "Assumed Warranty Work").
- (d) *Accrued Vacation.* All Liabilities of Transferor in respect vacation pay entitlement of Hired Employees accrued prior to Closing but not yet taken by such Hired Employees at the Closing ("Vacation Pay Accrual").
- (e) *Employees.* All Liabilities in respect of the Hired Employees to the extent that such Liabilities arise on or after the Closing Time.
- (f) *BlackBerrys.* All Liabilities in respect of Blackberries arising after the Closing Time, excluding all Liabilities of Transferor to the service provider thereof, Bell Canada.
- (g) *Home Shows.* All Liabilities in respect of Home Shows arising after the Closing Time.

**Section 2.12 Excluded Liabilities.**

Except as specifically provided in Section 2.11, Transferee shall not assume and shall not agree to pay, perform or discharge any Liabilities of Transferor, including those which are not Assumed Liabilities, including any Liabilities which arise in connection with or relate to the business of Transferor that is not the Business, all of which Liabilities are "Excluded Liabilities." Without limiting the generality of the foregoing, Transferee shall have no obligations in respect of any of the following Liabilities:

- (a) *Contracts, etc.* All Liabilities (other than Assumed Liabilities) of Transferor accruing prior to the Closing Time under contracts (other than Open Customer Contracts or in relation to Assumed Warranty Work), and Permits including all Liabilities in respect of any breach of representation, warranty or covenant contained in, or for any claim for indemnification pursuant to, any contract (other than Open Customer Contracts or in relation to Assumed Warranty Work) or Permit to the extent that such breach or claim arose out of Transferor's performance or non-performance thereunder prior to the Closing Time, regardless of when said breach or claim is asserted.

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- (b) *Employees.* (i) Any Liabilities accruing from or being determined by reference to any period of time prior to the Closing Time relating to the employment by the Transferor of any of the Home Services Employees (other than Vacation Pay Accrual); (ii) any Liabilities of the Transferor accruing before or after the Closing Time in respect of any Employee Plan, the Transferor Pension Plan or applicable Laws.
- (c) *Actions.* Any Liabilities of Transferor arising out of or related to any Claim against Transferor which adversely affects the Transferred Assets and which shall have been asserted on or prior to the Closing Time or the basis of which shall have arisen on or prior to the Closing Time.
- (d) *Excluded Assets.* Any Liabilities arising out of any of the Excluded Assets.
- (e) *Product Liabilities.* All Liabilities in respect of injury to or death of Persons or damage to or destruction of property not constituting part of the Transferred Assets, including product liability claims and worker's compensation claims arising out of the conduct of the Business prior to the Closing Time, regardless of when said Liability is asserted, including any Liability for indirect, consequential or punitive damages in connection with the foregoing.
- (f) *Taxes.* All Liabilities for taxes collected, collectible, payable or remittable by Transferor, including taxes payable or accruing in respect of the Business prior to the Closing Time.
- (g) *Violation of Laws.* Any violation of or failure to comply with any Laws (including Laws relating to franchises or bulk sales) or any Permit by the Business, prior to the Closing Time or in connection with the sale and transfer of the Transferred Assets.
- (h) *Entering into the Agreement.* Any Liabilities of Transferor resulting from entering into, performing its obligations pursuant to or consummating the transactions contemplated by, this Agreement.

**ARTICLE 3  
REPRESENTATIONS AND WARRANTIES OF THE TRANSFEROR**

**Section 3.1 Representations and Warranties of the Transferor.**

The Transferor represents and warrants as follows to the Transferee and acknowledges that the Transferee is relying upon the representations and warranties in connection with its purchase of the Transferred Assets:

**Corporate Matters**

- (a) **Incorporation and Qualification.** The Transferor is a corporation formed and existing under the Laws of its jurisdiction of formation and has the



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corporate power to own and operate its property, carry on its business and enter into and perform its obligations under this Agreement.

- (b) **Corporate Authorization.** The execution and delivery of and performance by the Transferor of this Agreement have been authorized by all necessary corporate action on the part of the Transferor.
- (c) **No Conflict.** The execution and delivery of, and performance by the Transferor of, the transaction of purchase and sale contemplated by this Agreement:
  - (i) do not constitute or result in a violation or breach of, or conflict with, or allow any Person to exercise any rights under, any of the terms or provisions of its articles or by-laws or any Contract or any other agreement to which the Transferor is a party;
  - (ii) do not result in a breach of, or cause the termination or revocation of, any Authorization held by the Transferor that is necessary to the ownership of the Transferred Assets, which would reasonably be expected to have a Material Adverse Effect; and
  - (iii) do not result in the violation of any Law which would reasonably be expected to have a Material Adverse Effect.
- (d) **Required Authorizations.** Except for Competition Act Clearance, no filing with, notice to, or Authorization of, any Governmental Entity is required on the part of the Transferor as a condition to the lawful completion of the transactions contemplated by this Agreement where the failure to make the filing, give the notice or obtain the Authorization would reasonably be expected to have a Material Adverse Effect.
- (e) **Third Party Consents.** Except for acceptance by Affected Employees of Offers of Employment, there is no requirement to obtain any consent, approval or waiver of a party under any contract, license, lease or instrument to which the Transferor is a party to the completion of the transactions contemplated by this Agreement where the failure to obtain such consent would reasonably be expected to have a Material Adverse Effect.
- (f) **Execution and Binding Obligation.** This Agreement has been duly executed and delivered by the Transferor and constitutes a legal, valid and binding agreement of it enforceable against it in accordance with its terms, subject to any limitation under applicable Laws relating to (i) bankruptcy, winding-up, insolvency, arrangement, fraudulent preference and conveyance, assignment and preference and other laws of general application affecting the enforcement of creditors' rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.

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- (g) **No Other Agreements to Transfer.** Except for the Transferee's right under this Agreement, to the knowledge of the Transferor, no Person has any contractual right or privilege for the purchase or acquisition from the Transferor of any of the Transferred Assets.
- (h) **Residence of the Transferor.** The Transferor is not a non-resident of Canada within the meaning of the Tax Act.
- (i) **Branded Concession Agreement.** Transferor has the right to execute and deliver the Branded Concession Agreement and to perform its obligations under it.

#### **General Matters Relating to the Business**

- (j) **Compliance with Laws.** The Transferor is conducting the Business in compliance with all applicable Laws, except for acts of non-compliance which would not reasonably be expected to have a Material Adverse Effect.
- (k) **Authorizations.** The Transferor is qualified, licensed or registered to carry on business in all provinces and territories of Canada. The Transferor has all Authorizations which are necessary for it to conduct the Business, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect. Such Authorizations are valid, subsisting and in good standing and there are no outstanding defaults or breaches under them on the part of the Transferor which would reasonably be expected to have a Material Adverse Effect.
- (l) **Solvency.** Transferor is not now insolvent and will not be rendered insolvent by transactions contemplated by this Agreement. As used in this paragraph, "insolvent" means the sum of debts and other probable liabilities of Transferor exceeds the present fair market value of Transferor's assets or that the Transferor is unable to pay its debts as they become due.

#### **Matters Relating to the Assets**

- (m) **The Assets Generally.** The Transferor owns the Transferred Assets, free and clear of all Liens, except for Permitted Liens. No other Person owns the Transferred Assets.
- (n) **No Options, etc. to Purchase Assets.** No Person has any contractual right or privilege for the purchase or other acquisition from the Transferor of any Transferred Assets except in the Ordinary Course of Business.
- (o) **Working Inventory.** All items included in Working Inventory are quality usable and, with respect to finished goods, saleable in the Ordinary Course of Business of the Transferor. Transferor is not in possession of any Working Inventory not owned by Transferor, including goods already

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sold. Working Inventory now on hand was purchased in the Ordinary Course of Business of the Transferor.

- (p) **As-Is, Where-Is Condition of Transferred Assets.** The Transferor makes or provides no warranty or representation, and the Transferee hereby waives any warranty or representation, in each case express or implied, as to the quality, merchantability, fitness for a particular purpose, conformity to samples, or condition of the Transferred Assets or any part thereof.
- (q) **Environmental Matters.** With respect to the Transferred Assets, Transferor is, and at all times has been, in full compliance with, and has not been and is not in violation of or liable under, any Environmental Laws. Transferor does not have any basis to expect any actual or threatened order, notice or other communication from any Governmental Entity or private citizen acting in the public interest of any actual or potential violation or failure to comply with Environmental Laws, or any actual or threatened obligation to undertake or bear the cost of any environmental, health and safety liabilities with respect to any of the Transferred Assets ("Environmental Liabilities").

#### Financial Matters

- (r) **No Liabilities.** To the knowledge of the Transferor, the Business has no liabilities of the type required to be reflected as liabilities on a balance sheet prepared in accordance with Accounting Standards, except for liabilities that would not reasonably be expected to have a Material Adverse Effect.
- (s) **Tax Matters.** Transferor has paid all Taxes which are due and payable by it or which have accrued with respect to the Business and the Transferred Assets on or before the Closing Date. There are no actions, suits, proceedings, investigations, enquiries or claims now pending or made or, to the best of the knowledge of Transferor, threatened against Transferor in respect of Taxes that may affect the Business or the Transferred Assets. Transferor has withheld from each amount paid or credited to any Person the amount of Taxes required to be withheld therefrom and has remitted such Taxes to the proper tax or other receiving authorities within the time required under applicable Law. Transferor is not a non-resident of Canada within the meaning of the Tax Act.

#### Particular Matters Relating to the Business

- (t) **Employees.** With respect to the Home Services Employees in their current employment with the Transferor and their current positions with the Business:
  - (i) Schedule 3.1(t) provides a breakdown of the number of Home Services Employees, their titles, and province of employment, as at the day of execution of this Agreement;

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- (ii) the Transferor is in material compliance with all Laws respecting employment including, without limitation, wages and hours of work, occupational health and safety, workers' compensation, and there are no outstanding claims, complaints, investigations or orders under any such Laws;
- (iii) there is no unfair labour practice complaint, grievance or arbitration proceeding pending or, to the knowledge of the Transferor, threatened against the Transferor that would have a Material Adverse Effect;
- (iv) the Transferor is not a party to any collective agreement, no collective agreement currently exists relating to the Home Services Employees, no collective agreement is being negotiated, or has been negotiated, by the Transferor or any other Person relating to the Business, and the Transferee will not be bound by any collective agreement arising from this Transaction;
- (v) no trade union, council of trade unions, employee bargaining agency or affiliated bargaining agent holds bargaining rights with respect to any of the Home Services Employees by way of certification, interim certification, voluntary recognition, or succession or common employer rights, or has applied or, to the knowledge of the Transferor, threatened to apply to be certified as the bargaining agent of any of the Home Services Employees. To the knowledge of the Transferor there is no threatened or pending union organizing activities involving the Home Services Employees. There is no labour strike, dispute, work slowdown or stoppage pending or involving or, to the knowledge of the Transferor, threatened against the Transferor in relation to the Business or the Home Services Employees;
- (vi) all amounts due or accrued due for all salary, wages, bonuses, commissions, vacation pay, and benefits under the employment contracts of the Home Services Employees and the Employee Plans have been paid or accrued prior to the Closing Time;
- (vii) to the knowledge of the Transferor, there are no outstanding assessments, penalties, fines, liens, charges, surcharges, or other amounts due or owing pursuant to any workplace safety or insurance/workers' compensation legislation in respect of the Business that would have a Material Adverse Effect, and the Transferor has not been reassessed in any material respect under such legislation during the past three (3) years, and to the knowledge of the Transferor, no audit of such business is currently being performed pursuant to any applicable workplace safety or insurance/workers' compensation legislation. To the knowledge of the Transferor, there are no claims or potential claims that may materially adversely affect the Transferor's accident cost experience pursuant to any applicable

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workplace or insurance/worker's compensation legislation, regulation or rules;

- (viii) to the knowledge of the Transferor, there are no charges pending under applicable occupational health or safety laws in any province or territory of Canada ("OHSA") in respect of the Transferor or the Transferred Assets that would have a Material Adverse Effect. The Transferor has complied in all material respects with any orders issued under OHSA and there are no appeals of any orders under OHSA currently outstanding;
  - (ix) all employee data and information relating to the terms and conditions of employment of the Home Services Employees is true and correct in all material respects as of the date of the execution of this Agreement, and will remain in effect as to the terms of conditions of employment until the Closing Time;
  - (x) the Transferor makes or provides no warranty or representation, and the Transferee hereby waives any warranty or representation, in each case express or implied, as to the past conduct of any Home Services Employee or the future conduct or suitability of any such employee for employment with the Transferee.
- (u) **Employee Plans.**
- (i) Schedule 3.1(u) lists all Employee Plans.
  - (ii) All Employee Plans have been established, registered and administered in compliance with all Laws except where failure to do so would not reasonably be expected to have a Material Adverse Effect.
  - (iii) The Transferor has made all contributions and paid all premiums in respect of each Employee Plan in a timely fashion in accordance with the terms of each Employee Plan and applicable Laws, except where failure to do so would not reasonably be expected to have a Material Adverse Effect.
  - (iv) Other than routine claims for benefits, to the knowledge of the Transferor, no Employee Plan is subject to any pending action, investigation, examination, claim (including claims for Taxes) or any other proceeding initiated by any Person which would reasonably be expected to have a Material Adverse Effect.
- (v) **Business Personal Information.** Transferor has written privacy policies respecting its handling of all Business Personal Information, including without limitation, in connection with collecting, receiving, storing, processing, using, accessing, retaining, transferring and disclosing of

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**Business Personal Information.** Transferor has made such privacy policies readily available to such individuals. Such privacy policies are adequate to enable Transferor to conduct the Business as it is currently being conducted. Transferor has materially complied with such privacy policies and all privacy Laws with respect to the handling of all Business Personal Information, including the obtaining of all consents as required under privacy Laws for: (i) the handling of Business Personal Information in connection with the Business; and (ii) the disclosure of the Business Personal Information to Transferee in connection with the transactions contemplated by this Agreement.

- (w) **Brokers.** No broker, agent or other intermediary is entitled to any fee, commission or other remuneration in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Transferor.

#### ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE TRANSFEREE

##### Section 4.1 Representations and Warranties of the Transferee.

The Transferee represents and warrants as follows to the Transferor and acknowledges and confirms that the Transferor is relying on such representations and warranties in connection with the sale by the Transferor of the Transferred Assets:

- (a) **Incorporation and Corporate Power.** The Transferee is a corporation incorporated and existing under the laws of its jurisdiction of incorporation. The Transferee has the corporate power to enter into and perform its obligations under this Agreement.
- (b) **Incorporation and Affiliate Status of ISO.** ISO is a corporation incorporated and existing under the laws of its jurisdiction of incorporation. ISO is an Affiliate of the Transferee.
- (c) **Corporate Authorization.** The execution and delivery of and performance by the Transferee of this Agreement have been authorized by all necessary corporate action on the part of the Transferee.
- (d) **No Conflict.** The execution and delivery of, and performance by the Transferee of, the transaction of purchase and sale contemplated by this Agreement:
- (i) do not constitute or result in a violation or breach of, or conflict with, or allow any Person to exercise any rights under, any of the terms or provisions of its articles or by-laws or under any material contract, license or instrument to which the Transferee or ISO is a party; and
- (ii) do not result in a breach of, or cause the termination or revocation of, any Authorization held by the Transferee or ISO that is necessary to

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the ownership of the Transferred Assets or the operation of the Business, which would reasonably be expected to have a Material Adverse Effect; and

- (iii) do not result in the violation of any Law which would reasonably be expected to have a Material Adverse Effect.
- (e) **Required Authorizations.** Except for Competition Act Clearance, no filing with, notice to or Authorization of any Governmental Entity is required on the part of the Transferee as a condition to the lawful completion of the transactions contemplated by this Agreement.
- (f) **Execution and Binding Obligation.** This Agreement has been duly executed and delivered by the Transferee and constitutes legal, valid and binding agreements of the Transferee, enforceable against it in accordance with its terms, subject only to any limitation under applicable Laws relating to (i) bankruptcy, winding-up insolvency, arrangement, fraudulent preference and conveyance, assignment and preference and other similar Laws of general application affecting creditors' rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies including specific performance and injunction.
- (g) **ISO Guarantee.** ISO has the right to execute and deliver ISO Guarantee and to perform its obligations under it.
- (h) **Loan.** At Closing, (i) the Transferee will have the right to execute and deliver the Loan Documents and to perform its obligations thereunder; and (ii) the guarantors to the Loan will have the right to execute and deliver their respective guarantees and to perform their respective obligations under them.
- (i) **Solvency.** Transferee is not now insolvent and will not be rendered insolvent by transactions contemplated by this Agreement. ISO is not now insolvent and will not be rendered insolvent by transactions contemplated by this Agreement. As used in this paragraph, "insolvent" means the sum of debts and other probable liabilities of Transferee or ISO, as the case may be, exceeds the present fair market value of such Person's assets or that the Transferee or ISO, as the case may be, is unable to pay its debts as they become due.
- (j) **Transferee's Financial Position.** The Transferee will be able on Closing to meet the financial covenants established in the Branded Concession Agreement.
- (k) **ISO's Financial Position.** ISO is able to meet any and all financial covenants it has covenanted with its lenders.

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- (l) **Litigation.** There are no actions, suits, appeals, claims, applications, investigations, orders, proceedings, grievances, arbitrations or alternative dispute resolution processes in progress, pending, or to the Transferee's knowledge, threatened against the Transferee or ISO, which prohibit, restrict or seek to enjoin the transactions contemplated by this Agreement.
- (m) **Branded Concession Agreement.** Transferee has the right to execute and deliver the Branded Concession Agreement and to perform its obligations under it.
- (n) **Brokers.** No broker, agent or other intermediary is entitled to any fee, commission or other remuneration in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Transferee or ISO.
- (o) **Due Diligence by Transferee.** The Transferee acknowledges that on Closing:
  - (i) Transferee has conducted to its satisfaction an independent investigation of the business, operations, assets, liabilities and financial condition of the Business in making the determination to proceed with the transactions contemplated by the Agreement, has relied solely on the results of its own independent investigation and the representations and warranties in Article 3;
  - (ii) in connection with its investigation of the Business, Transferee has received certain projections and other forecasts including, without limitation, projected and historical financial statements, income statements showing field profits, cash flow items and certain business plan information related to the Business and the Transferor;
  - (iii) Transferee is familiar with and understands that there are uncertainties inherent in providing projections and forecasts and, accordingly, is taking full responsibility for making its own evaluation of the adequacy and accuracy of all such projections and forecasts;
  - (iv) Transferee has no claim under this Agreement against anyone with respect to the accuracy of such projections and forecasts, and the Transferor has made no representation or warranty with respect to such projections and forecasts;
  - (v) the representations and warranties by the Transferor in Article 3 constitute the sole and exclusive representations and warranties of the Transferor to the Transferee in connection with the transactions contemplated hereby, and the Transferee understands, acknowledges and agrees that all other representations and warranties of any kind or nature expressed or implied (including, without limitation, any



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relating to the future or historical financial condition, results of operations, assets or liabilities of the Business and the Transferor or the quality, quantity or condition of the assets of the Business) are specifically disclaimed by the Transferor; and

- (vi) the Transferor makes or provides no warranty or representation, express or implied, as to the quality, merchantability, fitness for a particular purpose, conformity to samples, or condition of the Transferred Assets or any part thereto;
- (vii) the Transferor may not have conducted background checks on Home Services Employees, or such background checks, if conducted, may be insufficient, inaccurate or out of date. Accordingly, the Transferor makes or provides no warranty or representation, express or implied, as to the adequacy of any background check made on a Home Services Employee, past conduct of any Home Services Employee or the future conduct or suitability of any such employee for employment with the Transferee.
- (p) **Breach.** The Transferee is not aware that any of the representations and warranties in Article 3 are incorrect in any material respect.
- (q) **Investment Canada Act.** The Transferee is not a "non-Canadian" within the meaning of the Investment Canada Act.

#### ARTICLE 5

##### PRE-CLOSING COVENANTS OF THE PARTIES

###### Section 5.1 Conduct of Business Prior to Closing.

Except as otherwise contemplated by this Agreement or the Schedules, during the Interim Period, the Transferor will conduct the Business in the Ordinary Course of Business and consistent with past practices.

###### Section 5.2 Access for Due Diligence.

- (1) Subject to applicable Law, during the Interim Period, a Party (hereinafter, in this section, the Party subject to the due diligence investigation of the other Party is referred to as the "Investigated Party", and where the Investigated Party is the Transferor, it is understood and agreed that the due diligence investigation will be limited to the Business, and where the Investigated Party is the Transferee, it is understood and agreed that the due diligence investigation will include ISO) will, upon reasonable notice,
  - (a) permit the other Party, its legal counsel, accountants and other representatives, to have reasonable access during normal business hours to the premises, assets, contracts, books and records and senior personnel of the Investigated Party;

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- (b) provide the other Party with copies of all such contracts, books and records and other existing documents and data as that Party may reasonably request;
  - (c) provide the other Party with such additional financial, operating and other relevant data and information as that Party may reasonably request; and
  - (d) cooperate and assist, to the extent reasonably requested by the other Party, with that Party's investigation of the properties, assets and financial condition related to the Investigated Party.
- (2) A Party may not conduct any invasive environmental testing or assessments without the prior written consent of the Investigated Party and any applicable landlord.
- (3) The Investigated Party is not required to disclose any information to the other Party where such disclosure is prohibited by applicable Law or by the terms of any agreement.
- (4) A Party shall not contact any employee, supplier, landlord or Party to a contract with the Investigated Party except as expressly may be agreed by the Investigated Party in its sole discretion.

#### **Section 5.3 Confidentiality.**

The Transferee acknowledges that ISO signed a confidentiality agreement with the Transferor dated October 7, 2011. The Transferee agrees that, except as provided in this Section 5.3, the confidentiality agreement continues to apply and ISO is bound by its terms. The Transferee agrees to also be bound by the terms and conditions of such confidentiality agreement as if it were ISO. Upon Closing, the confidentiality agreement will terminate as between the Transferee and the Transferor, but will continue in accordance with its terms as between ISO and the Transferor. If the Closing does not occur, the confidentiality agreement will remain in effect between ISO and the Transferor in accordance with and subject to its terms and will remain in effect between the Transferee and the Transferor in accordance with and subject to its terms and this paragraph.

#### **Section 5.4 Actions to Satisfy Closing Conditions.**

Subject to this Article 5, the Transferor will use its commercially reasonable efforts to ensure compliance with all of the conditions set forth in Section 6.1 and the Transferee will use its commercially reasonable efforts to ensure compliance with all of the conditions set forth in Section 6.2.

#### **Section 5.5 Notice of Assignment to Licensees and Contractors.**

The Transferor will use its commercially reasonable efforts to notify each of the Licensees and Contractors prior to Closing that, conditional upon Closing and effective at the Closing Time, their agreements will be assigned to Transferee.

The Transferor will use its commercially reasonable efforts to notify each of the Licensees prior to Closing that, conditional upon Closing and effective at the Closing Time,

the rights to use trade-marks under the Licensee Contracts will continue for the duration of the terms of such Contracts.

**Section 5.6 Filings and Authorizations.**

- (1) Each of the Transferor and the Transferee, as promptly as practicable after the execution of this Agreement, will use its commercially reasonable efforts to make all filings with, give all notices to, and obtain all Authorizations from, Governmental Entities that are necessary for the lawful completion of the transactions contemplated by this Agreement.
- (2) To the extent required by Law, each of the Transferor and the Transferee will make, or cause to be made, all filings that are required in connection with obtaining Competition Act Clearance. The Transferee will pay all costs, fees and expenses including all filing fees incurred in connection with the Competition Act Clearance. The Transferee will have primary responsibility for attempting to obtain the Competition Act Clearance and the Transferor and the Transferee will coordinate and cooperate in exchanging information and supplying assistance that is reasonably requested in connection with this Section 5.6, including providing each other with advanced copies and reasonable opportunity to comment on all notices and information supplied to or filed with any Governmental Entity (except for notices and information which the Transferor or the Transferee, in each case acting reasonably, considers highly confidential and sensitive, which may be provided on a confidential and privileged basis to outside counsel of the other Party), and all notices and correspondence received from any Governmental Entity.
- (3) The Transferee and the Transferor will take all commercially reasonable actions necessary to expedite obtaining the Competition Act Clearance.
- (4) Each Party shall use its commercially reasonable efforts to satisfy all requests for additional information and documentation received in connection with obtaining the Competition Act Clearance.
- (5) Each Party shall consult with, and consider in good faith any suggestions or comments made by the other Parties with respect to submissions relating to the Competition Act Clearance process. Each Party shall promptly furnish such information and assistance as may reasonably be requested by any other Party in order to prepare submissions relating to the Competition Act Clearance process (including information which a Party, acting reasonably, considers competitively sensitive which may be provided on a confidential basis to outside counsel of the other Party on the condition that it not be revealed to any Person, including such counsel's client, without the disclosing Party's consent).
- (6) Each Party shall inform the other Parties or their respective counsel on a regular basis as to the status of the Competition Act Clearance process and shall immediately provide each of the other Parties or their respective counsel with copies of any material correspondence from or to the Commissioner or her staff.

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- (7) Each Party shall not participate in any substantive meeting or discussion (whether in person, by telephone or otherwise) with the Commissioner or her staff in connection with obtaining the Competition Act Clearance unless it consults with the other Parties in advance and gives the other Parties the opportunity to attend and participate thereat (except where the Commissioner or her staff expressly requests that the other(s) should not be present at the meeting or discussion or part or parts of the meeting or discussion; or except where competitively sensitive information may be discussed, in which case reasonable effort will be made to allow external legal counsel to participate).
- (8) None of the Parties shall take any action that will have, or might reasonably be expected to have, the effect of delaying, impairing or impeding the granting of the Competition Act Clearance.
- (9) If Closing occurs, the Transferee shall be entitled to deduct one-half of the filing fee incurred for obtaining Competition Act Clearance (\$25,000) from payment of the Purchase Price, at the time of reconciliation of the Purchase Price.

**Section 5.7 Notice of Untrue Representation or Warranty.**

During the Interim Period, the Transferee will promptly notify the Transferor if the Transferee becomes aware that any of the Transferor's representations or warranties is untrue or inaccurate in any material respect or that the Transferor has failed to perform or fulfil any of their covenants or obligations under this Agreement in any material respect. If the Closing occurs, (i) the Schedules are deemed to be amended to qualify the applicable representations and warranties, and (ii) the Transferee is deemed to have waived in full any breach or inaccuracy or failure to perform of any of the representations, warranties, covenants and obligations of the Transferor of which the Transferee has knowledge of at the Closing.

**Section 5.8 Risk of Loss.**

If, prior to Closing, all or any part of the Business assets are destroyed or damaged by fire or any other casualty or are appropriated, expropriated or seized by any Governmental Entity but which does not have a Material Adverse Effect, the representations and warranties of the Transferor that are not true and correct in all material respects as of the Closing Date solely as a result of such destruction, damage, appropriation, expropriation or seizure will be deemed to be true and correct in all material respects as of the Closing Date for all purposes of this Agreement. The Transferee will complete the transactions contemplated by this Agreement without reduction of the Purchase Price, in which event all proceeds of any insurance or compensation will be payable to the Transferee and all right and claim of the Transferor to any such amounts not paid by the Closing Date will be assigned to the Transferee.

**Section 5.9 Home Services Employee Personal Information and Access.**

- (1) On the date of the public announcement of this Agreement, the Transferor shall provide the Transferee with a list containing, with respect to the Home Services Employees, the names, titles, location of employment, original date of hire by the Transferor or the Transferor's predecessor, current hourly wage or base salary,

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particulars of other compensation arrangements or termination pay arrangements, and vacation pay entitlement. No later than seven (7) days after the public announcement of this Agreement, the Transferor shall provide to the Transferee (i) reasonable access to consult, but not copy, other Home Services Employee Personal Information regarding such Home Services Employees; and (ii) the Termination Pay Formula.

- (2) The "Home Services Employee Personal Information" will consist of the names, titles and respective terms and conditions of employment of the Home Services Employees, including, without limitation, title and job description, location of employment, original date of hire by the Transferor or the Transferor's predecessor, current hourly wage or base salary, particulars of other compensation arrangements or termination pay arrangements, copies of written employment agreements, Employee Plans, or perquisites, vacation pay entitlement, together with recent performance reviews as applicable and to the extent available, and any other relevant employment information pertaining to such Home Services Employees.
- (3) After the public announcement of this Agreement, the Transferor shall act reasonably in allowing the Transferee the opportunity to meet with and/or assess the Home Services Employees prior to making any employment offers or providing any notices of continuation of employment.

#### **Section 5.10 Notice of Non-Transferring Employees.**

- (1) On or before 12:00 noon (Toronto time) on February 4, 2013, or such other time as agreed to by the Parties, but in any event no later than 12:00 noon (Toronto time) 10 Business Days prior to Closing, the Transferee shall provide notice to the Transferor of the Non-Transferring Employees. The selection of Non-Transferring Employees is in the Transferee's sole discretion, provided the Transferee abides by all applicable Laws and in making its selection does not discriminate against employees who are on maternity, paternity or parental leave, or who are on short-term disability leave. The Parties agree that the Transferee's selection of employees who are on long term disability leave or on workers compensation leave for inclusion on the notice of Non-Transferring Employees shall not be construed as discriminatory.
- (2) For the avoidance of doubt, (i) any Non-Quebec Home Services Employee that is not on the notice of Non-Transferring Employees shall be deemed an Affected Employee; and (ii) failure to provide the notice of Non-Transferring Employees within the deadline provided above shall be deemed to constitute notice that the only Non-Transferring Employees shall be the Home Services Employees who are on long term disability leave or on workers compensation leave at the time of the deadline indicated in the previous paragraph.

#### **Section 5.11 Employee Transfer**

- (1) On or before February 11, 2013, or such other date as agreed to by the Parties, but in any event no later than eight (8) Business Days prior to Closing, draft Offers of Employment with respect to each Affected Employee, and draft Notices of Continuation of Employment with respect to each Quebec Home Services Employee

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(such Notices being in the language of preference of such Quebec Home Services Employee or, if the language preference is not known, shall be in French), shall be provided by the Transferee to the Transferor, and shall be subject to approval of the Transferor, which approval must be provided no later than two (2) Business Days following receipt (or approval shall otherwise be deemed to be given) and shall not be withheld unless such Offers of Employment or Notices of Continuation of Employment (i) do not comply with the terms and conditions of this Agreement (including use of the required form); or (ii) contain inaccurate data.

- (2) On February 18, 2013 or such other date as agreed to by the Parties, but in any event no later than six (6) Business Days prior to Closing, the Transferee shall make Offers of Employment in the form approved by Transferor to the Affected Employees. Affected Employees who accept the Offers of Employment prior to Closing shall become employees of the Transferee conditional upon Closing, and effective at the Closing Time. In connection with the Transferee presenting Offers of Employment to the Affected Employees, the Transferor agrees to attend all such presentations made in person by representatives of Transferee, and at such time to advise each such Affected Employee that their function will no longer be available at Sears after Closing.
- (3) On February 18, 2013, or such other date as agreed to by the Parties, but in any event no later than six (6) Business Days prior to Closing, the Transferee shall provide Notices of Continuation of Employment to all Quebec Home Services Employees. Such Quebec Home Services Employees shall become employees of the Transferee conditional upon Closing, and effective at the Closing Time.
- (4) On or before February 25, 2013, or such other date as agreed to by the Parties, the Transferee shall notify the Transferor which of the Affected Employees, if any, accepted an Offer of Employment with the Transferee.

**Section 5.12 Employment and Benefit Arrangements Prior to Closing.**

- (1) On or as soon as reasonably practicable after the Closing Time, but effective as of the Closing Time, Transferee shall, at its own expense, establish and register with the applicable Governmental Authorities a registered defined contribution pension plan ("Transferee Pension Plan") for the Hired Employees to provide pension benefits in respect of service with Transferee after the Closing Time. The employer and member contribution rates under the Transferee Pension Plan shall be the same as or greater than the corresponding contribution rates under the Transferor Pension Plan immediately prior to the Closing Time. Hired Employees who participated in the defined contribution component of the Transferor Pension Plan immediately prior to the Closing Time shall participate in the Transferee Pension Plan effective as of the Closing Time and the Transferee Pension Plan shall recognize the membership of the Hired Employees in the Transferor Pension Plan for the purposes of determining eligibility for membership in and entitlement to benefits under the Transferee Pension Plan. If permitted under the applicable pension standards legislation, the Transferee Pension Plan shall permit the Hired Employees to transfer their account

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balance(s) from the Transferor Pension Plan to their account balance under the Transferee Pension Plan.

- (2) Prior to the Closing Time, the Transferor shall be responsible for and will make all payments and discharge all liabilities accrued or relating to events occurring on and prior to the Closing Time in respect of all the Home Services Employees, including, without limitation, all liabilities in respect of salary, wages, Employee Plans, benefits, bonuses, perquisites, commissions, Transferor Pension Plan and benefits, vacation pay, disputes or claims (whether reported or not), lawsuits or legal proceedings.
- (3) Between the time of the execution of this Agreement and the Closing Time, the Transferor shall be solely liable and responsible, and will hold the Transferee and its successors and assigns harmless from and against all claims and continue to be responsible for and will discharge all obligations arising from the termination of employment of any of the Home Services Employees and/or independent contractors, occurring prior to the Closing Time, including but not limited to, severance pay, termination pay, notice of termination, damages for dismissal without cause, a claim for reinstatement and any and all benefits or claims, including, without limitation, wages, sick pay or vacation pay, overtime pay, pension/retirement benefits (statutory or otherwise) and bonus entitlement, accrued up to the Closing Time.
- (4) The Transferor shall be solely liable and responsible, and will hold the Transferee and its successors and assigns harmless from and against all claims (including any claim for wrongful or constructive dismissal), losses, lawsuits or legal proceedings, and expenses whatsoever which may be brought against or suffered by the Transferee, or which the Transferee may sustain, pay or incur as a result of any manner or thing arising out of, resulting from, attributable to or connected with any of the Non-Transferring Employees.
- (5) The Transferor shall retain responsibility for and satisfy its obligations with respect to all pension benefits provided under the Transferor Pension Plan accrued up to and including the Closing Time in respect of the Home Services Employees in accordance with the terms of the Transferor Pension Plan and all applicable Laws. Effective as of the Closing Time, the Hired Employees shall cease to accrue further pension benefits under the Transferor Pension Plan. The Transferee shall not assume any liability or obligation with respect to the Transferor Pension Plan. The Transferee and the Transferor acknowledge and agree that all provisions contained in this Section 5.12 with respect to employees are included for the sole benefit of the Transferee and the Transferor, and that nothing herein, whether express or implied, shall create any third party beneficiary or other rights in any other person, including, without limitation, any of the current or former employees, or any dependent or beneficiary thereof.

**Section 5.13 Business Personal Information.**

- (1) For all Business Personal Information disclosed to or collected by a Party, that Party will put in place reasonable security arrangements to secure the Business Personal

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Information against unauthorized or unintended access, use or disclosure. All such security measures shall be appropriate to the sensitivity of the Business Personal Information.

- (2) In the event the Closing does not occur, each Party, in respect of all Business Personal Information collected from the other Party:
  - (a) shall either destroy that Business Personal Information or return the same to the other Party as directed by that other Party; and
  - (b) shall not thereafter use or disclose any of that Business Personal Information.
- (3) The Parties shall fully cooperate with each other, any affected individual to whom the Business Personal Information relates, and any Governmental Entity charged with the enforcement of privacy Laws, in responding to inquiries, complaints, requests for access and lawsuits or legal proceedings in respect of Business Personal Information.

#### **Section 5.14 BlackBerrys.**

The parties will cooperate in joint discussions with the Blackberry service provider to effect the transfer of BlackBerrys under terms and conditions satisfactory to the Transferor, and in particular so that the Transferor does not incur a penalty or increased fees as a result of such transfer. If such satisfactory terms and conditions are not reached prior to Closing, then BlackBerrys shall not be Transferred Assets and shall be Excluded Assets.

### **ARTICLE 6 CONDITIONS OF CLOSING**

#### **Section 6.1 Conditions for the Benefit of the Transferee.**

The purchase and sale of the Transferred Assets is subject to the following conditions being satisfied at or prior to Closing, which conditions are for the exclusive benefit of the Transferee and may be waived, in whole or in part, by the Transferee in its sole discretion:

- (a) **Truth of Representations and Warranties.** Except as contemplated or permitted by this Agreement, the representations and warranties of the Transferor contained in this Agreement must be true and correct in all material respects as of the Closing Date with the same force and effect as if such representations and warranties were made on and as of such date. However, (i) if a representation and warranty is qualified by materiality or Material Adverse Effect, it must be true and correct in all respects, and (ii) if a representation and warranty speaks only as of a certain date, it only needs to be true and correct as of that date. Notwithstanding the foregoing, and without prejudice to Section 5.7, the Transferor shall be permitted to update the Schedules two (2) days prior to Closing and such updates or amendments shall not give rise to a breach by the Transferor or termination by the Transferee of this Agreement, unless, in the latter case,



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such updates or amendments would reasonably be expected to have a Material Adverse Effect. The Transferee must receive a certificate of a senior officer of the Transferor, without personal liability, as to the matters in this paragraph.

- (b) **Performance of Covenants.** The Transferor must have fulfilled, or complied with, in all material respects, all covenants contained in this Agreement to be fulfilled or complied with by it at or prior to the Closing and the Transferee must receive a certificate of a senior officer of the Transferor, without personal liability, to that effect.
- (c) **Deliveries.** The Transferee must have received a certificate of status, compliance, good standing or like certificate with respect to the Transferee issued by appropriate government officials of its jurisdiction of incorporation.
- (d) **Competition Act.** Competition Act Clearance shall have been obtained.
- (e) **Consents and Authorizations.** Other than as set out in Section 6.1 (d), no other consents, approvals or waivers are required to have been made, given or obtained.
- (f) **No Legal Action.** No injunction that remains in effect shall have been obtained by any Person (other than the Transferee or any Person associated with it) in any jurisdiction that enjoins, restricts or prohibits any of the transactions contemplated by this Agreement which would reasonably be expected to have a Material Adverse Effect.
- (g) **Financing.** Transferee will have received equity and debt financing of at least \$18,000,000.
- (h) **Branded Concession Agreement.** The Transferor and the Transferee shall have executed and delivered the Branded Concession Agreement.
- (i) **Employee Transfer.** As at the Closing Time, all Quebec Home Services Employees shall have received Notices of Continuation of Employment and all Affected Employees shall have received and accepted Offers of Employment.
- (j) **No Material Adverse Effect.** During the Interim Period, there has been no change to the Business which has had a Material Adverse Effect.

**Section 6.2 Conditions for the Benefit of the Transferor.**

The purchase and sale of the Transferred Assets is subject to the following conditions being satisfied at or prior to Closing, which conditions are for the exclusive benefit of the Transferor and may be waived, in whole or in part, by the Transferor in its sole discretion:

- (a) **Truth of Representations and Warranties.** The representations and warranties of the Transferee contained in this Agreement must be true and correct in all material respects as of the Closing Date with the same force and effect as if such representations and warranties had been made on and as of such date. However, if a representation and warranty is qualified by materiality or material adverse effect, it must be true and correct in all respects. The Transferor must receive a certificate of a senior officer of the Transferee, without personal liability, as to the matters in this paragraph.
- (b) **Performance of Covenants.** The Transferee must have fulfilled or complied with, in all material respects, all covenants contained in this Agreement to be fulfilled or complied with by it at or prior to Closing and the Transferor must receive a certificate of a senior officer of the Transferee, without personal liability, to that effect.
- (c) **Deliveries.** The Transferor must have received the following:
  - (i) a certificate of status, compliance, good standing or like certificate with respect to the Transferee issued by appropriate government official of the jurisdiction of its incorporation;
  - (ii) a certificate of status, compliance, good standing or like certificate with respect to ISO issued by appropriate government official of the jurisdiction of its incorporation;
- (d) **No Legal Action.** No injunction that remains in effect shall have been obtained by any Person (other than the Transferor or any Person associated with it) in any jurisdiction, that enjoins, restricts or prohibits any of the transactions contemplated by this Agreement.
- (e) **Competition Act.** Competition Act Clearance shall have been obtained.
- (f) **Consents and Authorizations.** Other than as set out in Section 6.2(e), no other consents, approvals or waivers are required to have been made, given or obtained.
- (g) **Branded Concession Agreement.** The Transferor and the Transferee shall have executed and delivered the Branded Concession Agreement.
- (h) **Employee Transfer.** As at the Closing Time, all Quebec Home Services Employees shall have received Notices of Continuation of Employment and all Affected Employees shall have received and accepted Offers of Employment.
- (i) **Closing Cash Payment.** The Transferee shall have satisfied the Closing Cash Payment.

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- (j) **ISO Guarantee.** ISO shall have executed and delivered a guarantee of the obligations of the Transferee substantially in the form attached hereto as Schedule 6.2(j).
- (k) **No Material Adverse Effect.** During the Interim Period, there has been no change which has had a Material Adverse Effect as it relates to the Transferee.
- (l) **No Material Adverse Effect (ISO).** During the Interim Period, there has been no change which has had a Material Adverse Effect as it relates to ISO.
- (m) **Financing.** Transferee will have received equity and debt financing of at least \$18,000,000.

#### ARTICLE 7 CLOSING

##### Section 7.1 Date, Time and Place of Closing.

The completion of the transaction of purchase and sale contemplated by this Agreement will take place at the offices of Sears Canada Inc., 290 Yonge Street, Suite 700, Toronto, Ontario at 11:59 p.m. (Toronto time) on the Closing Date or at such other place, on such other date and at such other time ("Closing Time") as the Transferor and the Transferee may agree to in writing.

##### Section 7.2 Closing Procedures.

Subject to satisfaction or waiver by the relevant Party of the conditions of closing, at the Closing, the Transferor will deliver actual possession of the Transferred Assets to the Transferee and upon such delivery the Transferee will satisfy the Closing Cash Payment in accordance with Section 2.3.

#### ARTICLE 8 TERMINATION

##### Section 8.1 Termination Rights.

This Agreement may, by notice in writing given at or prior to the Closing, be terminated:

- (a) by mutual consent of the Transferor and the Transferee; or
- (b) by the Transferor or the Transferee (so long as such party is not then in material breach of any of its representations, warranties, covenants or agreements contained in this Agreement) if a Closing does not occur by April 7, 2013.

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**Section 8.2 Effect of Termination.**

- (1) If a Party waives compliance with any of the conditions, obligations or covenants contained in this Agreement, the waiver will be without prejudice to any of its rights of termination in the event of non-fulfilment, non-observance or non-performance of any other condition, obligation or covenant in whole or in part.
- (2) If this Agreement is terminated, the Parties are released from all of their obligations under this Agreement, except that:
  - (a) each Party's obligations under Section 5.3, Section 11.3 and Section 11.6 will survive; and
  - (b) if this Agreement is terminated by a Party because of a material breach of this Agreement by the other Party, the terminating Party's right to pursue all legal remedies will survive such termination unimpaired.

**ARTICLE 9  
INDEMNIFICATION**

**Section 9.1 Survival.**

The representations and warranties contained in this Agreement and the certificates delivered pursuant to Section 6.1(a) and Section 6.2(a) survive the Closing and continue in full force and effect for the following periods:

- (i) representations and warranties regarding Taxes will continue until the end of the Transferor's "normal reassessment period", as defined in the Tax Act;
- (ii) representations and warranties regarding Employee Claims will continue until the end of the applicable limitation period in accordance with applicable Law;
- (iii) representations and warranties regarding Environmental Liabilities will continue forever; and
- (iv) all other representations and warranties will continue for a period of 12 months after the Closing Date

**Section 9.2 Indemnification in Favour of the Transferee.**

Subject to Section 9.4, following Closing, the Transferor will indemnify and save the Transferee harmless of and from, and will pay for, any Damages suffered by, imposed upon or asserted against it as a result of, in respect of, connected with, or arising out of, under, or pursuant to:

- (a) any breach or inaccuracy of any representation or warranty in Section 3.1 or the certificate to be delivered pursuant to Section 6.1(a) for which a notice of claim under Section 9.5 has been provided to the Transferor within the applicable period specified in Section 9.1; and

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- (b) any failure of the Transferor to perform or fulfil any of its covenants or obligations under this Agreement.

**Section 9.3 Indemnification in Favour of the Transferor.**

Subject to Section 9.4, following Closing, the Transferee will indemnify and save the Transferor harmless of and from, and will pay for, any Damages suffered by, imposed upon or asserted against it as a result of, in respect of, connected with, or arising out of, under or pursuant to:

- (a) any breach or inaccuracy of any representation or warranty in Section 4.1 or the certificate to be delivered pursuant to Section 6.2(a), for which a notice of claim under Section 9.5 has been provided to the Transferee within the applicable period specified in Section 9.1; and
- (b) any failure of the Transferee to perform or fulfil any of its covenants or obligations under this Agreement.

**Section 9.4 Limitations.**

- (1) A Party has no obligation or liability for indemnification or otherwise with respect to any representation or warranty made by such Party in this Agreement, or the certificates delivered pursuant to Section 6.1(a) and Section 6.2(a), after the end of the applicable time periods specified in Section 9.1, except for claims relating to the representations and warranties that the Party has been notified of prior to the end of the applicable time periods specified in Section 9.1.
- (2) A Party has no obligation or liability for indemnification or otherwise with respect to any breach or inaccuracy of any representation or warranty in this Agreement, or the certificates delivered pursuant to Section 6.1(a) or Section 6.2(a), or any failure to perform or fulfil any covenants or obligations, if the Person making the claim had knowledge of the breach, inaccuracy or failure to perform on or prior to Closing, or if and to the extent caused by or resulting from the negligence, breach or wilful misconduct of the Person making the claim.
- (3) A Party has no liability for, or obligation with respect to, any special, indirect, consequential, punitive or aggravated damages, including damages for lost profit, damages based on multiples of earnings, earnings before interest, taxes, depreciation and amortization (EBITDA), cash flow or other metrics or projections, it being understood that Third Party Claims will not be considered claims for special, indirect, consequential, punitive or aggravated damages even if such Third Party Claim itself is a claim for consequential, incidental, indirect, special or punitive damages.
- (4) The amount of any Damages subject to indemnification hereunder or of any claim therefor shall be calculated net of (i) any Tax Benefit (as defined below) received by the Transferee or any of its Affiliates on account of such Damages and (ii) any insurance proceeds (net of direct collection expenses) received by the Transferee or any of its Affiliates on account of such Damages. If the Transferee or any of its

Affiliates receives a Tax Benefit after an indemnification payment is made, the Transferee shall promptly pay to the Transferor the amount of such Tax Benefit at such time or times as and to the extent that such Tax Benefit is realized. For purposes hereof, "Tax Benefit" shall mean any refund of Taxes paid or reduction in the amount of Taxes which otherwise would have been paid, in each case computed at the highest marginal rates. The Transferee and its Affiliates shall seek full recovery under all insurance policies covering any Damages to the same extent as they would if such Damages were not subject to indemnification hereunder, and the Transferee and its Affiliates shall not terminate or cancel any insurance policies in effect for periods prior to the Closing. In the event that an insurance recovery is made by the Transferee or any of its Affiliates with respect to any Damages for which any such Person has been indemnified hereunder, then a refund equal to the aggregate amount of the recovery (net of all direct collection expenses) shall be made promptly to the Transferor. The Indemnifying Parties shall be subrogated to all rights in respect of any Damages indemnified by the Indemnifying Parties; but the Transferee has no claim against the Transferor as a result thereof.

- (5) Notwithstanding anything to the contrary contained in this Article 9, there shall be no recovery for any Damages by the Transferee under this Article 9, and the Damages shall not be included in meeting the stated thresholds hereunder, to the extent such item has been included in a reserve or accrual used in the calculation of the Purchase Price as determined pursuant to Article 2 hereof; or to the extent that the Damages arise or the amount thereof are increased as a result of any voluntary act or omission on the part of the Transferee after Closing.
- (6) The Transferor has no obligation to make any payment for Damages (for indemnification or otherwise) with respect to the matters described in Section 9.2 until the total of all Damages with respect to such matters exceeds \$50,000, and then Transferor will pay Transferee the full amount of such Damages and in all cases only up to a maximum of the Purchase Price ("Indemnification Cap"). Furthermore, Transferee shall not be entitled to make any claim for indemnification against the Transferor in respect of an Individual Matter (as defined below) unless such claim is for Damages in an amount of at least \$5,000. "Individual Matter" means any indemnification claim or series of indemnification claims for a breach of a representation or warranty of the Transferor which arises from the same or similar underlying event or circumstance. Notwithstanding the foregoing, the Indemnification Cap shall not apply where the Transferor is in breach of any representation or warranty in Section 3.1 or the certificate to be delivered pursuant to Section 6.1(a), for which a notice of claim under Section 9.5 has been provided to the Transferee within the applicable period specified in Section 9.1.
- (7) The Transferee has no obligation to make any payment for Damages (for indemnification or otherwise) with respect to the matters described in Section 9.3 until the total of all Damages with respect to such matters exceeds \$50,000, and then Transferee will pay Transferor the full amount of such Damages and in all cases only up to the Indemnification Cap. Furthermore, Transferor shall not be entitled to make any claim for indemnification against the Transferee in respect of an Individual

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Matter unless such claim is for Damages in an amount of at least \$5,000. Notwithstanding the foregoing, the Indemnification Cap shall not apply where the Transferee is in breach of the following:

- (a) any breach or inaccuracy of any representation or warranty in Section 4.1 or the certificate to be delivered pursuant to Section 6.2(a), for which a notice of claim under Section 9.5 has been provided to the Transferee within the applicable period specified in Section 9.1; and
- (b) the indemnity provided in Section 2.6.

**Section 9.5 Notification.**

- (1) If a Third Party Claim is instituted or asserted against an Indemnified Party, the Indemnified Party will promptly notify the Indemnifying Party in writing of the Third Party Claim. The notice must specify in reasonable detail, the identity of the Person making the Third Party Claim and, to the extent known, the nature of the Damages and the estimated amount needed to investigate, defend, remedy or address the Third Party Claim.
- (2) If an Indemnified Party becomes aware of a Direct Claim, the Indemnified Party will promptly notify the Indemnifying Party in writing of the Direct Claim.
- (3) Upon receipt of such notice, the provisions of Section 9.6 will apply to any Third Party Claim.

**Section 9.6 Procedure for Third Party Claims.**

- (1) Upon receiving notice of a Third Party Claim, the Indemnifying Party may participate in the investigation and defence of the Third Party Claim and may also elect to assume the investigation and defence of the Third Party Claim.
- (2) In order to assume the investigation and defence of a Third Party Claim, the Indemnifying Party must give the Indemnified Party written notice of its election within 30 days of Indemnifying Party's receipt of notice of the Third Party Claim.
- (3) If the Indemnifying Party assumes the investigation and defence of a Third Party Claim:
  - (a) the Indemnifying Party will pay for all reasonable costs and expenses of the investigation and defence of the Third Party Claim except that the Indemnifying Party will not, so long as it diligently conducts such defence, be liable to the Indemnified Party for any fees of other counsel or any other expenses with respect to the defence of the Third Party Claim, incurred by the Indemnified Party after the date the Indemnifying Party validly exercised its right to assume the investigation and defence of the Third Party Claim; and
  - (b) the Indemnifying Party will reimburse the Indemnified Party for all reasonable costs and expenses incurred by the Indemnified Party in

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connection with the investigation and defence of the Third Party Claim prior to the date the Indemnifying Party validly exercised its right to assume the investigation and defence of the Third Party Claim.

- (4) If the Indemnified Party undertakes the defence of the Third Party Claim, the Indemnifying Party will not be bound by any determination of the Third Party Claim or any compromise or settlement of the Third Party Claim effected without the consent of the Indemnifying Party (which consent may not be unreasonably withheld, conditioned or delayed).
- (5) The Indemnifying Party will not be permitted to compromise and settle or to cause a compromise and settlement of a Third Party Claim without the prior written consent of the Indemnified Party, which consent may not be unreasonably withheld, conditioned or delayed, unless:
  - (a) the terms of the compromise and settlement require only the payment of money for which the Indemnified Party is entitled to full indemnification under this Agreement; and
  - (b) the Indemnified Party is not required to admit any wrongdoing, take or refrain from taking any action, acknowledge any rights of the Person making the Third Party Claim or waive any rights that the Indemnified Party may have against the Person making the Third Party Claim.
- (6) The Indemnified Party and the Indemnifying Party agree to keep the other fully informed of the status of any Third Party Claim and any related proceedings. If the Indemnifying Party assumes the investigation and defence of a Third Party Claim, the Indemnified Party will, at the request and expense of the Indemnifying Party, use its reasonable efforts to make available to the Indemnifying Party, on a timely basis, those employees and others whose assistance, testimony or presence is necessary to assist the Indemnifying Party in investigating and defending the Third Party Claim. The Indemnified Party shall, at the request and expense of the Indemnifying Party, make available to the Indemnifying Party, or its representatives, on a timely basis all documents, records and other materials in the possession, control or power of the Indemnified Party, reasonably required by the Indemnifying Party for its use solely in defending any Third Party Claim which it has elected to assume the investigation and defence of. The Indemnified Party shall cooperate on a timely basis with the Indemnifying Party in the defence of any Third Party Claim.

**Section 9.7 Exclusion of Other Remedies.**

- (1) Except as provided in this Section 9.7, and other than as provided in Section 5.3, Section 11.3 or Section 11.6, the indemnities provided in Section 9.2 and Section 9.3 constitute the only remedy of the Transferee or the Transferor, respectively, against a Party in the event of any breach of a representation, warranty, covenant or agreement of such Party contained in this Agreement. The Parties may exercise their rights of termination in Section 8.1 and their rights of indemnity in Article 9. The Parties acknowledge that the failure to comply with a covenant or obligation



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contained in this Agreement may give rise to irreparable injury to a Party inadequately compensable in damages. Accordingly, a Party may seek to enforce the performance of this Agreement by injunction or specific performance upon application to a court of competent jurisdiction without proof of actual damage (and without requirement of posting a bond or other security). Each of the Transferee and the Transferor expressly waives and renounces any other remedies whatsoever, whether at law or in equity, which it would otherwise be entitled to as against any other Party, except as expressly set forth in this Agreement.

- (2) No claim shall be brought or maintained by the Transferee or its successors or permitted assigns against any partner, officer, director, employee (present or former) or Affiliate of any Party hereto which is not itself otherwise expressly identified as a Party hereto, and no recourse shall be brought or granted against any of them, by virtue of or based upon any alleged misrepresentation or inaccuracy in or breach of any of the representations, warranties or covenants of any Party hereto set forth or contained in this Agreement or any exhibit or schedule hereto or any certificate delivered hereunder.

**Section 9.8 One Recovery.**

Any Indemnified Party is not entitled to double recovery for any claims even though they may have resulted from the breach of more than one of the representations, warranties, covenants and obligations of the Indemnifying Party in this Agreement. No Party has any liability or obligation with respect to any claim for indemnification to the extent that such matter was reflected as an adjustment to the Purchase Price.

**Section 9.9 Duty to Mitigate.**

Nothing in this Agreement in any way restricts or limits the general obligation at Law of an Indemnified Party to mitigate any loss which it may suffer or incur by reason of the breach by an Indemnifying Party of any representation, warranty, covenant or obligation of the Indemnifying Party under this Agreement. If any claim can be reduced by any recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement or payment by or against any other Person, the Indemnified Party shall take all appropriate steps to enforce such recovery, settlement or payment and the amount of any Damages of the Indemnified Party will be reduced by the amount of insurance proceeds actually recoverable by the Indemnified Party.

**ARTICLE 10  
POST-CLOSING COVENANTS**

**Section 10.1 Termination Payment Contribution for Terminated Employees.**

- (1) The Transferee acknowledges and agrees that the Transferor may, effective at the Closing Time, and conditional upon Closing, terminate the employment of any or all of the Non-Transferring Employees other than Non-Transferring Employees who are on long-term disability leave or workers compensation leave at the time that notice of termination is provided (such terminated employees referred to as the "Terminated Employees"). If there are more than 51 Terminated Employees, the Transferee shall pay to the Transferor the Termination Payment Contribution.

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- (2) If a Termination Payment Contribution is payable by the Transferee, then (i) at or before 4 pm (Toronto Time) on the second Business Day following the Closing Date (or such other time as agreed to by the Parties), the Transferor shall provide notice to the Transferee containing the names of the Terminated Employees; (ii) on or before the 15<sup>th</sup> Business Day following the Closing Date (or such other time as agreed to by the Parties), the Transferor shall provide notice to the Transferee of the aggregate amounts of payment in lieu of notice, severance and other payments made or owing to the Terminated Employees as a result of the termination of their employment at the Closing Time ("Termination Payments"), and at such time will provide to the Transferee a written accounting of the calculations used to derive the Termination Payments, including the calculations for each Terminated Employee and how the Termination Payment Contribution (as defined below) formula will be calculated; and (iii) no later than 30 days after the Closing Date, the Transferee shall pay to the Transferor the amount that is the result of the following formula (the "Termination Payment Contribution"): Termination Payments divided by the number of Terminated Employees, multiplied by the amount by which the total number of Terminated Employees is greater than 51.
- (3) Other than the obligations set out above relating to the Termination Payment Contribution, the Transferee shall have no further obligations to the Transferor regarding any Non-Transferring Employee.

#### **Section 10.2 Non-Termination of Hired Employees.**

- (1) Subject to subsection (2) below relating to certain Hired Employees based in Quebec, the Transferee agrees not to terminate any Hired Employee's employment without cause for the period ending six (6) months after Closing. Subject to the previous sentence, nothing in this Agreement shall be deemed to prevent or restrict in any way the right of the Transferee to terminate, reassign, promote or demote any of its employees after the Closing Time, or to change adversely or favourably the title, powers, duties, responsibilities, functions, locations, salaries, other compensation or terms or conditions of employment of such employees.
- (2) With respect to Hired Employees working in Quebec, the Transferee agrees not to terminate any more than 30 such Hired Employees' employment without cause for the period ending six (6) months after Closing. Subject to the previous sentence, nothing in this Agreement shall be deemed to prevent or restrict in any way the right of the Transferee to terminate, reassign, promote or demote any of its employees working in Quebec after the Closing Time, or to change adversely or favourably the title, powers, duties, responsibilities, functions, locations, salaries, other compensation or terms or conditions of employment of such employees.

#### **Section 10.3 Access to Books and Records.**

For a period of the longer of (i) 10 years from the Closing Date; or (ii) 2 years after the end of the Term of the Branded Concession Agreement, or for such longer period as may be required by Law or requested by Transferor, acting reasonably, the Transferee will retain all copies of Business Books and Records transferred to the Transferee on the Closing Date. So long as any such Books and Records are retained by the Transferee pursuant to this

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Agreement, the Transferor has the right to inspect and to make copies (at their own expense) of them at any time upon reasonable request for any proper purpose and without undue interference to the business operations of the Transferee.

**Section 10.4 Litigation Assistance.**

For a period of six years from the Closing Date or for such longer period as may be required by Law or requested by Transferor, acting reasonably, the Transferee will assist the Transferor and its Affiliates, as the case may be, with all third party claims and litigation involving the Transferor or any of its Affiliates and any third parties, in relation to the Business as it was operated by the Transferor prior to the Closing Date.

**Section 10.5 Business Personal Information.**

Transferee shall only use and disclose the Business Personal Information: (i) for the purposes for which the Business Personal Information was initially collected from or in respect of the individuals, provided the Business Personal Information relates solely to the carrying on of the business or activity or the carrying out of the objects of the transactions contemplated by this Agreement; or (ii) as otherwise required or permitted by privacy Laws.

**Section 10.6 Further Assurances.**

Each of the Parties hereto will promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the other Party hereto may reasonably require from time to time for the purpose of giving effect to this Agreement and will use its best efforts and take all such steps as may be reasonably within its power to implement to their full extent the provisions of this Agreement.

Transferor for itself and its successors and assigns hereby covenants and agrees that, at any time and from time to time forthwith upon the written request of Transferee, Transferor will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, each and all of such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may reasonably be required by Transferee in order to assign, transfer, set over, convey, assure and confirm unto and vest in Transferee, its successors and assigns, good and valid title to the assets sold, conveyed, transferred and delivered by this Agreement free and clear of all Liens except for Permitted Liens.

Transferor hereby constitutes and appoints Transferee and its successors and assigns Transferor's true and lawful attorney and attorneys, with full power of substitution, in Transferor's name and stead, by and on behalf of, and for the benefit of, Transferee and its successors and assigns to demand and receive any and all of the Transferred Assets and to give receipts and releases for and in respect of the same, and any part thereof, and from time to time to institute and prosecute, at the expenses, and for the benefit of, Transferee and its successors and assigns any and all proceedings at law, in equity or otherwise, which Transferee or its successors and assigns may deem proper for the collection or reduction to possession of any of the Transferred Assets or for the collection and enforcement of any claim or right of any kind hereby sold, conveyed, assigned, transferred and delivered, and to do all acts and things in relation to the Transferred Assets which Transferee or its

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successors and assigns shall deemed desirable. Transferor hereby declares that the foregoing powers are coupled with an interest and are and shall be irrevocable by Transferor in any manner or for any reason whatsoever.

Nothing contained herein, express or implied, is intended or shall be construed to confer upon, or give to, any person other than Transferee and its successors and assigns any remedy, claim under or by reason of this Agreement or any agreements, terms, covenants or conditions hereof, and all agreements, terms, covenants and conditions contained herein shall be for the sole and exclusive benefit of Transferee and its successors and assigns.

#### ARTICLE 11 MISCELLANEOUS

##### Section 11.1 Notices.

Any notice, direction or other communication (each a "Notice") given regarding the matters contemplated by this Agreement must be in writing, sent by personal delivery, courier or facsimile (but not by electronic mail) and addressed:

to the Transferor at:

Sears Canada Inc.  
290 Yonge Street, suite 700  
Toronto, Ontario M5C 2B3

Attention: General Counsel  
Facsimile: 416-941-2321

to the Transferee at:

#245, 1209 59 Avenue SE  
Calgary, Alberta T2H 2P6

Attention: President  
Facsimile: (403) 255-2839

with a copy (which shall not constitute notice) to:

Burnet Duckworth & Palmer LLP  
2400, 525-8th Avenue SW  
Calgary, Alberta T2P 1G1

Attention: Brian W. Borich  
Facsimile: 403-260-0332

A Notice is deemed to be delivered and received (i) if sent by personal delivery or same-day courier, on the date of delivery if it is a Business Day and the delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day, (ii) if sent

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by overnight courier, on the next Business Day, or (iii) if sent by facsimile, on the Business Day following the date of confirmation of transmission by the originating facsimile. A Party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the Party at its changed address. Any element of a Party's address that is not specifically changed in a Notice will be assumed not to be changed. Sending a copy of a Notice to a Party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the Notice to that Party. The failure to send a copy of a Notice to legal counsel does not invalidate delivery of that Notice to a Party.

**Section 11.2 Time of the Essence.**

Time is of the essence in this Agreement.

**Section 11.3 Brokers.**

The Transferor shall indemnify and save harmless the Transferee from and against any and all claims, losses and costs whatsoever for any fee, commission or other remuneration payable or alleged to be payable to any broker, agent or other intermediary who purports to act or have acted for the Transferor. The Transferee shall indemnify and save harmless the Transferor from and against any and all claims, losses and costs whatsoever for any fee, commission or other remuneration payable or alleged to be payable to any broker, agent or other intermediary who purports to act or have acted for the Transferee. These indemnities are not subject to any of the limitations set out in Article 9.

**Section 11.4 Announcements.**

No press release, public statement or announcement or other public disclosure with respect to this Agreement or the transactions contemplated in this Agreement may be made except with the prior written consent and joint approval of the Transferor and the Transferee, or if required by Law or a Governmental Entity. Where the public disclosure is required by Law or a Governmental Entity, the Party required to make the public disclosure will use its commercially reasonable efforts to obtain the approval of the other Party as to the form, nature and extent of the disclosure.

**Section 11.5 Third Party Beneficiaries.**

Except as otherwise expressly provided herein, the Transferor and the Transferee intend that this Agreement will not benefit or create any right or cause of action in favour of any Person, other than the Parties. To the extent required by law to give full effect to these direct rights, the Transferor and the Transferee agree and acknowledge that they are acting as agent of their respective Indemnified Parties. The Parties reserve their right to vary or rescind the rights, granted by or under this Agreement to any Person who is not a Party, at any time and in any way whatsoever, without notice to or consent of that Person, including any Indemnified Party.

**Section 11.6 Expenses.**

Except as otherwise expressly provided in this Agreement, each Party will pay for its own costs and expenses incurred in connection with this Agreement and the transactions contemplated by them. The fees and expenses referred to in this Section 11.6 are those

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which are incurred in connection with the negotiation, preparation, execution and performance of this Agreement, and the transactions contemplated by this Agreement, including the fees and expenses of legal counsel, investment advisers and accountants.

**Section 11.7 Amendments.**

Subject to Section 11.8, this Agreement may only be amended, supplemented or otherwise modified by written agreement signed by the Transferor and the Transferee.

**Section 11.8 Waiver.**

No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar). No waiver will be binding unless executed in writing by the Party to be bound by the waiver. A Party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a Party from any other or further exercise of that right or the exercise of any other right.

**Section 11.9 Non-Merger.**

Except as otherwise expressly provided in this Agreement, the covenants, representations and warranties shall not merge on and shall survive the Closing.

**Section 11.10 Entire Agreement.**

This Agreement, together with the confidentiality agreement, constitutes the entire agreement between the Parties with respect to the transactions contemplated by this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties. There are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, between or among the Parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement. The Parties have not relied and are not relying on any other information, discussion or understanding (including any information in any confidential information memorandum or business overview document) in entering into and completing the transactions contemplated by this Agreement.

**Section 11.11 Successors and Assigns.**

- (1) This Agreement becomes effective only when executed by the Transferor and the Transferee. After that time, it is binding on and enures to the benefit of the Transferor, the Transferee and their respective successors and permitted assigns.
- (2) Neither this Agreement nor any of the rights or obligations under this Agreement are assignable or transferable by any Party without the prior written consent of the other Parties.

**Section 11.12 Severability.**

If any provision of this Agreement is determined to be illegal, invalid or unenforceable by an arbitrator or any court of competent jurisdiction, that provision will be

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severed from this Agreement and the remaining provisions will remain in full force and effect.

**Section 11.13 Governing Law.**

- (1) This Agreement is governed by and interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- (2) Each Party irrevocably attorns and submits to the non-exclusive jurisdiction of the Ontario courts situated in the City of Toronto and waives objection to the venue of any proceeding in such court or that such court provides an inconvenient forum.

**Section 11.14 Counterparts.**

This Agreement may be executed in any number of counterparts (including counterparts by facsimile or email) and all such counterparts taken together shall be deemed to constitute one and the same instrument.

*[Signature pages to follow.]*

IN WITNESS WHEREOF the Parties have executed this Asset Transfer Agreement.

**SEARS CANADA INC.**

By: \_\_\_\_\_  
Name: Peter Kalen  
Title: Executive Vice-President,  
Financial and Home Services, Direct  
and Marketing

\_\_\_\_\_  
Name: Terri Lowe  
Title: Vice-President, Home Services

**SHS SERVICES MANAGEMENT INC.**


By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Name:  
Title:



IN WITNESS WHEREOF the Parties have executed this Asset Transfer Agreement.

**SEARS CANADA INC.**

By:   
Name: Peter Kalen  
Title: Executive Vice-President,  
Financial and Home Services, Direct  
and Marketing

\_\_\_\_\_  
Name: Terri Lowe  
Title: Vice-President, Home Services

**SHS SERVICES MANAGEMENT INC.**

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF the Parties have executed this Asset Transfer Agreement.

**SEARS CANADA INC.**

By: \_\_\_\_\_

Name: Peter Kalen

Title: Executive Vice-President,  
Financial and Home Services, Direct  
and Marketing



\_\_\_\_\_  
Name: Terri Lowe

Title: Vice-President, Home Services

**SHS SERVICES MANAGEMENT INC.**

By: \_\_\_\_\_

Name:

Title:

\_\_\_\_\_  
Name:

Title:

IN WITNESS WHEREOF the Parties have executed this Asset Transfer Agreement.

SEARS CANADA INC.

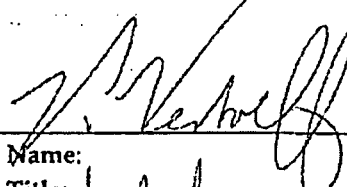
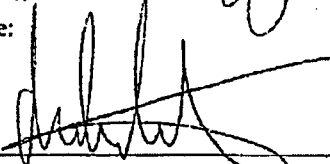
By:

\_\_\_\_\_  
Name: Peter Kalen  
Title: Executive Vice-President,  
Financial and Home Services, Direct  
and Marketing

\_\_\_\_\_  
Name: Terri Lowe  
Title: Vice-President, Home Services

SHS SERVICES MANAGEMENT INC.

By:

  
\_\_\_\_\_  
Name:  
Title:  
  
\_\_\_\_\_  
Name:  
Title:

**Schedule 2.2****Purchase Price and Closing Cash Payment**

Pursuant to Section 2.2 [*Purchase Price and Closing Cash Payment*]

Furniture & Equipment Purchase Price: \$290,000

Estimated Inventory Purchase Price: \$3,835,000

Estimated Rental Equipment Purchase Price: \$3,544,000

Estimated Work In Progress Price: \$289,000

Home Shows Assumption Price: \$106,525.80

Warranty Work Reserve (Non-HVAC): \$925,000

Estimated Customer Deposit Value: \$1,312,000

Estimated Vacation Pay Accrual: \$151,000

Closing Cash Payment: \$5,676,525.80

## Schedule 2.3

## Loan Agreement Terms

Pursuant to Section 2.3[Satisfaction of Closing Cash Payment]

## SUMMARY OF KEY TERMS

CAD \$5,676,525.80 SENIOR SECURED TERM LOAN

FOR SHS SERVICES MANAGEMENT INC.

*This term sheet is to be held confidential and its terms may not be shared with outside parties. All dollar amounts are in Canadian dollars unless expressly stated otherwise.*

<b>Borrower:</b>	SHS Services Management Inc. (the "Borrower")
<b>Guarantors:</b>	Installation Services Org. Ltd., Paul Verhoeff and Stephen Verhoeff (the "Guarantors")
<b>Lender:</b>	Sears Canada Inc. ("Sears" or the "Lender")
<b>Closing Date:</b>	March 2, 2013 or such other date on which the Closing (as defined in the Asset Transfer Agreement) takes place.
<b>Type of Loan:</b>	CAD \$5,676,525.80 secured term vendor take-back loan (the "Loan").
<b>Interest Rate:</b>	HSBC Bank Canada Prime Rate plus 3.25% per annum, payable monthly.
<b>Maturity Date:</b>	Six years after the Closing Date.
<b>Purpose:</b>	To finance the acquisition from Lender of equipment, inventory and assets related to the Sears home services business pursuant to the asset transfer agreement dated December 20, 2012 made between the Lender and the Borrower (the "Asset Transfer Agreement").
<b>Availability Period:</b>	The Loan will be available in a single drawdown on the Closing Date. The Loan shall not revolve and any amounts repaid under the Loan may not be re-borrowed.
<b>Repayment:</b>	The Loan will be repayable in 48 blended monthly payments beginning on the 25th month after the Closing Date.

<b>Voluntary Prepayment and Cancellation:</b>	No repayment penalty. The Loan may be prepaid on any date prior to the Maturity Date, in whole or in part, upon 2 days prior notice to Sears.
<b>Security:</b>	The obligations of the Borrower shall be secured by a first ranking security interest on all of the present and after-acquired assets, undertaking and property of the Borrower acquired pursuant to the Asset Transfer Agreement or hereafter supplied by the Lender to the Borrower (and proceeds thereof) and a second ranking security interest on all of the other present and after-acquired assets, undertaking and property of the Borrower. The obligations of the Borrower shall be guaranteed by the Guarantors.
<b>Intercreditor Agreement:</b>	HSBC Bank Canada shall enter into an intercreditor agreement with respect to the security granted to Sears hereunder on terms satisfactory to Sears (the "Intercreditor Agreement").
<b>Documentation:</b>	Promissory note, guarantee and security agreement, certificates, resolutions and opinions, and such other customary documents for a loan of this type, as may be required by the Lender, acting reasonably and each such document to be in a form satisfactory to the Lender.
<b>Expenses:</b>	Borrower shall be responsible for all of Sears' third party costs associated with enforcing the Loan.
<b>Representations:</b>	Customary for loans of this type.
<b>Financial Covenants:</b>	Such financial covenants as set out in Schedule "N" to the Branded Concession Agreement between the parties dated December 20, 2012 (the "Concession Agreement")
<b>General Covenants:</b>	Customary for loans of this type including without limitation: <ol style="list-style-type: none"> <li>1. Restriction on mergers, amalgamations and consolidations</li> <li>2. Restriction on distributions</li> <li>3. Restriction on asset dispositions</li> <li>4. Restriction on additional debt</li> <li>5. Restriction on additional liens</li> <li>6. Restriction on affiliate transactions</li> </ol>

<b>Assignments and transfers by the Parties:</b>	<p>The Borrower shall not assign any of its rights or obligations hereunder.</p> <p>The Lender may only assign all or any part of its rights hereunder in conjunction with the assignment of the Branded Concession Agreement.</p>
<b>Conditions Precedent to Drawdown:</b>	<p>Customary for loans of this type including without limitation:</p> <ol style="list-style-type: none"> <li>1. Concurrent closing of the Asset Transfer Agreement;</li> <li>2. All representations and warranties are true and correct;</li> <li>3. No event of default has occurred and is continuing;</li> <li>4. Executed loan documentation, including board resolutions and certificates of incumbency;</li> <li>5. Executed Intercreditor Agreement;</li> <li>6. Satisfactory legal opinions from counsel to the Borrower and Guarantors;</li> <li>7. Satisfactory receipt by the Lender of all necessary governmental, regulatory, shareholder and other consents and approvals required to be obtained by the Borrower and the Guarantors for the Loan.</li> </ol>
<b>Events of Default:</b>	<p>Customary for loans of this type including without limitation:</p> <ol style="list-style-type: none"> <li>1. Payment default;</li> <li>2. Cross payment default and cross acceleration to: <ol style="list-style-type: none"> <li>(a) the Asset Transfer Agreement</li> <li>(b) the Concession Agreement; and</li> <li>(c) HSBC credit facilities;</li> </ol> </li> <li>3. False or incorrect representations or warranties;</li> <li>4. Bankruptcy, arrangements or compromise proceedings, voluntary or involuntary;</li> <li>5. Covenant breach, with applicable grace period in the case of positive covenants where appropriate and customary; and</li> <li>6. Change in Control.</li> </ol>

<b>Set Off:</b>	The Lender will have the right to set off any amounts owing by it to the Borrower or the Guarantors against amounts owing on the Loan after default.
<b>Default Interest Rate:</b>	Incremental 2%
<b>Governing Law:</b>	Province of Ontario



**Schedule 2.8(h)****Home Show Exhibitions**Pursuant to Section 2.8(h) [*Home Show Exhibition Space & Booths*]

Dates	Home Show	Cost to Sears
March 15-24, 2013	Salon National de l'Habitation- Montreal	\$ 40,666.80
March 15-24, 2013	National Home Show @ Direct Energy Centre	\$ 42,584.00
March 21-24, 2013	Edmonton Home Show	\$ 23,275.00

**TOTAL COST TO SEARS: \$ 106,525.80**

## Schedule 3.1(t)

## Home Services Employees

Pursuant to Section 3.1(t)(i)[*Representations and Warranties of the Transferor, on Home Services Employees*]

Location Province	Job Code Description	Current Title	Total
AB	Admin Office Assistant 2 H C	Project Coordinator	18
	Commission Sales Rep	Sales Associate	37
	Commission Trainee H C	Sales Associate	2
	Dist Install Mgr Large Market	Installation Manager	1
	District Sales Manager HIPS 2	District Sales Manager	1
	District Sales Mgr HIPS	District Sales Manager	2
	Field Inspector	Inspector	1
	Home Solutions Associate	Lead Developer	8
	Installation Specialist	Installation Specialist	2
	Lead Developer H I P S	Lead Developer	7
	Lead Developer H I P S H C	Lead Developer	3
	Materials Handler 3	Material Handler	1
	Materials Handler 4 H C	Material Handler	1
	Regional Sales Manager	Regional Sales Manager	1
	Sales Floor Associate	Lead Developer	2
<b>AB Total</b>			<b>87</b>
BC	Admin Office Assistant 1	Material Handler	1
		Project Coordinator	3
	Admin Office Assistant 2	Project Coordinator	1
	Admin Office Assistant 2 H C	Project Coordinator	7
	Commission Sales Rep	Project Coordinator	1
		Sales Associate	38
	Commission Trainee H C	Sales Associate	1
	District Sales Mgr HIPS	District Sales Manager	3
	District Sales Mgr Install	District Sales Manager	1
	Field Inspector	Inspector	3
	Field Inspector H C	Inspector	2
	Installation Specialist	Installation Specialist	2
	Lead Developer H I P S	Project Coordinator	2
	Lead Developer H I P S H C	Lead Developer	22
		Project Coordinator	1
Materials Handler 2	Material Handler	2	
Sales Floor Associate	Lead Developer	1	

	Supervisor 2 H C	Installation Specialist	1
<b>BC Total</b>			<b>92</b>
<b>MB</b>	Commission Sales Rep	Sales Associate	6
	District Sales Mgr Install	District Sales Manager	1
	Field Inspector	Inspector	1
	Home Solutions Associate	Lead Developer	8
<b>MB Total</b>			<b>16</b>
<b>NB</b>	Commission Sales Rep	Sales Associate	1
	Home Solutions Associate	Lead Developer	2
<b>NB Total</b>			<b>3</b>
<b>NL</b>	Commission Sales Rep	Sales Associate	1
	Lead Developer H I P S H C	Lead Developer	2
<b>NL Total</b>			<b>3</b>
<b>NS</b>	Admin Office Assistant 2 H C	Project Coordinator	4
	Commission Sales Rep	Sales Associate	6
	District Installation Manager	Installation Manager	1
	District Sales Mgr HIPS	District Sales Manager	1
	Field Inspector	Inspector	1
	Lead Developer H I P S	Lead Developer	2
	Lead Developer H I P S H C	Lead Developer	4
<b>NS Total</b>			<b>19</b>
<b>ON</b>	Admin Office Assistant 1	Project Coordinator	2
	Admin Office Assistant 2	BSO Admin	4
	Admin Office Assistant 2 H C	BSO Admin	3
		Lead Developer	1
		Project Coordinator	42
	Admin Office Assistant 3	BSO Admin	3
	Assoc Product Mgr, Home Svcs	Associate Product Manager	1
	Associate Vice-President	AVP Digital Marketing	1
	AVP Business Operations	AVP Product	2
	Business Administration Mgr	Manager, Home Services Finance	1
	Business Analyst Home Services	Programmer Analyst	1
	Commission Sales Rep	Sales Associate	115
	Commission Trainee H C	Sales Associate	1
	Customer Service Assistant	Project Coordinator	1
	Customer Service Mgr, Carpet	HMS	1
	Dir Product Mgmt, Home Svcs	Product Manager	1
	Director Sears Card	National Manager Business Process	1
	District Installation Manager	Installation Manager	2
	District Sales Manager HIPS 2	District Sales Manager	3
	District Sales Mgr HIPS	District Sales Manager	3

District Sales Mgr Install	District Sales Manager	3
DVP Business Development	DVP Home Improvement	1
Field Inspector	Inspector	3
Field Inspector H C	Inspector	7
Home Solutions Associate	Lead Developer	40
	Sales Associate	1
Installation Specialist	Installation Specialist	10
Lead Developer H I P S	Lead Developer	5
Lead Developer H I P S H C	Lead Developer	46
Materials Handler 2	Material Handler	1
Materials Handler 3 H C	Material Handler	2
Materials Handler 4	Project Coordinator	1
Materials Handler Grp Leader 2	Senior Material Handler	1
Mdse Business Associate	Product Manager Support, HVAC	1
Merchandise Flow Analyst	Product Manager Support, HVAC	1
Merchandise Flow Associate	Material Handler	3
Performance Analyst Retail Ops	Programmer Analyst	1
Product Mgr Brand Developmt	Product Manager	1
Product Mgr, Sears Home Svcs	Product Manager	3
Programmer Analyst 2	Programmer Analyst	1
Regional Sales Manager	Regional Sales Manager	1
Sales Associate	Sales Associate	1
Sr Prod Mgr Brand Developmt	Product Manager	1
Supplier Comm Coordinator	HMS	1
Technical Manager	Manager BSO	1
<b>ON Total</b>		<b>326</b>
<b>QC</b>	<b>Admin Office Assistant 1</b>	<b>Admin Office Assistant</b>
	<b>Admin Office Assistant 2</b>	<b>Project Coordinator</b>
	<b>Admin Office Assistant 3</b>	<b>Project Coordinator</b>
	<b>Commission Sales Rep</b>	<b>Material Handler</b>
		<b>Sales Associate</b>
		<b>68</b>
	<b>Commission Trainee H C</b>	<b>Sales Associate</b>
		<b>3</b>
	<b>Coordinator</b>	<b>Project Coordinator</b>
		<b>12</b>
	<b>Dist Install Mgr Large Market</b>	<b>Installation Manager</b>
		<b>1</b>
	<b>District Operations Manager 2</b>	<b>District Ops Manager, Quebec</b>
		<b>1</b>
	<b>District Sales Manager HIPS 2</b>	<b>District Sales Manager</b>
		<b>3</b>
	<b>District Sales Mgr HIPS</b>	<b>District Sales Manager</b>
		<b>1</b>
	<b>Field Inspector</b>	<b>Inspector</b>
		<b>5</b>
	<b>Installation Specialist</b>	<b>Installation Specialist</b>
		<b>3</b>
	<b>Lead Developer H I P S</b>	<b>Lead Developer</b>
		<b>5</b>
	<b>Lead Developer H I P S H C</b>	<b>Lead Developer</b>
		<b>26</b>

	Logistics Inventory Specialist	Material Handler	1
	Materials Handler 4	Material Handler	1
<b>QC Total</b>			<b>147</b>
SK	Admin Office Assistant 2 H C	Project Coordinator	3
	Admin Office Assistant 3 H C	Project Coordinator	3
	Commission Sales Rep	Sales Associate	5
	Commission Trainee H C	Sales Associate	1
	District Installation Manager	Installation Manager	1
	Field Inspector	Inspector	2
	Installation Specialist	Installation Specialist	1
	Lead Developer H I P S H C	Lead Developer	3
<b>SK Total</b>			<b>19</b>
<b>Grand Total</b>			<b>712</b>

**Schedule 3.1(u)**

**Employee Plans**

Pursuant to Section 3.1(u)(i) [*Representations and Warranties of the Transferor, Employee Plans*]

<b>Sears Programs / Plans</b>	
1	Annual Incentive Program
2	Quarterly Incentive Plan
3	Commission Sales Plan
4	Base Salary Program
5	Performance Management Programs
6	Performance Improvement Plan
7	Group Insurance Program - Core Life Insurance Plan
8	Group Insurance Program - Optional Life Insurance Plans (Member, Spousal, Dependents)
9	Group Insurance Program - Sick Leave / Sick Days Plan
10	Group Insurance Program - Short Term Disability Plan
11	Group Insurance Program - Long Term Disability Plan
12	Group Insurance Program - Medical and Dental Plan
13	Group Insurance Program - Associate Assistance Program (AAP)
14	Group Insurance Program - Business Travel
15	Time Off Programs - Vacation Plan
16	Time Off Programs - Holiday Plan
17	Platinum Club Incentive Program
18	Retirement Programs - Defined Benefit Component of SRRP
19	Retirement Programs - Defined Contribution Component of SRRP
20	Retirement Programs - Voluntary Group Registered Retirement Savings Plan
21	Perquisite Programs - Automotive Allowance
22	Perquisite Programs - Leased Vehicle
23	Perquisite Programs - Executive Medical
24	Perquisite Programs - Fitness / Club Membership
25	Recognition Program - Long Service Awards Program
26	Associate Discount Program
27	Severance / Separation Policies
28	Retirement Programs - Supplementary Retirement Program
29	Stock Option Program (Frozen)
30	Sears Sons and Daughters Scholarship Program

**Schedule 5.11(3)****Form of Offer of Employment****Pursuant to Section 5.11[Employee Transfer]****[LETTERHEAD OF SHS SERVICES MANAGEMENT INC.]**

February 4, 2013

**PERSONAL AND CONFIDENTIAL**

c/o Sears Canada Inc.  
700 - 290 Yonge Street  
Toronto, Ontario  
M5C 2B3

Dear •:

**Conditional Offer of Employment with SHS Services Management Inc.**

**[NTD: ATTENTION: THIS DOCUMENT IS A TEMPLATE OFFER OF EMPLOYMENT AND SUBJECT TO REQUIRED AMENDMENTS BASED ON THE UNIQUE CIRCUMSTANCES OF EACH EMPLOYEE THAT IS TO RECEIVE AN OFFER OF EMPLOYMENT FROM SHS]**

As you may be aware, your current employer, Sears Canada Inc. (Sears), has entered into an agreement whereby SHS Services Management Inc. (SHS) has agreed to acquire certain assets and to operate certain business of Sears, particularly the business operating under the "Sears Home Services" banner (the Transaction). We anticipate that the Transaction will close on March 2, 2013, or such other date as the parties agree (the Closing Date).

SHS values your knowledge and experience and we are pleased to extend this conditional offer of employment to you to be employed with SHS. Please be advised that this offer of employment is conditional upon the successful closing of the Transaction, and effective immediately after closing. If the Transaction does not close, this offer is null and void.

Outlined below are the terms and conditions of this conditional offer of employment:

1. **Title**

You will hold the position and title of •.

2. **Commencement Date**

The commencement of your employment with SHS will be on the Closing Date, immediately after closing (the Commencement Date), but SHS will recognize your prior years of continuous service with Sears for the purposes of vacation entitlement and statutory or common law severance entitlement.

3. **Term**

You will continue to be employed with SHS on an indefinite basis, unless terminated earlier in accordance with this conditional offer of employment (the Term).

4. **Reporting**

In the capacity of •, you will report to •.

5. **Responsibilities**

Your responsibilities will continue, in essence, as they existed with Sears, to be modified as reasonably necessary to reflect the revised structure of the business and the needs of SHS.

6. **Salary**

Your annual base salary (Base Salary) will be \$, less required statutory deductions, and you will be paid in accordance with SHS's usual payroll practices. Your Base Salary will be subject to an annual review by SHS.

7. **Benefits**

You will be entitled to participate in all benefit plans adopted by SHS for its employees generally, in accordance with the terms and conditions of such plans, and as such plans may be implemented from time to time. We will be available to discuss the specifics of such benefit plans with you at your convenience.

You will be eligible to enroll in a Defined Contribution Pension Plan with SHS. We will be available to discuss the specifics of such Pension Plan with you at your convenience.

8. **Vacation**

You will be entitled to paid vacation of • weeks per year. In scheduling such vacation, you will have regard to the operations of SHS and the reasonable directions of your superiors.

9. **Voluntary Resignation**

You may terminate your employment at any time by providing • weeks advance written notice of the termination date to SHS. In such event, SHS's obligation to compensate you shall cease on the termination date, save and except only for payment of the pro-rata Base Salary earned for services rendered up to and including the termination date, plus any accrued vacation pay owing up to and including the termination date.



#### 10. Termination

SHS may terminate your employment at any time for cause, without further notice or obligation to you, and without any pay, compensation or benefits in lieu of notice. If your employment is terminated for cause, you will be paid the pro-rata portion of your Base Salary earned, but not yet paid, up to and including your last day actively at work, and any outstanding vacation pay due and owing to you, but otherwise no further compensation will be payable to you.

SHS may also terminate your employment immediately, for any reason that does not constitute cause. SHS will recognize your prior years of continuous service with Sears for the purposes of calculating your entitlement to working notice, or payment in lieu of working notice. [NTD: Different and more fulsome formulas for notice/severance may be required for more senior employees that are offered employment with SHS. The final form is subject to the circumstances of each employment situation.]

#### 11. Confidentiality

As an employee of SHS, you will have access to the confidential information of SHS and its affiliates, as well as confidential information of Sears (collectively, the Protected Parties), including, without limitation, policies, processes, operating methods, source relationships, computer software and all tangible items on which there is recorded information related to the Protected Parties' businesses, as well as all information relating to the presentation, merchandising, marketing, provision and sale of products and services of the Protected Parties, including all customer lists and customer information (the Confidential Information). You will not, during your employment with SHS, or at any time after the cessation of your employment with SHS, reproduce, disclose or in any way make available, either directly or indirectly, any of the Confidential Information to any other person at any time without the prior written consent of the applicable Protected Party, as the case may be, whose confidential information you seek to disclose.

#### 12. Personal Data and Privacy

You consent that:

- (a) Personal data relating to you may be maintained and stored by SHS electronically or in any other form; and
- (b) Personal data relating to you may be freely transferred and shared between SHS, its affiliates, and Sears, irrespective of where the offices of such entities are physically located.

You acknowledge and agree that SHS has the right to collect, use and disclose your personal information for purposes relating to your employment with SHS, including:

- (a) Ensuring that you are paid for the services performed for SHS;
- (b) Administering any benefits to which you are or may become entitled to, including medical, dental, life insurance, or pension benefits. This shall include the disclosure of your personal information to any insurance company

and/or broker or to any entity that manages or administers SHS's benefits on behalf of SHS;

- (c) Compliance with any regulatory reporting and withholding requirements relating to your employment;
- (d) Enforcing SHS's policies, including those relating to the proper use of the electronic communications network and to comply with applicable laws; and
- (e) In the event of a sale or transfer of all or part of the assets of SHS, disclosing to any potential acquiring organization, your personal information solely for the purpose of determining the value of SHS and its assets and liabilities and to evaluate your position within SHS. If your personal information is disclosed to any potential acquiring organization, SHS will require the potential acquiring organization to agree to protect the privacy of your personal information in a manner that is consistent with any policy of SHS dealing with privacy that may be in effect from time to time and/or any applicable law that may be in effect from time to time.

**13. Acknowledgement of Employment Form**

At the time of commencing employment with SHS, you will execute the attached "Statement of Understanding of Employment and/or Engagement Form" attached to this conditional offer letter, which will be an acknowledgement that you are not and shall not be deemed to be an employee of Sears for any purposes, and that you will not be eligible for or considered for employment with Sears while you are an employee of SHS.

**14. Entire Agreement**

This conditional offer and the documents referenced in this letter constitute the entire agreement between you and SHS and supercedes all prior contracts, agreements and understandings between the parties.

**15. Governing Law**

Unless otherwise stated, your employment and this conditional offer letter shall be governed by and construed in accordance with the laws of the Province of •.

Please be advised that the terms of this conditional offer are confidential. We ask that you not discuss the terms with other employees of Sears. This offer remains open for your acceptance until •, February •, 2013.

We are pleased to make this offer of employment to you and hope that you will accept it. To indicate your acceptance of this offer, kindly sign both copies of this letter where indicated and return one copy to • by close of business, •, 2013.

Again, we remind you that this offer is conditional. We look forward to the conditions being satisfied and hope to be working with you in the future. If you have any questions, please contact ● at ●.

Yours truly,

**SHS SERVICES MANAGEMENT INC.**

Per: \_\_\_\_\_

**I have read the above Conditional Offer of Employment and I accept this Conditional Offer of Employment with SHS Services Management Inc., on the terms and conditions set out in this letter. I understand that this Offer of Employment is conditional upon the Transaction closing.**

Dated this \_\_\_\_ day of February, 2013.

Witness \_\_\_\_\_

\_\_\_\_\_  
[Insert employee name]

## Schedule 5.11(4)

## Form of Notice of Continuation of Employment

Pursuant to Section 5.11[Employee Transfer]

[EN-TÊTE DE GESTION DES SERVICES SHS INC.]

• février 2013

## PERSONNEL ET CONFIDENTIEL

•  
a/s Sears Canada Inc.  
700 - 290 Yonge Street  
Toronto, Ontario  
M5C 2B3

Cher/Chère •

## Continuité de l'emploi chez Gestion des services SHS Inc.

Comme vous le savez, votre employeur actuel, Sears Canada Inc. (Sears), a conclu une entente selon laquelle Gestion des services SHS Inc. (SHS) se porterait acquéreur de certains actifs de Sears et exploiterait certaines activités de cette société, en particulier celles qui sont réalisées pour le compte de « Services résidentiels Sears » (la Transaction). Nous prévoyons conclure la Transaction le 2 mars 2013 ou à une autre date dont les parties conviendront (Date de signature).

## 1. Continuité de l'emploi

À la date de signature, Sears cessera d'être votre employeur; vous passerez alors au service de SHS, à des conditions substantiellement semblables, dans leur ensemble, aux conditions actuellement en vigueur chez Sears.

## 2. Confidentialité

En étant au service de SHS, vous aurez accès aux informations confidentielles concernant SHS et ses sociétés affiliées ainsi qu'à celles qui concernent Sears (collectivement, les Parties protégées), notamment, et de manière non limitative, les politiques, processus, méthodes d'exploitation, relations avec les fournisseurs, logiciels informatiques et tout autre objet physique ou matériel susceptible de renfermer des informations relatives aux activités commerciales des Parties protégées, ainsi que toute information portant sur la présentation, le merchandising, le marketing, la fourniture et la vente des produits et services des Parties protégées, y compris toutes les listes de clients et informations sur la clientèle (Informations confidentielles). Que ce soit durant la durée de votre emploi chez SHS ou en tout temps après cessation d'emploi auprès de SHS, vous ne pourrez, en aucun cas, ni reproduire ni divulguer ni communiquer à quiconque, directement ou indirectement, les Informations confidentielles, sans le consentement écrit préalable,

selon le cas, de la Partie protégée concernée dont les informations confidentielles feraient l'objet d'une telle divulgation.

### 3. Renseignements personnels et vie privée

Vous consentez :

- (a) À ce que les informations personnelles vous concernant soient conservées et archivées par SHS sur support électronique ou de tout autre façon; et
- (b) À ce que les informations personnelles vous concernant soient librement transférées et mises en commun par SHS, ses sociétés affiliées et Sears, quel que soit le lieu où se trouvent les bureaux de ces entités.

Vous reconnaissez et acceptez que SHS a le droit de recueillir, utiliser et divulguer vos renseignements personnels à toutes fins liées à votre emploi chez SHS, notamment :

- (c) Pour veiller à ce que vous receviez paiement en échange des services prestés à SHS;
- (d) Pour administrer tout avantage auquel vous avez ou auriez droit, y compris les assurances médicale, dentaire et vie ainsi que les prestations de retraite. Cela comprend la divulgation de vos renseignements personnels aux compagnies d'assurance et/ou aux courtiers ou à toute autre entité chargée de la gestion ou de l'administration du régime d'avantages sociaux de SHS pour le compte de SHS;
- (e) Pour se conformer aux prescriptions réglementaires sur les déclarations et les retenues d'emploi;
- (f) Pour mettre en œuvre les politiques de SHS, notamment celles qui sont relatives à l'utilisation appropriée des réseaux de communications électroniques, et pour se conformer aux lois applicables; et
- (g) En cas de vente ou de transfert de tout ou partie des avoirs de SHS, pour divulguer, à tout acquéreur potentiel, vos renseignements personnels seulement dans le but de déterminer la valeur de SHS et celle de son actif et de son passif et d'évaluer votre position au sein de SHS. Si vos renseignements personnels devaient être divulgués à un acquéreur potentiel, SHS lui demanderait de consentir à protéger le caractère privé de ces renseignements de manière qui soit compatible avec la politique de SHS en matière de respect de la vie privée qui serait alors en vigueur ainsi qu'avec les lois applicables en vigueur à ce moment-là.

### 4. Déclaration officielle d'emploi

Au moment d'entrer au service de SHS, vous devrez signer le document intitulé « Déclaration officielle d'emploi » selon laquelle vous reconnaissez ne pas être au service de Sears et ne pas être considéré comme tel pour quelle que raison que ce soit et que vous n'êtes pas admissible à être employé(e) par Sears ou susceptible d'être embauché(e) par Sears tant que vous serez au service de SHS.

Nous nous réjouissons de l'approche de la date de signature de la Transaction et de la perspective de pouvoir collaborer avec vous. Veuillez prendre note que la continuité de l'emploi auprès de SHS est conditionnelle à la conclusion de la Transaction et qu'elle prendra effet à la signature. Si la Transaction n'était pas conclue, votre emploi ne se poursuivra pas auprès de SHS.

Pour toute question sur cet avis, n'hésitez pas à prendre contact avec • au •.

Cordialement,

**Gestion des services SHS INC.**

Par: \_\_\_\_\_

Je prends acte de cet avis et y consens ce \_\_\_\_ jour de février 2013.

Témoïn \_\_\_\_\_

[Nom de l'employé(e)]

[LETTERHEAD OF SHS SERVICES MANAGEMENT INC.]

February 4, 2013

**PERSONAL AND CONFIDENTIAL**

•  
c/o Sears Canada Inc.  
700 - 290 Yonge Street  
Toronto, Ontario  
M5C 2B3

Dear •:

**Continuation of Employment with SHS Management Inc.**

As you may be aware, your current employer, Sears Canada Inc. (Sears), has entered into an agreement whereby SHS Services Management Inc. (SHS) has agreed to acquire certain assets and operate certain business of Sears, particularly the business operating under the "Sears Home Services" banner (the Transaction). We anticipate that the Transaction will close on March 2, 2013, or such other date as the parties agree (the Closing Date).

**1. Continuation of Employment**

On the Closing Date, Sears will cease to be your employer and you will continue your employment with SHS, on terms and conditions substantially similar, in the aggregate, to those currently in place with Sears.

**2. Confidentiality**

As an employee of SHS, you will have access to the confidential information of SHS and its affiliates, as well as confidential information of Sears (collectively, the Protected Parties), including, without limitation, policies, processes, operating methods, source relationships, computer software and all tangible items on which there is recorded information related to the Protected Parties' businesses, as well as all information relating to the presentation, merchandising, marketing, provision and sale of products and services of the Protected Parties, including all customer lists and customer information (the Confidential Information). You will not, during your employment with SHS, or at any time after the cessation of your employment with SHS, reproduce, disclose or in any way make available, either directly or indirectly, any of the Confidential Information to any other person at any time without the prior written consent of the applicable Protected Party, as the case may be, whose confidential information you seek to disclose.

### 3. Personal Data and Privacy

You consent that:

- (a) Personal data relating to you may be maintained and stored by SHS electronically or in any other form; and
- (b) Personal data relating to you may be freely transferred and shared between SHS, its affiliates, and Sears, irrespective of where the offices of such entities are physically located.

You acknowledge and agree that SHS has the right to collect, use and disclose your personal information for purposes relating to your employment with SHS, including:

- (c) Ensuring that you are paid for the services performed for SHS;
- (d) Administering any benefits to which you are or may become entitled to, including medical, dental, life insurance, or pension benefits. This shall include the disclosure of your personal information to any insurance company and/or broker or to any entity that manages or administers SHS's benefits on behalf of SHS;
- (e) Compliance with any regulatory reporting and withholding requirements relating to your employment;
- (f) Enforcing SHS's policies, including those relating to the proper use of the electronic communications network and to comply with applicable laws; and
- (g) In the event of a sale or transfer of all or part of the assets of SHS, disclosing to any potential acquiring organization, your personal information solely for the purpose of determining the value of SHS and its assets and liabilities and to evaluate your position within SHS. If your personal information is disclosed to any potential acquiring organization, SHS will require the potential acquiring organization to agree to protect the privacy of your personal information in a manner that is consistent with any policy of SHS dealing with privacy that may be in effect from time to time and/or any applicable law that may be in effect from time to time.

### 4. Statement of Understanding of Employment

At the time of commencing employment with SHS, you will execute the attached "Statement of Understanding of Employment", which will be an acknowledgement that you are not and shall not be deemed to be an employee of Sears for any purposes, and that you will not be eligible for or considered for employment with Sears while you are an employee of SHS.



We look forward to the closing of the Transaction and working with you in the future. Please be advised that the continuation of your employment with SHS is conditional upon the successful closing of the Transaction, and immediately effective after Closing. If the Transaction does not close, your employment will not be continued with SHS.

Should you have any questions with respect to this notification, please do not hesitate to contact • at •.

Yours truly,

**SHS SERVICES MANAGEMENT INC.**

Per: \_\_\_\_\_

**Acknowledged and consented to this \_\_\_\_ day of February, 2013.**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
[insert employee name]

**Schedule 6.2(j)****Form of ISO Guarantee**

Pursuant to Section 6.2(j) [*Conditions for the Benefit of the Transferor, ISO Guarantee*]

**GUARANTEE AGREEMENT**

THIS GUARANTEE AGREEMENT (this "Agreement") is made and entered into as of December 20, 2012 by and between Installation Services Org. Ltd., a corporation incorporated under the laws of Alberta ("ISO") and Sears Canada Inc., a corporation incorporated under the laws of Canada ("Sears"). Capitalized terms used but not defined herein shall have the meanings set forth in the Branded Concession Agreement, as defined below.

WHEREAS SHS Services Management Inc., a corporation incorporated under the laws of Canada ("SHS") and Sears entered into an Asset Transfer Agreement dated December 20, 2012 (as in effect from time to time, the "Asset Transfer Agreement");

WHEREAS SHS and Sears entered into a Branded Concession Agreement dated December 20, 2012 (as in effect from time to time, the "Branded Concession Agreement");

WHEREAS SHS is an Affiliate of ISO;

WHEREAS as an inducement to Sears to consummate the transactions contemplated by the Asset Transfer Agreement and the Branded Concession Agreement, ISO has agreed to provide a Guarantee of SHS's obligations under the Asset Transfer Agreement and of certain of SHS's obligations under the Branded Concession Agreement.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**Article I Guarantee**

1.1 Guarantee. Subject to the terms and conditions hereof, ISO hereby unconditionally and irrevocably guarantees the performance and payment in full of the Transferee Obligations (as defined below) and the Licensee Obligations (as defined below) (the Transferee Obligations and the Licensee Obligations collectively referred to as the "Guaranteed Obligations"). This Guarantee is a guarantee of performance and payment of each and every Guaranteed Obligation, and not solely a guarantee of collection. ISO shall be liable for each of the Guaranteed Obligations as a primary obligor, not merely as surety. Furthermore, for the avoidance of doubt, Sears shall be entitled to bring a claim against ISO in a court of law for the satisfaction of any Guaranteed Obligations at the same time as Sears brings a claim against SHS.

1.2 For purposes hereof, the term "Transferee Obligations" means:

(i) all of SHS's liabilities and obligations under the Asset Transfer Agreement, subject to any applicable grace periods, notice periods and limitations according to the terms of the Asset Transfer Agreement; and

(ii) any enforcement of the performance of the obligations of SHS set out in the Asset Transfer Agreement.

1.3 For purposes hereof, the term "Licensee Obligations" means:

(i) SHS's liabilities and obligations under the Branded Concession Agreement, subject to any applicable grace periods, notice periods and limitations according to the terms of the Branded Concession Agreement, that arise during the first Fiscal Year of the Term;

(ii) any and all obligations of payment of SHS pursuant to the Branded Concession Agreement that arise as a result of the operation of the Concession during the first Fiscal Year of the Term (including, without limitation, payment of any Financial Commitments), regardless of when such obligations of payment are due;

(iii) any and all obligations of payment of SHS pursuant to the Branded Concession Agreement that arise as a result of Gross Revenue generated during the first Fiscal Year of the Term, regardless of when such obligations of payment are due;

(iv) any and all obligations of SHS under Article 25 of the Branded Concession Agreement; and

(v) any enforcement of the performance of the obligations of SHS set out in paragraphs (i) to (iv) above.

1.4 ISO shall be obligated to perform or pay the Guaranteed Obligations after Sears has requested payment of such amount or performance thereof from SHS. For the avoidance of doubt, Sears is not required to seek or enforce any remedies against SHS or any other party before Sears will be entitled to performance or payment by ISO of the Guaranteed Obligations and nothing contained herein shall be construed to suggest that a court or other governmental authority must have ruled that any damages are payable by SHS before Sears may exercise its rights hereunder.

1.5 This Guarantee is a continuing guarantee and shall extend (i) to the ultimate performance of the Guaranteed Obligations; and (ii) to the ultimate balance of sums payable by SHS with respect to the stated Guaranteed Obligations, regardless of any payment by SHS that does not fully satisfy its Guaranteed Obligations or any partial discharge or waiver of such obligations by Sears.

1.6 Subrogation. Until the final payment and performance in full of all of the Guaranteed Obligations, ISO shall not exercise and ISO hereby waives (until such final payment and performance) any rights against SHS arising as a result of payment by ISO hereunder, by way of subrogation, reimbursement, restitution, contribution, discussion, division or otherwise, and will not prove any claim in competition with Sears in respect of any payment hereunder in any bankruptcy, insolvency or reorganization case or proceedings of any nature (nothing contained herein shall prevent the filing of such a claim provided that payments made with respect thereto are turned over to Sears for application to the payment of the Guaranteed Obligations until the final payment of the Guaranteed Obligations). ISO will not claim any setoff, recoupment or counterclaim against SHS in respect of any liability of ISO to SHS.

1.7 Waivers by ISO. ISO hereby waives promptness, diligences, presentment, demand, protest, notice of acceptance, notice of any Guaranteed Obligations incurred, notice of any default, and all other notices of any kind, all defences which may be available by virtue of any valuation, stay, moratorium law or other similar law now or hereafter in effect, any right to require the marshaling of assets of SHS, or any other entity or other person primarily or secondarily liable with respect to any of the Guaranteed Obligations, and all suretyship defences generally. Without limiting the generality of the foregoing, ISO agrees to the provisions of any instrument evidencing, securing or otherwise executed in connection with any Guaranteed Obligation and agrees that the obligations of ISO hereunder shall not be released or discharged, in whole or in part, or otherwise affected by (i) the failure of Sears to assert any claim or demand or to enforce any right or remedy against SHS or any other entity or other person primarily or secondarily liable with respect to any of the Guaranteed Obligations; (ii) any extensions, compromise, refinancing, consolidation or renewals of any Guaranteed Obligation; (iii) any change in the time, place or manner of payment of any of the Guaranteed Obligations or any rescissions, waivers, compromise, refinancing, consolidation or other amendments or modifications or changes of any of the terms or provisions of the Asset Transfer Agreement or Branded Concession Agreement or any document or agreement evidencing, securing or otherwise executed in connection with any of the Guaranteed Obligations, (iv) the addition, substitution, discharge or release of any other entity or other person primarily or secondarily liable for any Guaranteed Obligation; or (v) any other act or omission (other than the irrevocable, final payment and performance in full of all of the Guaranteed Obligations) which might in any manner or to any extent vary the risk of ISO or otherwise operate as a release or discharge of ISO, all of which may be done without notice to ISO. To the fullest extent permitted by law, ISO hereby expressly waives any and all rights or defences arising by reason of any law which in any way would require any election of remedies by Sears.

1.8 Recovery. ISO agrees that, if at any time all or any part of any payment previously applied by SHS to any of the Guaranteed Obligations is or must be rescinded or returned by Sears for any reason (including without limitation the bankruptcy of SHS), whether by court order, administrative order, or settlement, ISO will remain liable for the full amount so rescinded or returned as if such amount had never been received by Sears, notwithstanding any termination of this Guarantee or cancellation or termination of the Asset Transfer Agreement or Branded Concession Agreement or any other agreement or document evidencing the Guaranteed Obligations.

## Article II General

2.1 This Agreement shall be binding upon and enure to the benefit of the parties and their respective heirs, beneficiaries, legal representatives, successors and assigns; provided, however, that Sears may (i) assign any or all of its rights and interests hereunder to one or more of its Affiliates, (ii) designate one or more of its Affiliates to perform its obligations hereunder (in any or all of which cases Sears nonetheless shall remain responsible for the performance of all of its obligations hereunder), (iii) assign any or all of its rights and interests hereunder as collateral to one or more lenders of Sears, and (iv) assign its rights hereunder in connection with the sale of all or substantially all of its business or assets (whether by merger, sale of stock or assets, recapitalization or otherwise); provided, however, in the case of clauses (i) and (iv), such 4

assignee must agree in writing with ISO to assume the obligations of Sears hereunder. Subject to section 2.2, ISO may not assign this Guarantee Agreement or any of its obligations hereunder.

2.2 If ISO is no longer an Affiliate of SHS, ISO may, effective no earlier than such time that ISO ceases to be an Affiliate of SHS, assign its obligations hereunder to a "Permitted Assignee" (as defined below), provided Permitted Assignee assumes all the obligations of ISO hereunder pursuant to a written assignment and assumption agreement, a copy of which is provided to Sears no later than the effective date of such assignment and assumption. A Permitted Assignee, with respect to SHS, is an Affiliate of SHS that is (i) not insolvent; (ii) actively engaged in operating a business; and (iii) has no fewer than 25 full-time employees.

2.3 The parties agree that 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, excluding any rule or principle that might refer the governance or the construction of this Agreement to the laws of another jurisdiction.

2.4 All notices, requests, instructions or other documents to be given under this Agreement shall be in writing and shall be deemed effectively given only when personally delivered; when received by facsimile, scanned e-mail or other electronic means or when delivered via a reputable courier service. Notices to Sears or ISO shall be sent to the addresses provided below; or, in either case, to such other address as the person to whom notice is given may have previously furnished to the other in writing in the manner set forth above. Notice given by a party's counsel shall be considered notice given by that party.

Notices to ISO shall be delivered to:

#245, 1209 59 Avenue SE

Calgary, Alberta T2H 2P6

Facsimile: (403) 255-2839

Attention: President

Notices to Sears shall be delivered to:

Sears Canada Inc.

290 Yonge Street, Suite 700

Toronto, Ontario M5B 2C3

Fax: (416) 941-2321

Attention: General Counsel

2.5 Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

2.6 This Agreement is intended by the Parties as a final expression of the guarantee agreement of ISO with respect to obligations under the Asset Transfer Agreement and the 5

Branded Concession Agreement, and is intended as a complete and exclusive statement of the terms of such agreement.

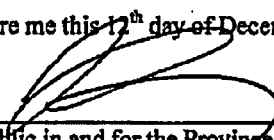
2.7 This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile, or scanned e-mail transmission or other electronic means shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile, e-mail or other electronic means shall be deemed to be their original signatures for any purposes whatsoever.

[SIGNATURE PAGE TO FOLLOW]

# TAB E

**EXHIBIT E**

This is the Exhibit marked "E" referred to  
in the Affidavit of Micheal Clements,  
sworn before me this 12<sup>th</sup> day of December, 2013.

  
\_\_\_\_\_  
Notary Public in and for the Province of Alberta  
**Nolan Ritzel**  
**Student-at-Law**



**GENERAL SECURITY AGREEMENT**

This General Security Agreement made as of 2nd day of March, 2013

**By:**

**SHS Services Management Inc.**

(the "Debtor")

**In Favour of:**

**Sears Canada Inc.**

(the "Secured Party")

**1. Security**

1.1 For value received, the Debtor grants and creates the security constituted by this General Security Agreement and agrees to the terms, covenants, agreements, conditions, provisos and other matters set out in this General Security Agreement.

1.2 As general and continuing security for the Obligations (as defined in clause 2.1 hereof), the Debtor:

1.2.1 hereby grants to the Secured Party, by way of mortgage, charge, assignment and transfer, a security interest in all presently owned and hereafter acquired personal property of the Debtor of whatsoever nature and kind and wheresoever situate and all proceeds thereof and therefrom, renewals thereof, Accessions thereto and substitutions therefor, (all of which are herein collectively called the "Personal Property Collateral"), including, without limiting the generality of the foregoing, all the presently owned or held and hereafter acquired right, title and interest of the Debtor in and to all Goods (including all accessories, attachments, additions and Accessions thereto), Chattel Paper, Documents of Title (whether negotiable or not), Instruments, Intangibles (subject to Clause 1.2.2 hereof), Licences, Money, Securities, Investment Property and all:

- (a) Inventory of whatsoever nature and kind and wheresoever situate;
- (b) Equipment (other than Inventory) of whatsoever nature and kind and wheresoever situate, including, without limitation, all machinery, tools, apparatus, plant, furniture, fixtures and vehicles of whatsoever nature and kind;

- (c) book accounts and book debts and generally all Accounts, debts, dues, claims, choses in action and demands of every nature and kind howsoever arising or secured including letters of credit, letters of guarantee and advices of credit, which are now due, owing or accruing or growing due to or owned by or which may hereafter become due, owing or accruing or growing due to or owned by the Debtor (all of which are herein collectively called the "Debts");
- (d) deeds, documents, writings, papers, books of account and other books relating to or being records of Debts, Chattel Paper or Documents of Title or by which such are or may hereafter be secured, evidenced, acknowledged or made payable;
- (e) contractual rights and insurance claims and all goodwill;
- (f) monies other than trust monies lawfully belonging to others; and
- (g) personal property described in any schedule now or hereafter annexed hereto; and

1.2.2 hereby grants to the Secured Party, by way of mortgage and charge a security interest in all presently owned and hereafter acquired patents, trade-marks, copyrights, industrial designs and other intellectual property and all proceeds thereof and therefrom, renewals thereof, Accessions thereto and substitutions therefor (all of which is deemed to be included in the definition of "Personal Property Collateral" referred to in Clauses 1.2.1 and 1.3.2 hereof); and

1.2.3 hereby charges as and by way of a floating charge in favour of the Secured Party all the presently owned or held and hereafter acquired property, assets, effects and undertakings of the Debtor of whatsoever nature and kind and wheresoever situate, other than such of the property, assets, effects and undertakings of the Debtor as are validly and effectively subjected to the security interest granted to the Secured Party pursuant to clause 1.2.1, (all of which property, assets, effects and undertakings so charged by this clause 1.2.3 are herein collectively called the "Other Collateral") including, without limiting the generality of the foregoing, all presently owned or held and hereafter acquired right, title and interest of the Debtor in and to real and immovable and leasehold property and rights whether in fee or of a less estate and all interest in and rights relating to lands and all easements, rights of way, privilege, benefits, licences, improvements and rights whether connected therewith or appurtenant thereto or separately owned or held and all structures, buildings, plant, machinery, fixtures, apparatus and fixed assets and the charge created by this clause 1.2.3 shall be a floating charge such that the Debtor shall not have power without the prior written consent of the Secured Party to:

- (a) create or permit to exist any Encumbrance against any of the Other Collateral which ranks or could in any event rank in priority to or *pari*

*passu* with the security constituted by this General Security Agreement, save for:

- (1) those Encumbrances shown in the Encumbrance Schedule; and
  - (2) Encumbrances approved in writing by the Secured Party prior to creation or assumption; or
- (b) grant, sell, exchange, transfer, assign, lease or otherwise dispose of the Other Collateral.

1.3 In this General Security Agreement:

- 1.3.1 any reference to "Premises" shall mean all property owned or leased by the Debtor;
- 1.3.2 the Personal Property Collateral and the Other Collateral are herein together called the "Collateral";
- 1.3.3 any reference to "Collateral" shall, unless the context otherwise requires, be deemed a reference to "Collateral or any part thereof";
- 1.3.4 any reference to "Debtor" and the personal pronoun "it" or "its" and any verb relating thereto and used therewith shall be read and construed as required by and in accordance with the context in which such words are used depending upon whether the Debtor is one or more corporations and, if more than one Debtor executes this General Security Agreement, this General Security Agreement shall apply and be binding upon each of them jointly and severally and all obligations hereunder shall be joint and several;
- 1.3.5 any reference to "Environmental Laws" shall mean any laws, regulations, orders, by-laws, permits or lawful requirements of any governmental authority with respect to environmental protection or regulating hazardous materials;
- 1.3.6 any reference to "General Security Agreement" shall, unless the context otherwise requires, be deemed a reference to this General Security Agreement as amended from time to time by written agreement together with the schedules hereto and any schedules added hereto pursuant to the provisions hereof;
- 1.3.7 any reference to "Hazardous Materials" shall mean any asbestos material, urea formaldehyde, explosives, radioactive materials, pollutants, contaminants, hazardous substances, corrosive substances, toxic substances, special waste or waste of any kind including, without limitation, compounds known as chlorobiphenyls and any substance the storage, manufacture, disposal, treatment, generation, use, transport, remediation or release of which into the environment is prohibited, controlled or licensed under Environmental Laws;

1.3.8 any reference to "PPSA" shall mean any legislation of any province or territory in Canada governing the creation, perfection and enforcement of and other matters pertaining to security interests in personal property, as amended from time to time and any Act substituted therefor and amendments thereto and, for the purposes of interpreting a term referred to herein or any reference to PPSA herein, unless otherwise indicated, means specifically the PPSA of Ontario, except to the extent that matters of title, creation, perfection or priority of the security interests granted hereby or procedural issues of foreclosure are required to be governed by the laws of a province in which the Collateral or any part thereof is located, in which case, it shall mean the jurisdiction that governs the matters of title, creation, perfection or priority of the security interests granted hereby or procedural issues of foreclosure in which such Collateral or such part thereof is located, as applicable;

1.3.9 any reference to the "Province" shall mean the Province of Ontario; and

1.3.10 the terms "Goods", "Chattel Paper", "Documents of Title", "Equipment", "Accounts" "Consumer Goods", "Instruments", "Intangibles", "Licences" (Alberta and British Columbia only), "Money", "Securities", "Investment Property", "Proceeds", "Inventory" and "Accessions" and other words and expressions which have been defined in the PPSA shall be interpreted in accordance with their respective meanings given in the PPSA (either in the singular or plural thereof), as the context requires unless otherwise defined herein or unless the context otherwise requires.

1.4 The Secured Party and the Debtor have not agreed to postpone the time for attachment of the security interests granted hereby.

1.5 The security interest in Consumer Goods hereby granted shall not become effective until, but shall become effective immediately when, the Secured Party notifies the Debtor in writing that it is effective.

1.6 The last day of the term of any lease held by the Debtor with respect to any of the Collateral is excluded from the security constituted by this General Security Agreement.

## **2. Obligations Secured**

2.1 The security constituted by this General Security Agreement is general and continuing security for payment, performance and satisfaction of each and every obligation, indebtedness and liability of the Debtor to the Secured Party (including interest thereon), present or future, direct or indirect, absolute or contingent, matured or not, extended or renewed, wheresoever and howsoever incurred, and any ultimate unpaid balance thereof, including all future advances and re-advances, and whether the same is from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again and whether the Debtor be bound alone or with another or others and whether as principal or surety, (all of which obligations, indebtedness and liabilities are herein collectively called the "Obligations").

2.2 This General Security Agreement and the security constituted hereby are in addition to and not in substitution for any other security or securities which the Secured Party may now or from time to time hold or take from the Debtor or from any other person whomsoever.

3. Representations and Warranties of the Debtor

3.1 The Debtor represents and warrants that, and, so long as this General Security Agreement remains in effect, shall be deemed to continuously represent and warrant that:

3.1.1 this General Security Agreement has been authorized, executed and delivered in accordance with resolutions of the directors (and of the shareholders as applicable) of the Debtor and all other matters and things have been done and performed so as to authorize and make the execution and delivery of this General Security Agreement, the creation of the security constituted hereby and the performance of the Debtor's obligations hereunder, legal, valid and binding;

3.1.2 the Collateral is genuine and is owned by the Debtor free of all security interests, mortgages, liens, claims, charges and other encumbrances (herein collectively called "Encumbrances"), save for the security constituted by this General Security Agreement, those Encumbrances shown on the Encumbrance Schedule and those Encumbrances approved in writing by the Secured Party;

3.1.3 the Debtor has good and lawful authority to create the security in the Collateral constituted by this General Security Agreement;

3.1.4 each Debt, Chattel Paper and Instrument included in Collateral is enforceable in accordance with its terms against the party obligated to pay the same (the "Account Debtor"), and the amount represented by the Debtor to the Secured Party from time to time as owing by each Account Debtor or by all Account Debtors will be the correct amount actually and unconditionally owing by such Account Debtor or Account Debtors, except for normal cash discounts where applicable, and no Account Debtor will have any defense, set off, claim or counterclaim against the Debtor which can be asserted against the Secured Party, whether in any proceeding to enforce the Collateral or otherwise;

3.1.5 with respect to Goods (including Inventory) comprised in the Collateral, the locations specified in the Location Schedule are accurate and complete (save for Goods in transit to such locations and Inventory on lease or consignment) and all fixtures or Goods about to become fixtures which form part of the Collateral will be situate at one of the locations specified in the Location Schedule;

3.1.6 none of the Premises are insulated with urca formaldehyde nor contain any asbestos material or underground tanks;

3.1.7 the Premises are free of any Hazardous Materials;

- 3.1.8 the Premises are not currently used in a manner, and, to the Debtor's knowledge, after having made due inquiry, no prior use has occurred, which is contrary to any laws, regulations, orders, bylaws, permits or lawful requirements of any Environmental Laws; and
- 3.1.9 there are no existing or threatened claims, actions, orders or investigations under any Environmental Laws against the Debtor or against the Premises;
- 3.1.10 the Debtor is the owner of any intellectual property applications and registrations and there are no outstanding claims of ownership by third parties in respect of these registrations and applications;
- 3.1.11 all intellectual property applications and registrations are valid and in good standing;
- 3.1.12 all trade-mark and industrial designs have been in continuous use and that the use has been proper in relation to the wares and/or services of Debtor;
- 3.1.13 only the Debtor has used the trade-marks, or if there are any third party users of the Debtor's trade-marks, such third party users are properly licensed to use such trademarks;
- 3.1.14 all assignments and other documents affecting intellectual property rights have been disclosed and provided to the Secured Party;
- 3.1.15 there are no outstanding or threatened claims or proceedings with respect to the intellectual property; and,
- 3.1.16 all necessary assignments and license agreements have been properly executed by the Debtor for use of third party intellectual property.

4. **Covenants of the Debtor**

- 4.1 The Debtor covenants and agrees that at all times while this General Security Agreement remains in effect the Debtor will:
  - 4.1.1 defend the Collateral for the benefit of the Secured Party against the claims and demands of all other persons;
  - 4.1.2 not, without the prior written consent of the Secured Party:
    - (a) create or permit to exist any Encumbrance against any of the Personal Property Collateral which ranks or could in any event rank in priority to or *pari passu* with the security constituted by this General Security Agreement, save for:
      - (i) those Encumbrances shown in the Encumbrance Schedule; and

- (ii) Encumbrances approved in writing by the Secured Party prior to creation or assumption; or
  - (b) grant, sell, exchange, transfer, assign, lease or otherwise dispose of the Collateral: provided always, that, until default, the Debtor may, in the ordinary course of the Debtor's business, sell or lease Inventory and, subject to clause 5.2 hereof, use monies available to the Debtor;
- 4.1.3 fully and effectively maintain and keep maintained valid and effective the security constituted by this General Security Agreement;
- 4.1.4 notify the Secured Party promptly of:
  - (a) any change in the information contained herein or in the Schedules hereto relating to the Debtor, the Debtor's name, the Debtor's business or the Collateral;
  - (b) the details of any significant acquisition of Collateral;
  - (c) the details of any claims or litigation affecting the Debtor or the Collateral;
  - (d) any loss or damage to the Collateral;
  - (e) any default by any Account Debtor in payment or other performance of obligations of the Account Debtor comprised in the Collateral; and
  - (f) the return to, or repossession by, the Debtor of Collateral;
- 4.1.5 keep the Collateral in good order, condition and repair (in the locations specified in the Location Schedule or such other locations as the Secured Party may approve in writing) and not use the Collateral in violation of the provisions of this General Security Agreement or any other agreement relating to the Collateral or any policy insuring the Collateral or any applicable statute, law, by-law, rule, regulation or ordinance;
- 4.1.6 carry on and conduct the business of the Debtor in a proper and efficient manner and so as to protect and preserve the Collateral and to keep, in accordance with generally accepted accounting principles, consistently applied, proper books of account for the Debtor's business as well as accurate and complete records concerning the Collateral and, at the Secured Party's request, mark any and all such records and the Collateral so as to indicate the security constituted by this General Security Agreement;
- 4.1.7 forthwith pay:
  - (a) all obligations to its employees and all obligations to others which relate to its employees when due, including, without limitation, all taxes, duties, levies, government fees, claims and dues related to its employees;

- (b) all taxes, assessments, rates, duties, levies, government fees, claims and dues lawfully levied, assessed or imposed upon it or the Collateral when due, unless the Debtor shall in good faith contest its obligations so to pay and shall furnish such security as the Secured Party may require; and
  - (c) all Encumbrances which rank or could in any event rank in priority to or *pari passu* with the security constituted by this General Security Agreement, other than the Encumbrances, if any, shown in the Encumbrance Schedule hereto and those approved in writing by the Secured Party;
- 4.1.8 prevent the Collateral, save Inventory sold or leased as permitted hereby, from being or becoming an Accession to other property not covered by this General Security Agreement;
- 4.1.9 insure the Collateral for such periods, in such amounts, on such terms and against loss or damage by fire and such other risks as the Secured Party shall reasonably direct (but in any event in accordance with prudent business practice and for not less than the full replacement cost thereof) with loss payable to the Secured Party and the Debtor, as insureds, as their respective interests may appear, and to pay all premiums for such insurance:
- 4.1.10 deliver to the Secured Party from time to time promptly upon request:
- (a) any Documents of Title, Instruments, Securities and Chattel Paper comprised in or relating to the Collateral;
  - (b) all books of account and all records, ledgers, reports, correspondence, schedules, documents, statements, lists and other writings relating to the Collateral for the purpose of inspecting, auditing or copying the same;
  - (c) all financial statements prepared by or for the Debtor regarding the Debtor's business;
  - (d) all policies and certificates of insurance relating to the Collateral; and
  - (e) such information concerning the Collateral, the Debtor and Debtor's business and affairs as the Secured Party may reasonably require;
- 4.1.11 forthwith pay all costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) which may be incurred by the Secured Party in:
- (a) inspecting the Collateral;
  - (b) negotiating, preparing, perfecting and registering this General Security Agreement and other documents, whether or not relating to this General Security Agreement;



- (c) investigating title to the Collateral;
  - (d) taking, recovering, keeping possession of and insuring the Collateral;
  - (e) connection with any disclosure requirements under the PPSA; and
  - (f) all other actions and proceedings taken in connection with the preservation of the Collateral and the confirmation, perfection and enforcement of this General Security Agreement and of any other security held by the Secured Party as security for the Obligations;
- 4.1.12 at the Secured Party's request at any time and from time to time create in favour of the Secured Party, as security for the Obligations, a fixed charge or charges upon any of the Other Collateral;
- 4.1.13 at the Secured Party's request at any time and from time to time execute and deliver such further and other documents and instruments and do all other acts and things as the Secured Party reasonably requires in order to give effect to this General Security Agreement or to confirm and perfect, and maintain perfection of, the security constituted by this General Security Agreement in favour of the Secured Party;
- 4.1.14 permit the Secured Party and its representatives, at all reasonable times, access to all the Debtor's property, assets and undertakings and to all its books of account and records for the purpose of inspection and render all assistance necessary for such inspection;
- 4.1.15 comply with the covenants, if any, set out in the Additional Covenants Schedule;
- 4.1.16 develop and use the Premises only in compliance with all Environmental Laws;
- 4.1.17 permit the Secured Party to investigate the Premises, any goods on the Premises and the Debtor's records at any time and from time to time to verify such compliance with Environmental Laws and this General Security Agreement;
- 4.1.18 upon the request of the Secured Party, obtain from time to time at the Debtor's cost a report from an independent consultant designated or approved by the Secured Party verifying compliance with Environmental Laws and this General Security Agreement or the extent of any non-compliance therewith;
- 4.1.19 not store, manufacture, dispose, treat, generate, use, transport, remediate or release Hazardous Materials on or from any of the Premises without notifying the Secured Party in writing;
- 4.1.20 promptly remove any Hazardous Materials from the Premises in a manner which conforms to Environmental Laws governing their removal; and,
- 4.1.21 notify the Secured Party in writing of:

- (a) any enforcement, clean-up, removal, litigation or other governmental, regulatory, judicial or administrative action instituted, contemplated or threatened against the Debtor or the Premises pursuant to any Environmental Laws;
- (b) all claims, actions, orders or investigations, made or threatened by any third party against the Debtor or any of the Premises relating to damage, contribution, cost recovery, compensation, loss or injuries resulting from any Hazardous Materials or any breach of the Environmental Laws; and
- (c) the discovery of any Hazardous Materials or any occurrence or condition on any of the Premises or any real property adjoining or in the vicinity of any of the Premises which could subject the Debtor or any of the Premises to any fines, penalties, orders or proceedings under any Environmental Laws;

4.1.22 apply to file applications and complete registrations on any present intellectual property which is not currently protected by an application or registration where commercially reasonable, including any and all improvements to intellectual property and apply to file registrations on unregistered trade-marks in Canada and the United States;

4.1.23 apply to file applications and complete registrations of all after acquired intellectual property in all jurisdictions where commercially reasonable;

4.1.24 keep up-to-date witnessed records regarding intellectual property;

4.1.25 enter into confidentiality agreements with employees and other third parties who may invent, create, discover, author and/or reduce to practice intellectual property for the Debtor and who may have access to confidential information of the Debtor;

4.1.26 ensure that all after acquired intellectual property obtained from third parties is properly acquired by way of a written license agreement or assignment;

4.1.27 provide, upon written request by the Secured Party, a list of all registered and unregistered trade-marks, patent applications, issued patents, copyright, industrial designs and other intellectual property; and,

4.1.28 mark all products and advertising appropriately to maintain the validity of all intellectual property rights.

## 5. Payments and Proceeds

- 5.1 Before or after default under this General Security Agreement, the Secured Party may notify all or any Account Debtors of the security constituted by this General Security Agreement and may also direct such Account Debtors to make all payments on the Collateral to the Secured Party.

5.2 The Debtor acknowledges that any payments on or other proceeds of the Collateral received by the Debtor from Account Debtors, whether before or after notification of the security constituted by this General Security Agreement to Account Debtors and whether before or after default under this General Security Agreement, shall be received and held by the Debtor in trust for the Secured Party and shall be turned over to the Secured Party forthwith upon request.

6. Secured Party Actions

6.1 The Debtor hereby authorizes the Secured Party to:

- (a) file such financing statements and other documents and do such acts, matters and things (including completing and adding schedules hereto identifying the Collateral or any permitted Encumbrances affecting collateral or identifying the locations at which the Debtor's business is carried on and the Collateral and records relating thereto are situate) as the Secured Party may deem appropriate to perfect and continue the security constituted hereby, to protect and preserve the Collateral and to realize upon the security constituted hereby and the Debtor hereby irrevocably constitutes and appoints the Secured Party the true and lawful attorney of the Debtor, with full power of substitution, to do any of the foregoing in the name of the Debtor whenever and wherever it may be deemed necessary or expedient by the Secured Party; and
- (b) make enquiries from time to time of any governmental authority with respect to the Debtor's compliance with Environmental Laws and the Debtor agrees that the Debtor will from time to time provide to the Secured Party with such written authorization as the Secured Party may reasonably require in order to facilitate the obtaining of such information.

6.2 The Secured Party may charge for its reasonable costs incurred in connection with any disclosure requirements under the PPSA.

6.3 If the Debtor fails to perform any of its Obligations hereunder, the Secured Party may, but shall not be obliged to, perform any or all of such Obligations without prejudice to any other rights and remedies of the Secured Party hereunder, and any payments made and any costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) incurred in connection therewith shall be payable by the Debtor to the Secured Party forthwith with interest until paid at the highest rate borne by any of the Obligations and such amounts shall form part of the Obligations and constitute a charge upon the Collateral in favour of the Secured Party prior to all claims subsequent to this General Security Agreement.

6.4 The Debtor covenants and agrees that the Secured Party may, but shall be under no obligation to, at any time or times as the Secured Party deems necessary and without the concurrence of the Debtor or any other person make such arrangements for the repairing, finishing and putting in order of the Premises, including, without limitation, such repairs,

replacements and improvements as are necessary so that the Debtor and the Premises comply with Environmental Laws, and all reasonable costs, charges and expenses including an allowance for the time and services of the Secured Party, the Secured Party's servants or agents or any other person or persons appointed for the above purposes including, without limitation, the full amount of all legal fees, disbursements, costs, charges and expenses incurred by the Secured Party and any amount due hereunder shall be payable forthwith to the Secured Party, shall be deemed an advance to the Debtor by the Secured Party, shall be deemed to be Obligations, and shall bear interest at the highest rate per annum from time to time charged by the Secured Party on any of the other Obligations until paid.

7. **Default**

7.1 The Debtor shall be in default under this General Security Agreement, unless otherwise agreed in writing by the Secured Party, upon the occurrence of any of the following events:

- 7.1.1 the Debtor makes default in payment when due of any of the Obligations which are indebtedness or liabilities or the Debtor fails to perform or satisfy any other of the Obligations; or
- 7.1.2 the Debtor is in breach of any term, condition, proviso, agreement or covenant to the Secured Party, or any representation or warranty given by the Debtor to the Secured Party is untrue, whether or not any such term, condition, proviso, agreement or covenant, representation or warranty is contained in this General Security Agreement; or
- 7.1.3 the Debtor makes an assignment for the benefit of its creditors, is declared bankrupt, makes a proposal or otherwise takes advantage of provisions for relief under the *Bankruptcy and Insolvency Act (Canada)*, the *Companies Creditors' Arrangement Act (Canada)* or similar legislation in any jurisdiction, or makes an authorized assignment; or
- 7.1.4 there is instituted by or against the Debtor any formal or informal proceeding for the dissolution or liquidation of, settlement of claims against, or winding-up of affairs of the Debtor; or
- 7.1.5 the Debtor ceases or threatens to cease to carry on business or makes or agrees to make a bulk sale of assets or commits or threatens to commit an act of bankruptcy; or
- 7.1.6 a receiver, receiver and manager or receiver-manager of all or any part of the Collateral or of any other property, assets or undertakings of the Debtor is appointed; or
- 7.1.7 any execution, sequestration, extent or other process of any court becomes enforceable against the Debtor or a distress or analogous process is levied upon the Collateral or any part thereof; or

- 7.1.8 an order is made or an effective resolution is passed for winding-up the Debtor; or
- 7.1.9 without the prior written consent of the Secured Party, the Debtor creates or permits to exist any Encumbrance against any of the Collateral which ranks or could in any event rank in priority to or *pari passu* with the security constituted by this General Security Agreement; or
- 7.1.10 the holder of any Encumbrance against any of the Collateral does anything to enforce or realize on such Encumbrance; or
- 7.1.11 the Debtor enters into any reconstruction, reorganization, amalgamation, merger or other similar arrangement with any other person; or
- 7.1.12 the Secured Party in good faith believes and has commercially reasonable grounds to believe that the prospect of payment or performance of any of the Obligations is impaired or that any of the Collateral is or is about to be placed in jeopardy; or
- 7.1.13 any certificate, statement, representation, warranty or audit report herewith, heretofore or hereafter furnished by or on behalf of the Debtor to the Secured Party, whether in connection with this General Security Agreement or otherwise, and whether furnished as an inducement to the Secured Party to extend any credit to or to enter into this or any other agreement with the Debtor or not:
  - (a) proves to have been false in any material respect at the time as of which the facts therein set forth were stated or certified; or
  - (b) proves to have omitted any substantial contingent or unliquidated liability or claim against the Debtor;

or, upon the date of execution of this General Security Agreement, there shall have been any material adverse change in any of the facts disclosed by any such certificate, statement, representation, warranty or audit report, which change was not disclosed to the Secured Party at or prior to the time of such execution.

- 7.2 For the purposes of Section 203 of the *Land Title Act* (British Columbia), the floating charge created by this General Security Agreement over land shall become a fixed charge thereon upon the earliest of:
  - 7.2.1 the occurrence of an event described in any of clauses 7.1.3, 7.1.4, 7.1.5, 7.1.6, 7.1.7, or 7.1.8; or
  - 7.2.2 the Secured Party taking any action to enforce and realize on the security constituted by this General Security Agreement.

## 8. Enforcement

- 8.1 The Secured Party may make demand for payment at any time of any or all of the Obligations which are payable upon demand (whether or not there is any default under

this General Security Agreement) and, upon any default under this General Security Agreement, the Secured Party may declare any or all of the Obligations which are not payable on demand to become immediately due and payable.

- 8.2 Upon default under this General Security Agreement, the security hereby constituted will immediately become enforceable.
- 8.3 To enforce and realize on the security constituted by this General Security Agreement, the Secured Party may take any action permitted by law or in equity, as it may deem expedient, and in particular, without limiting the generality of the foregoing, the Secured Party may do any one or more of the following:
- 8.3.1 appoint by instrument a receiver, receiver and manager or receiver-manager (the person so appointed is herein called the "Receiver") of the Collateral, with or without bond as the Secured Party may determine, and from time to time in its sole discretion remove such Receiver and appoint another in its stead;
- 8.3.2 enter upon any of the Premises and take possession of the Collateral with power to exclude the Debtor, its agents and its servants therefrom, without becoming liable as a mortgagee in possession;
- 8.3.3 preserve, protect and maintain the Collateral and make such replacements thereof and repairs and additions thereto as the Secured Party may deem advisable;
- 8.3.4 sell, lease or otherwise dispose of or concur in selling, leasing or otherwise disposing of all or any part of the Collateral, whether by public or private sale or lease or otherwise, in such manner, at such price as can be reasonably obtained therefor and on such terms as to credit and with such conditions of sale and stipulations as to title or conveyance or evidence of title or otherwise as to the Secured Party may seem reasonable, provided that the Debtor will not be entitled to be credited with the proceeds of any such sale, lease or other disposition until the monies therefor are actually received; and
- 8.3.5 exercise all of the rights and remedies of a secured party under the PPSA.
- 8.4 A Receiver appointed pursuant to this General Security Agreement shall be the agent of the Debtor and not of the Secured Party and, to the extent permitted by law or to such lesser extent permitted by its appointment, shall have all the powers of the Secured Party hereunder, and in addition shall have power to carry on the business of the Debtor and for such purpose from time to time to borrow money either secured or unsecured, and if secured by a security on any of the Collateral, any such security may rank in priority to or *pari passu* with or behind the security constituted by this General Security Agreement, and if it does not so specify such security shall rank in priority to the security constituted by this General Security Agreement.
- 8.5 Subject to applicable law and the claims, if any, of the creditors of the Debtor ranking in priority to the security constituted by this General Security Agreement, all amounts realized from the disposition of the Collateral pursuant to this General Security

Agreement will be applied as the Secured Party, in its sole discretion, may direct as follows:

- Firstly:** in or toward payment of all costs, charges and expenses (including legal fees and disbursements on a solicitor and his own client basis) incurred by the Secured Party in connection with or incidental to:
- (a) the exercise by the Secured Party of all or any of the powers granted to it pursuant to this General Security Agreement; and
  - (b) the appointment of the Receiver and the exercise by the Receiver of all or any of the powers granted to the Receiver pursuant to this General Security Agreement, including the Receiver's reasonable remuneration and all outgoings properly payable by the Receiver;
- Secondly:** in or toward payment to the Secured Party of all principal and other monies (except interest) due in respect of the Obligations;
- Thirdly:** in or toward payment to the Secured Party of all interest remaining unpaid in respect of the Obligations; and
- Fourthly:** any surplus will be paid to the Debtor.

#### 9. Deficiency

- 9.1 If the amounts realized from the disposition of the Collateral are not sufficient to pay the Obligations in full to the Secured Party, the Debtor will immediately pay to the Secured Party the amount of such deficiency.

#### 10. Rights Cumulative

- 10.1 All rights and remedies of the Secured Party set out in this General Security Agreement are cumulative and no right or remedy contained herein is intended to be exclusive but each will be in addition to every other right or remedy contained herein or in any existing or future general security agreement or now or hereafter existing at law or in equity or pursuant to any other agreement between the Debtor and the Secured Party that may be in effect from time to time.

#### 11. Appointment of Attorney

- 11.1 The Debtor hereby irrevocably appoints the Secured Party or the Receiver, as the case may be, with full power of substitution, to be the attorney of the Debtor for and in the name of the Debtor to sign, endorse or execute under seal or otherwise any deeds, documents, transfers, cheques, instruments, demands, assignments, assurances or consents that the Debtor is obliged to sign, endorse or execute and generally to use the name of the Debtor and to do all things as may be necessary or incidental to the exercise of all or any of the powers conferred on the Secured Party or the Receiver, as the case may be, pursuant to this General Security Agreement.

**12. Liability of Secured Party**

- 12.1 The Secured Party shall not be responsible or liable for any debts contracted by it, for damages to persons or property or for salaries or non-fulfilment of contracts during any period when the Secured Party shall manage the Collateral upon entry of the business of the Debtor, as herein provided, nor shall the Secured Party be liable to account as mortgagee in possession or for anything except actual receipts or be liable for any loss or realization or for any default or omission for which a mortgagee in possession may be liable.
- 12.2 The Secured Party shall not be bound to do, observe or perform or to see to the observance or performance by the Debtor of any obligations or covenants imposed upon the Debtor nor shall the Secured Party, in the case of Securities, Instruments or Chattel Paper, be obliged to reserve rights against other persons, nor shall the Secured Party be obliged to keep any of the Collateral identifiable.
- 12.3 The Secured Party shall not be obliged to inquire into the right of any person purporting to be entitled under the PPSA to information and materials from the Secured Party by making a demand upon the Secured Party for such information and materials and the Secured Party shall be entitled to comply with such demand and shall not be liable for having complied with such demand notwithstanding that such person may in fact not be entitled to make such demand.
- 12.4 The Debtor will indemnify the Secured Party and hold the Secured Party harmless from and against any and all claims, costs, losses, demands, actions, causes of action, lawsuits, damages, penalties, judgments and liabilities of whatsoever nature and kind in connection with or arising out of any representation or warranty given by the Debtor, being untrue, the breach of any term, condition, proviso, agreement or covenant to the Secured Party, or the exercise of any of the rights and or remedies of the Secured Party, or any transaction contemplated in this General Security Agreement.
- 12.5 The Debtor hereby waives any applicable provision of law permitted to be waived by it which imposes higher or greater obligations upon the Secured Party than provided in this General Security Agreement.
- 12.6 The Debtor shall indemnify, reimburse and save harmless the Secured Party, any receiver, its directors, officers, employees, agents, and successors and assigns, from any and all liabilities, actions, damages, claims, losses, costs and expenses whatsoever (including without limitation, the full amount of all legal fees, costs, charges and expenses and the cost of removal, treatment, storage and disposal of any Hazardous Materials and remediation of the Premises) which may be paid, incurred or asserted against the Secured Party for, with respect to or as a direct or indirect result of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from the Premises or into or upon any other land, the atmosphere or any watercourse, body of water or wetland of any Hazardous Materials.



12.7 Any amount owing by the Debtor hereunder shall, from the date of disbursement until the date the Secured Party receives reimbursement, be deemed advanced to the Debtor by the Secured Party, shall be deemed to be Obligations and shall bear interest at the highest rate per annum from time to time charged by the Secured Party on any of the other Obligations until paid.

12.8 The Debtor agrees that the indemnity obligations hereunder shall survive the release of the security of this General Security Agreement and the payment and satisfaction of the indebtedness and liabilities hereby secured.

**13. Appropriation of Payments and Offset**

13.1 Subject to any applicable provisions of the PPSA, any and all payments made in respect of the Obligations from time to time and monies realized from any security held therefor (including monies collected in accordance with or realized on any enforcement of this General Security Agreement) may be applied to such part or parts of the Obligations as the Secured Party may see fit, and the Secured Party may at all times and from time to time change any appropriation as the Secured Party may see fit or, at the option of the Secured Party, such payments and monies may be held unappropriated in a collateral account or released to the Debtor, all without prejudice to the liability of the Debtor or to the rights of the Secured Party hereunder.

13.2 Without limiting any other right of the Secured Party, whenever any of the Obligations is immediately due and payable or the Secured Party has the right to declare any of the Obligations to be immediately due and payable (whether or not it has so declared), the Secured Party may, in its sole discretion, set off against any of the Obligations any and all monies then owed to the Debtor by the Secured Party in any capacity, whether or not due and to do so even though any charge therefor is made or entered on the Secured Party's records subsequent thereto, and the Secured Party shall be deemed to have exercised such right to set off immediately at the time of making its decision.

**14. Liability to Advance, Etc.**

14.1 Except to the extent that the Secured Party:

14.1.1 by accepting bills of exchange drawn on it by the Debtor; or

14.1.2 by issuing letters of credit or letters of guarantee on the application of the Debtor; is required to advance monies on the maturity of such bills or pursuant to such letters of credit or letters of guarantee, as the case may be, none of the preparation, execution, perfection and registration of this General Security Agreement or the advance of any monies shall bind the Secured Party to make any advance or loan or further advance or loan, or renew any note or extend any time for payment of any indebtedness or liability of the Debtor to the Secured Party or extend any term for performance or satisfaction of any obligation of the Debtor to the Secured Party.

14.2 Nothing herein contained shall in any way oblige the Secured Party to grant, continue, renew, extend time for payment of or accept anything which constitutes or would constitute Obligations or any of them.

15. Waiver

15.1 No delay or omission by the Secured Party in exercising any right or remedy hereunder or with respect to any of the Obligations shall operate as a waiver thereof or of any other right or remedy, and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy.

15.2 The Secured Party may from time to time and at any time waive in whole or in part any right, benefit or default under any clause of this General Security Agreement but any such waiver of any right, benefit or default on any occasion shall be deemed not to be a waiver of any such right, benefit or default thereafter, or of any other right, benefit or default, as the case may be.

16. Extensions

16.1 The Secured Party may grant extensions of time and other indulgences, take and give up security, accept compositions, compound, compromise, settle, grant releases and discharges, refrain from perfecting or maintaining perfection of security, and otherwise deal with the Debtor, Account Debtors of the Debtor, sureties and others and with the Collateral and other security as the Secured Party may see fit without prejudice to the liability of the Debtor or the Secured Party's right to hold and realize on the security constituted by this General Security Agreement.

17. Assignment

17.1 The Secured Party may, without further notice to the Debtor, at any time mortgage, charge, assign, transfer or grant a security interest in this General Security Agreement and the security constituted hereby.

17.2 The Debtor expressly agrees that the assignee, transferee or secured party of the Secured Party, as the case may be, shall have all of the Secured Party's rights and remedies under this General Security Agreement and the Debtor will not assert any defence, counterclaim, right of set-off or otherwise any claim which it now has or hereafter acquires against the Secured Party in any action commenced by such assignee, transferee or secured party, as the case may be, and will pay the Obligations to the assignee, transferee or secured party, as the case may be, as the Obligations become due.

18. Satisfaction and Discharge

18.1 Any partial payment or satisfaction of the Obligations, or any ceasing by the Debtor to be indebted to the Secured Party, shall be deemed not to be redemption or discharge of the security constituted by this General Security Agreement.

- 18.2 The Debtor shall be entitled to a release and discharge of the security constituted by this General Security Agreement upon full payment, performance and satisfaction of all Obligations, or the securing of the Obligations to the satisfaction of the Secured Party, and upon written request by the Debtor and payment to the Secured Party of all costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) incurred by the Secured Party in connection with the Obligations and such release and discharge.
19. **No Merger**
- 19.1 This General Security Agreement shall not operate so as to create any merger or discharge of any of the Obligations, or any assignment, transfer, guarantee, lien, contract, promissory note, bill of exchange or security in any form held or which may hereafter be held by the Secured Party from the Debtor or from any other person whomsoever.
- 19.2 The taking of a judgment with respect to any of the Obligations will not operate as a merger of any of the terms, conditions, covenants, agreements or provisos contained in this General Security Agreement.
- 19.3 The release and discharge of the security constituted by this General Security Agreement by the Secured Party shall not operate as a release or discharge of any right of the Secured Party to be indemnified and held harmless by the Debtor pursuant to clause 12.4 hereof or of any other right of the Secured Party against the Debtor arising under this General Security Agreement prior to such release and discharge.
20. **Interpretation**
- 20.1 In this General Security Agreement:
- 20.1.1 the invalidity or unenforceability of the whole or any part of any clause shall not affect the validity or enforceability of any other clause or the remainder of such clause;
- 20.1.2 the headings have been inserted for reference only and shall not define, limit, alter or enlarge the meaning of any provision of this General Security Agreement; and
- 20.1.3 when the context so requires, the singular shall be read as if the plural were expressed and the provisions hereof shall be read with all grammatical changes necessary dependent upon the person referred to being a male, female, firm or corporation.
21. **Paramountcy**
- 21.1 In the event that the terms or provisions of this General Security Agreement conflict or are inconsistent with the terms and provisions of the loan agreement dated March 2, 2013 made between the Debtor, as borrower, and the Secured Party, as lender, as may be amended, restated, supplemented, extended, renewed, replaced or otherwise modified from time to time in accordance with the provisions thereof (the "Loan Agreement"), the

terms and provisions of the Loan Agreement shall prevail to the extent necessary to resolve such conflict or inconsistency.

**22. Notice**

- 22.1 Whenever either the Secured Party or the Debtor is required or entitled to notify or direct the other or to make a demand upon or request of the other relating to the Collateral, this General Security Agreement or the PPSA, such notice, direction, demand or request shall be sufficiently given if given in writing and delivered to the party for whom it is intended at the address of such party herein or as changed pursuant hereto or if sent by prepaid registered mail addressed to the party for whom it is intended at the address of such party herein set forth or as changed pursuant hereto.
- 22.2 Either the Secured Party or the Debtor may notify the other in accordance herewith of any change in its principal address to be used for the purposes hereof.

**23. Variation**

- 23.1 Save for any schedules which may be added hereto pursuant to the provisions hereof, no modification, variation or amendment of any provision of this General Security Agreement shall be made except by written agreement, executed by the parties hereto and no waiver of any provision hereof shall be effective unless in writing.

**24. Enurement**

- 24.1 This General Security Agreement shall enure to the benefit of the Secured Party and its successors and assigns and shall be binding upon the respective heirs, executors, personal representatives, successors and permitted assigns of the Debtor.

**25. Copy of Agreement and Financing Statement**

- 25.1 The Debtor hereby:
- 25.1.1 acknowledges receiving a copy of this General Security Agreement; and
- 25.1.2 waives all rights to receive from the Secured Party a copy of any financing statement, financing change statement or verification statement filed at any time or from time to time in respect of this General Security Agreement.

**26. Governing Law**

- 26.1 This General Security Agreement shall be governed by and construed in accordance with the laws of the Province, except to the extent that matters of title, creation, perfection or priority of the security interests granted hereby or procedural issues of foreclosure are required to be governed by the laws of a province in which the Collateral or any part thereof is located.

26.2 For the purpose of legal proceedings this General Security Agreement shall be deemed to have been made in the Province and to be performed there and the courts of the Province shall have jurisdiction over all disputes which may arise under this General Security Agreement and the Debtor hereby irrevocably and unconditionally submits to the non-exclusive jurisdiction of such courts, provided always that nothing herein contained shall prevent the Secured Party from proceeding at its election against the Debtor in the courts of any other province, country or jurisdiction.

27. **Non-Application of Saskatchewan Laws**

27.1 The Debtor covenants and agrees with the Secured Party that:

27.1.1 the *Land Contracts (Actions) Act* (Saskatchewan) shall have no application to any action as in such Act defined, with respect to any security interests given by the Debtor under this Agreement; and

27.1.2 the *Limitation of Civil Rights Act* (Saskatchewan) shall have no application to:

- (a) this Agreement,
- (b) any indenture, instrument or agreement entered into by the Debtor at any time hereafter, supplemental or ancillary to or in implementation of this Agreement and involving the payment by the Debtor of money, or the liability of the Debtor to payment,
- (c) any security interests for the payment of money made, given or created by this Agreement or by any indenture, instrument or agreement referred to or mentioned in clause (b) above,
- (d) any instrument or agreement entered into by the Debtor at any time hereafter renewing or extending or collateral to this Agreement, renewing or extending or collateral to any indenture, instrument or agreement referred to or mentioned in clause (b) above, or renewing or extending or collateral to any mortgage, charge or other security referred to or mentioned in clause (c) above, or
- (e) the rights, powers or remedies of the Secured Party under this Agreement or any security interests, indenture, instrument or agreement referred to or mentioned in this Section 27.1.2.

28. **Composite Mortgage**

28.1 This General Security Agreement is a composite security agreement covering the Collateral of the Debtor located in various provinces and territories of Canada and in each other jurisdiction in which the Debtor has assets and, as to portions of the Collateral located in such other jurisdictions, this General Security Agreement shall be a security agreement enforceable against the Debtor without regard to the application of this General Security Agreement to portions of the Collateral located in other jurisdictions.

All provisions hereof shall be applicable separately to the portions of the Collateral located in each separate jurisdiction with the same effect as if a separate security agreement with respect thereto had been executed and delivered by the Debtor to the Secured Party. Upon the reasonable request of the Secured Party, the Debtor shall prepare, execute, deliver and register, at its expense, a separate security agreement covering the portion of the Collateral located in any such jurisdiction or jurisdictions, such separate security agreement to be substantially in the form hereof except for such modifications as shall be required by the fact that such security agreement relates only to the Collateral located in such jurisdiction or jurisdictions or as may be required by the Secured Party in connection herewith.

In Witness Whereof the Debtor has executed this General Security Agreement as of the day and year first above written.

**FOR BRITISH COLUMBIA**

Officer Signature(s)	Execution Date			
	Y	M	D	
(For Corporation)				(Corporation Name) by its authorized signatories
_____ <i>Officer Signature</i>				_____ <i>Signature</i>
_____ <i>Name</i>				_____ <i>Name</i>
_____ <i>Address</i>				_____ <i>Title</i>
				_____ <i>Signature</i>
				_____ <i>Name</i>
				_____ <i>Title</i>
(For Individual)				
_____ <i>Officer Signature</i>				
_____ <i>Name</i>				_____ <i>Debtor Signature</i>
_____ <i>Address</i>				_____ <i>Name</i>

Officer Certification: Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

FOR ALL JURISDICTIONS OTHER THAN BRITISH COLUMBIA

(For Corporation)

SHS SERVICES MANAGEMENT INC.

Per:

\_\_\_\_\_  
*Name of Corporation*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
 Mike Clements  
*Name*

\_\_\_\_\_  
 Director  
*Title*

C/S

Per:

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Name*

\_\_\_\_\_  
*Title*

FOR INDIVIDUAL

DEBTOR SIGNATURE

Per:

\_\_\_\_\_  
*Signature of Witness*

\_\_\_\_\_  
*Name*

\_\_\_\_\_  
*Address*

\_\_\_\_\_  
*Occupation*

\_\_\_\_\_  
*Signature of Debtor*

\_\_\_\_\_  
*Name*



**Encumbrance Schedule**

Those Encumbrances which are "Permitted Encumbrances" as such term is defined in the Loan Agreement. In the event that the Loan Agreement is terminated for any reason and this General Security Agreement remains outstanding, the term "Permitted Encumbrance" and the other terms of the Loan Agreement that are incorporated herein by reference shall be deemed to be to the terms defined in the Loan Agreement in effect immediately prior to such termination.

**Location Schedule**

Address(es) for Location of the Collateral

**Additional Covenants Schedule**

**Additional Covenants of the Debtor further to Clause 4.1.15:**

Each of the covenants contained in (i) the loan agreement dated March 2, 2013 made by the Debtor in favour of the Secured Party and (ii) the branded concession agreement dated December 20, 2012, in each case, as may be amended, restated, supplemented, extended, renewed, replaced or otherwise modified from time to time in accordance with the provisions thereof.

**GENERAL SECURITY AGREEMENT**

This General Security Agreement made as of 2nd day of March, 2013

By:

**SHS Services Limited Partnership**  
(the "Debtor")

In Favour of:

**Sears Canada Inc.**  
(the "Secured Party")

**1. Security**

- 1.1 For value received, the Debtor grants and creates the security constituted by this General Security Agreement and agrees to the terms, covenants, agreements, conditions, provisos and other matters set out in this General Security Agreement.
- 1.2 As general and continuing security for the Obligations (as defined in clause 2.1 hereof), the Debtor:
- 1.2.1 hereby grants to the Secured Party, by way of mortgage, charge, assignment and transfer, a security interest in all presently owned and hereafter acquired personal property of the Debtor of whatsoever nature and kind and wheresoever situate and all proceeds thereof and therefrom, renewals thereof, Accessions thereto and substitutions therefor, (all of which are herein collectively called the "Personal Property Collateral"), including, without limiting the generality of the foregoing, all the presently owned or held and hereafter acquired right, title and interest of the Debtor in and to all Goods (including all accessories, attachments, additions and Accessions thereto), Chattel Paper, Documents of Title (whether negotiable or not), Instruments, Intangibles (subject to Clause 1.2.2 hereof), Licences, Money, Securities, Investment Property and all:
- (a) Inventory of whatsoever nature and kind and wheresoever situate;
- (b) Equipment (other than Inventory) of whatsoever nature and kind and wheresoever situate, including, without limitation, all machinery, tools, apparatus, plant, furniture, fixtures and vehicles of whatsoever nature and kind;

- (c) book accounts and book debts and generally all Accounts, debts, dues, claims, choses in action and demands of every nature and kind howsoever arising or secured including letters of credit, letters of guarantee and advices of credit, which are now due, owing or accruing or growing due to or owned by or which may hereafter become due, owing or accruing or growing due to or owned by the Debtor (all of which are herein collectively called the "Debts");
  - (d) deeds, documents, writings, papers, books of account and other books relating to or being records of Debts, Chattel Paper or Documents of Title or by which such are or may hereafter be secured, evidenced, acknowledged or made payable;
  - (e) contractual rights and insurance claims and all goodwill;
  - (f) monies other than trust monies lawfully belonging to others; and
  - (g) personal property described in any schedule now or hereafter annexed hereto; and
- 1.2.2 hereby grants to the Secured Party, by way of mortgage and charge a security interest in all presently owned and hereafter acquired patents, trade-marks, copyrights, industrial designs and other intellectual property and all proceeds thereof and therefrom, renewals thereof, Accessions thereto and substitutions therefor (all of which is deemed to be included in the definition of "Personal Property Collateral" referred to in Clauses 1.2.1 and 1.3.2 hereof); and
- 1.2.3 hereby charges as and by way of a floating charge in favour of the Secured Party all the presently owned or held and hereafter acquired property, assets, effects and undertakings of the Debtor of whatsoever nature and kind and wheresoever situate, other than such of the property, assets, effects and undertakings of the Debtor as are validly and effectively subjected to the security interest granted to the Secured Party pursuant to clause 1.2.1, (all of which property, assets, effects and undertakings so charged by this clause 1.2.3 are herein collectively called the "Other Collateral") including, without limiting the generality of the foregoing, all presently owned or held and hereafter acquired right, title and interest of the Debtor in and to real and immovable and leasehold property and rights whether in fee or of a less estate and all interest in and rights relating to lands and all easements, rights of way, privilege, benefits, licences, improvements and rights whether connected therewith or appurtenant thereto or separately owned or held and all structures, buildings, plant, machinery, fixtures, apparatus and fixed assets and the charge created by this clause 1.2.3 shall be a floating charge such that the Debtor shall not have power without the prior written consent of the Secured Party to:
- (a) create or permit to exist any Encumbrance against any of the Other Collateral which ranks or could in any event rank in priority to or *pari*

*passu* with the security constituted by this General Security Agreement, save for:

- (1) those Encumbrances shown in the Encumbrance Schedule; and
  - (2) Encumbrances approved in writing by the Secured Party prior to creation or assumption; or
- (b) grant, sell, exchange, transfer, assign, lease or otherwise dispose of the Other Collateral.

1.3 In this General Security Agreement:

- 1.3.1 any reference to "Premises" shall mean all property owned or leased by the Debtor;
- 1.3.2 the Personal Property Collateral and the Other Collateral are herein together called the "Collateral";
- 1.3.3 any reference to "Collateral" shall, unless the context otherwise requires, be deemed a reference to  
"Collateral or any part thereof";
- 1.3.4 any reference to "Debtor" and the personal pronoun "it" or "its" and any verb relating thereto and used therewith shall be read and construed as required by and in accordance with the context in which such words are used depending upon whether the Debtor is one or more corporations and, if more than one Debtor executes this General Security Agreement, this General Security Agreement shall apply and be binding upon each of them jointly and severally and all obligations hereunder shall be joint and several;
- 1.3.5 any reference to "Environmental Laws" shall mean any laws, regulations, orders, by-laws, permits or lawful requirements of any governmental authority with respect to environmental protection or regulating hazardous materials;
- 1.3.6 any reference to "General Security Agreement" shall, unless the context otherwise requires, be deemed a reference to this General Security Agreement as amended from time to time by written agreement together with the schedules hereto and any schedules added hereto pursuant to the provisions hereof;
- 1.3.7 any reference to "Hazardous Materials" shall mean any asbestos material, urea formaldehyde, explosives, radioactive materials, pollutants, contaminants, hazardous substances, corrosive substances, toxic substances, special waste or waste of any kind including, without limitation, compounds known as chlorobiphenyls and any substance the storage, manufacture, disposal, treatment, generation, use, transport, remediation or release of which into the environment is prohibited, controlled or licensed under Environmental Laws;

- 1.3.8 any reference to "PPSA" shall mean any legislation of any province or territory in Canada governing the creation, perfection and enforcement of and other matters pertaining to security interests in personal property, as amended from time to time and any Act substituted therefor and amendments thereto and, for the purposes of interpreting a term referred to herein or any reference to PPSA herein, unless otherwise indicated, means specifically the PPSA of Ontario, except to the extent that matters of title, creation, perfection or priority of the security interests granted hereby or procedural issues of foreclosure are required to be governed by the laws of a province in which the Collateral or any part thereof is located, in which case, it shall mean the jurisdiction that governs the matters of title, creation, perfection or priority of the security interests granted hereby or procedural issues of foreclosure in which such Collateral or such part thereof is located, as applicable;
- 1.3.9 any reference to the "Province" shall mean the Province of Ontario; and
- 1.3.10 the terms "Goods", "Chattel Paper", "Documents of Title", "Equipment", "Accounts", "Consumer Goods", "Instruments", "Intangibles", "Licences" (Alberta and British Columbia only), "Money", "Securities", "Investment Property", "Proceeds", "Inventory" and "Accessions" and other words and expressions which have been defined in the PPSA shall be interpreted in accordance with their respective meanings given in the PPSA (either in the singular or plural thereof), as the context requires unless otherwise defined herein or unless the context otherwise requires.
- 1.4 The Secured Party and the Debtor have not agreed to postpone the time for attachment of the security interests granted hereby.
- 1.5 The security interest in Consumer Goods hereby granted shall not become effective until, but shall become effective immediately when, the Secured Party notifies the Debtor in writing that it is effective.
- 1.6 The last day of the term of any lease held by the Debtor with respect to any of the Collateral is excluded from the security constituted by this General Security Agreement.
- 2. Obligations Secured**
- 2.1 The security constituted by this General Security Agreement is general and continuing security for payment, performance and satisfaction of each and every obligation, indebtedness and liability of the Debtor to the Secured Party (including interest thereon), present or future, direct or indirect, absolute or contingent, matured or not, extended or renewed, wheresoever and howsoever incurred, and any ultimate unpaid balance thereof, including all future advances and re-advances, and whether the same is from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again and whether the Debtor be bound alone or with another or others and whether as principal or surety, (all of which obligations, indebtedness and liabilities are herein collectively called the "Obligations").

2.2 This General Security Agreement and the security constituted hereby are in addition to and not in substitution for any other security or securities which the Secured Party may now or from time to time hold or take from the Debtor or from any other person whomsoever.

3. Representations and Warranties of the Debtor

3.1 The Debtor represents and warrants that, and, so long as this General Security Agreement remains in effect, shall be deemed to continuously represent and warrant that:

3.1.1 this General Security Agreement has been authorized, executed and delivered in accordance with resolutions of the directors (and of the shareholders as applicable) of the Debtor and all other matters and things have been done and performed so as to authorize and make the execution and delivery of this General Security Agreement, the creation of the security constituted hereby and the performance of the Debtor's obligations hereunder, legal, valid and binding;

3.1.2 the Collateral is genuine and is owned by the Debtor free of all security interests, mortgages, liens, claims, charges and other encumbrances (herein collectively called "Encumbrances"), save for the security constituted by this General Security Agreement, those Encumbrances shown on the Encumbrance Schedule and those Encumbrances approved in writing by the Secured Party;

3.1.3 the Debtor has good and lawful authority to create the security in the Collateral constituted by this General Security Agreement;

3.1.4 each Debt, Chattel Paper and Instrument included in Collateral is enforceable in accordance with its terms against the party obligated to pay the same (the "Account Debtor"), and the amount represented by the Debtor to the Secured Party from time to time as owing by each Account Debtor or by all Account Debtors will be the correct amount actually and unconditionally owing by such Account Debtor or Account Debtors, except for normal cash discounts where applicable, and no Account Debtor will have any defense, set off, claim or counterclaim against the Debtor which can be asserted against the Secured Party, whether in any proceeding to enforce the Collateral or otherwise;

3.1.5 with respect to Goods (including Inventory) comprised in the Collateral, the locations specified in the Location Schedule are accurate and complete (save for Goods in transit to such locations and Inventory on lease or consignment) and all fixtures or Goods about to become fixtures which form part of the Collateral will be situate at one of the locations specified in the Location Schedule;

3.1.6 none of the Premises are insulated with urea formaldehyde nor contain any asbestos material or underground tanks;

3.1.7 the Premises are free of any Hazardous Materials;



- 3.1.8 the Premises are not currently used in a manner, and, to the Debtor's knowledge, after having made due inquiry, no prior use has occurred, which is contrary to any laws, regulations, orders, bylaws, permits or lawful requirements of any Environmental Laws; and
- 3.1.9 there are no existing or threatened claims, actions, orders or investigations under any Environmental Laws against the Debtor or against the Premises;
- 3.1.10 the Debtor is the owner of any intellectual property applications and registrations and there are no outstanding claims of ownership by third parties in respect of these registrations and applications;
- 3.1.11 all intellectual property applications and registrations are valid and in good standing;
- 3.1.12 all trade-mark and industrial designs have been in continuous use and that the use has been proper in relation to the wares and/or services of Debtor;
- 3.1.13 only the Debtor has used the trade-marks, or if there are any third party users of the Debtor's trade-marks, such third party users are properly licensed to use such trademarks;
- 3.1.14 all assignments and other documents affecting intellectual property rights have been disclosed and provided to the Secured Party;
- 3.1.15 there are no outstanding or threatened claims or proceedings with respect to the intellectual property; and,
- 3.1.16 all necessary assignments and license agreements have been properly executed by the Debtor for use of third party intellectual property.

4. Covenants of the Debtor

- 4.1 The Debtor covenants and agrees that at all times while this General Security Agreement remains in effect the Debtor will:
  - 4.1.1 defend the Collateral for the benefit of the Secured Party against the claims and demands of all other persons;
  - 4.1.2 not, without the prior written consent of the Secured Party:
    - (a) create or permit to exist any Encumbrance against any of the Personal Property Collateral which ranks or could in any event rank in priority to or *pari passu* with the security constituted by this General Security Agreement, save for:
      - (i) those Encumbrances shown in the Encumbrance Schedule; and

- (ii) Encumbrances approved in writing by the Secured Party prior to creation or assumption; or
  - (b) grant, sell, exchange, transfer, assign, lease or otherwise dispose of the Collateral: provided always, that, until default, the Debtor may, in the ordinary course of the Debtor's business, sell or lease Inventory and, subject to clause 5.2 hereof, use monies available to the Debtor;
- 4.1.3 fully and effectively maintain and keep maintained valid and effective the security constituted by this General Security Agreement;
- 4.1.4 notify the Secured Party promptly of:
  - (a) any change in the information contained herein or in the Schedules hereto relating to the Debtor, the Debtor's name, the Debtor's business or the Collateral;
  - (b) the details of any significant acquisition of Collateral;
  - (c) the details of any claims or litigation affecting the Debtor or the Collateral;
  - (d) any loss or damage to the Collateral;
  - (e) any default by any Account Debtor in payment or other performance of obligations of the Account Debtor comprised in the Collateral; and
  - (f) the return to, or repossession by, the Debtor of Collateral;
- 4.1.5 keep the Collateral in good order, condition and repair (in the locations specified in the Location Schedule or such other locations as the Secured Party may approve in writing) and not use the Collateral in violation of the provisions of this General Security Agreement or any other agreement relating to the Collateral or any policy insuring the Collateral or any applicable statute, law, by-law, rule, regulation or ordinance;
- 4.1.6 carry on and conduct the business of the Debtor in a proper and efficient manner and so as to protect and preserve the Collateral and to keep, in accordance with generally accepted accounting principles, consistently applied, proper books of account for the Debtor's business as well as accurate and complete records concerning the Collateral and, at the Secured Party's request, mark any and all such records and the Collateral so as to indicate the security constituted by this General Security Agreement;
- 4.1.7 forthwith pay:
  - (a) all obligations to its employees and all obligations to others which relate to its employees when due, including, without limitation, all taxes, duties, levies, government fees, claims and dues related to its employees;

- (b) all taxes, assessments, rates, duties, levies, government fees, claims and dues lawfully levied, assessed or imposed upon it or the Collateral when due, unless the Debtor shall in good faith contest its obligations so to pay and shall furnish such security as the Secured Party may require; and
  - (c) all Encumbrances which rank or could in any event rank in priority to or *pari passu* with the security constituted by this General Security Agreement, other than the Encumbrances, if any, shown in the Encumbrance Schedule hereto and those approved in writing by the Secured Party;
- 4.1.8 prevent the Collateral, save Inventory sold or leased as permitted hereby, from being or becoming an Accession to other property not covered by this General Security Agreement;
- 4.1.9 insure the Collateral for such periods, in such amounts, on such terms and against loss or damage by fire and such other risks as the Secured Party shall reasonably direct (but in any event in accordance with prudent business practice and for not less than the full replacement cost thereof) with loss payable to the Secured Party and the Debtor, as insureds, as their respective interests may appear, and to pay all premiums for such insurance:
- 4.1.10 deliver to the Secured Party from time to time promptly upon request:
- (a) any Documents of Title, Instruments, Securities and Chattel Paper comprised in or relating to the Collateral;
  - (b) all books of account and all records, ledgers, reports, correspondence, schedules, documents, statements, lists and other writings relating to the Collateral for the purpose of inspecting, auditing or copying the same;
  - (c) all financial statements prepared by or for the Debtor regarding the Debtor's business;
  - (d) all policies and certificates of insurance relating to the Collateral; and
  - (e) such information concerning the Collateral, the Debtor and Debtor's business and affairs as the Secured Party may reasonably require;
- 4.1.11 forthwith pay all costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) which may be incurred by the Secured Party in:
- (a) inspecting the Collateral;
  - (b) negotiating, preparing, perfecting and registering this General Security Agreement and other documents, whether or not relating to this General Security Agreement;

- (c) investigating title to the Collateral;
  - (d) taking, recovering, keeping possession of and insuring the Collateral;
  - (e) connection with any disclosure requirements under the PPSA; and
  - (f) all other actions and proceedings taken in connection with the preservation of the Collateral and the confirmation, perfection and enforcement of this General Security Agreement and of any other security held by the Secured Party as security for the Obligations;
- 4.1.12 at the Secured Party's request at any time and from time to time create in favour of the Secured Party, as security for the Obligations, a fixed charge or charges upon any of the Other Collateral;
- 4.1.13 at the Secured Party's request at any time and from time to time execute and deliver such further and other documents and instruments and do all other acts and things as the Secured Party reasonably requires in order to give effect to this General Security Agreement or to confirm and perfect, and maintain perfection of, the security constituted by this General Security Agreement in favour of the Secured Party;
- 4.1.14 permit the Secured Party and its representatives, at all reasonable times, access to all the Debtor's property, assets and undertakings and to all its books of account and records for the purpose of inspection and render all assistance necessary for such inspection;
- 4.1.15 comply with the covenants, if any, set out in the Additional Covenants Schedule;
- 4.1.16 develop and use the Premises only in compliance with all Environmental Laws;
- 4.1.17 permit the Secured Party to investigate the Premises, any goods on the Premises and the Debtor's records at any time and from time to time to verify such compliance with Environmental Laws and this General Security Agreement;
- 4.1.18 upon the request of the Secured Party, obtain from time to time at the Debtor's cost a report from an independent consultant designated or approved by the Secured Party verifying compliance with Environmental Laws and this General Security Agreement or the extent of any non-compliance therewith;
- 4.1.19 not store, manufacture, dispose, treat, generate, use, transport, remediate or release Hazardous Materials on or from any of the Premises without notifying the Secured Party in writing;
- 4.1.20 promptly remove any Hazardous Materials from the Premises in a manner which conforms to Environmental Laws governing their removal; and,
- 4.1.21 notify the Secured Party in writing of:

- (a) any enforcement, clean-up, removal, litigation or other governmental, regulatory, judicial or administrative action instituted, contemplated or threatened against the Debtor or the Premises pursuant to any Environmental Laws;
- (b) all claims, actions, orders or investigations, made or threatened by any third party against the Debtor or any of the Premises relating to damage, contribution, cost recovery, compensation, loss or injuries resulting from any Hazardous Materials or any breach of the Environmental Laws; and
- (c) the discovery of any Hazardous Materials or any occurrence or condition on any of the Premises or any real property adjoining or in the vicinity of any of the Premises which could subject the Debtor or any of the Premises to any fines, penalties, orders or proceedings under any Environmental Laws;

4.1.22 apply to file applications and complete registrations on any present intellectual property which is not currently protected by an application or registration where commercially reasonable, including any and all improvements to intellectual property and apply to file registrations on unregistered trade-marks in Canada and the United States;

4.1.23 apply to file applications and complete registrations of all after acquired intellectual property in all jurisdictions where commercially reasonable;

4.1.24 keep up-to-date witnessed records regarding intellectual property;

4.1.25 enter into confidentiality agreements with employees and other third parties who may invent, create, discover, author and/or reduce to practice intellectual property for the Debtor and who may have access to confidential information of the Debtor;

4.1.26 ensure that all after acquired intellectual property obtained from third parties is properly acquired by way of a written license agreement or assignment;

4.1.27 provide, upon written request by the Secured Party, a list of all registered and unregistered trade-marks, patent applications, issued patents, copyright, industrial designs and other intellectual property; and,

4.1.28 mark all products and advertising appropriately to maintain the validity of all intellectual property rights.

## 5. Payments and Proceeds

- 5.1 Before or after default under this General Security Agreement, the Secured Party may notify all or any Account Debtors of the security constituted by this General Security Agreement and may also direct such Account Debtors to make all payments on the Collateral to the Secured Party.

5.2 The Debtor acknowledges that any payments on or other proceeds of the Collateral received by the Debtor from Account Debtors, whether before or after notification of the security constituted by this General Security Agreement to Account Debtors and whether before or after default under this General Security Agreement, shall be received and held by the Debtor in trust for the Secured Party and shall be turned over to the Secured Party forthwith upon request.

6. **Secured Party Actions**

6.1 The Debtor hereby authorizes the Secured Party to:

- (a) file such financing statements and other documents and do such acts, matters and things (including completing and adding schedules hereto identifying the Collateral or any permitted Encumbrances affecting collateral or identifying the locations at which the Debtor's business is carried on and the Collateral and records relating thereto are situate) as the Secured Party may deem appropriate to perfect and continue the security constituted hereby, to protect and preserve the Collateral and to realize upon the security constituted hereby and the Debtor hereby irrevocably constitutes and appoints the Secured Party the true and lawful attorney of the Debtor, with full power of substitution, to do any of the foregoing in the name of the Debtor whenever and wherever it may be deemed necessary or expedient by the Secured Party; and
- (b) make enquiries from time to time of any governmental authority with respect to the Debtor's compliance with Environmental Laws and the Debtor agrees that the Debtor will from time to time provide to the Secured Party with such written authorization as the Secured Party may reasonably require in order to facilitate the obtaining of such information.

6.2 The Secured Party may charge for its reasonable costs incurred in connection with any disclosure requirements under the PPSA.

6.3 If the Debtor fails to perform any of its Obligations hereunder, the Secured Party may, but shall not be obliged to, perform any or all of such Obligations without prejudice to any other rights and remedies of the Secured Party hereunder, and any payments made and any costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) incurred in connection therewith shall be payable by the Debtor to the Secured Party forthwith with interest until paid at the highest rate borne by any of the Obligations and such amounts shall form part of the Obligations and constitute a charge upon the Collateral in favour of the Secured Party prior to all claims subsequent to this General Security Agreement.

6.4 The Debtor covenants and agrees that the Secured Party may, but shall be under no obligation to, at any time or times as the Secured Party deems necessary and without the concurrence of the Debtor or any other person make such arrangements for the repairing, finishing and putting in order of the Premises, including, without limitation, such repairs,

replacements and improvements as are necessary so that the Debtor and the Premises comply with Environmental Laws, and all reasonable costs, charges and expenses including an allowance for the time and services of the Secured Party, the Secured Party's servants or agents or any other person or persons appointed for the above purposes including, without limitation, the full amount of all legal fees, disbursements, costs, charges and expenses incurred by the Secured Party and any amount due hereunder shall be payable forthwith to the Secured Party, shall be deemed an advance to the Debtor by the Secured Party, shall be deemed to be Obligations, and shall bear interest at the highest rate per annum from time to time charged by the Secured Party on any of the other Obligations until paid.

**7. Default**

- 7.1 The Debtor shall be in default under this General Security Agreement, unless otherwise agreed in writing by the Secured Party, upon the occurrence of any of the following events:
- 7.1.1 the Debtor makes default in payment when due of any of the Obligations which are indebtedness or liabilities or the Debtor fails to perform or satisfy any other of the Obligations; or
  - 7.1.2 the Debtor is in breach of any term, condition, proviso, agreement or covenant to the Secured Party, or any representation or warranty given by the Debtor to the Secured Party is untrue, whether or not any such term, condition, proviso, agreement or covenant, representation or warranty is contained in this General Security Agreement; or
  - 7.1.3 the Debtor makes an assignment for the benefit of its creditors, is declared bankrupt, makes a proposal or otherwise takes advantage of provisions for relief under the *Bankruptcy and Insolvency Act (Canada)*, the *Companies Creditors' Arrangement Act (Canada)* or similar legislation in any jurisdiction, or makes an authorized assignment; or
  - 7.1.4 there is instituted by or against the Debtor any formal or informal proceeding for the dissolution or liquidation of, settlement of claims against, or winding-up of affairs of the Debtor; or
  - 7.1.5 the Debtor ceases or threatens to cease to carry on business or makes or agrees to make a bulk sale of assets or commits or threatens to commit an act of bankruptcy; or
  - 7.1.6 a receiver, receiver and manager or receiver-manager of all or any part of the Collateral or of any other property, assets or undertakings of the Debtor is appointed; or
  - 7.1.7 any execution, sequestration, extent or other process of any court becomes enforceable against the Debtor or a distress or analogous process is levied upon the Collateral or any part thereof; or

- 7.1.8 an order is made or an effective resolution is passed for winding-up the Debtor; or
- 7.1.9 without the prior written consent of the Secured Party, the Debtor creates or permits to exist any Encumbrance against any of the Collateral which ranks or could in any event rank in priority to or *pari passu* with the security constituted by this General Security Agreement; or
- 7.1.10 the holder of any Encumbrance against any of the Collateral does anything to enforce or realize on such Encumbrance; or
- 7.1.11 the Debtor enters into any reconstruction, reorganization, amalgamation, merger or other similar arrangement with any other person; or
- 7.1.12 the Secured Party in good faith believes and has commercially reasonable grounds to believe that the prospect of payment or performance of any of the Obligations is impaired or that any of the Collateral is or is about to be placed in jeopardy; or
- 7.1.13 any certificate, statement, representation, warranty or audit report herewith, heretofore or hereafter furnished by or on behalf of the Debtor to the Secured Party, whether in connection with this General Security Agreement or otherwise, and whether furnished as an inducement to the Secured Party to extend any credit to or to enter into this or any other agreement with the Debtor or not:
  - (a) proves to have been false in any material respect at the time as of which the facts therein set forth were stated or certified; or
  - (b) proves to have omitted any substantial contingent or unliquidated liability or claim against the Debtor;

or, upon the date of execution of this General Security Agreement, there shall have been any material adverse change in any of the facts disclosed by any such certificate, statement, representation, warranty or audit report, which change was not disclosed to the Secured Party at or prior to the time of such execution.

- 7.2 For the purposes of Section 203 of the *Land Title Act* (British Columbia), the floating charge created by this General Security Agreement over land shall become a fixed charge thereon upon the earliest of:
  - 7.2.1 the occurrence of an event described in any of clauses 7.1.3, 7.1.4, 7.1.5, 7.1.6, 7.1.7, or 7.1.8; or
  - 7.2.2 the Secured Party taking any action to enforce and realize on the security constituted by this General Security Agreement.
- 8. **Enforcement**
  - 8.1 The Secured Party may make demand for payment at any time of any or all of the Obligations which are payable upon demand (whether or not there is any default under



this General Security Agreement) and, upon any default under this General Security Agreement, the Secured Party may declare any or all of the Obligations which are not payable on demand to become immediately due and payable.

- 8.2 Upon default under this General Security Agreement, the security hereby constituted will immediately become enforceable.
- 8.3 To enforce and realize on the security constituted by this General Security Agreement, the Secured Party may take any action permitted by law or in equity, as it may deem expedient, and in particular, without limiting the generality of the foregoing, the Secured Party may do any one or more of the following:
- 8.3.1 appoint by instrument a receiver, receiver and manager or receiver-manager (the person so appointed is herein called the "Receiver") of the Collateral, with or without bond as the Secured Party may determine, and from time to time in its sole discretion remove such Receiver and appoint another in its stead;
  - 8.3.2 enter upon any of the Premises and take possession of the Collateral with power to exclude the Debtor, its agents and its servants therefrom, without becoming liable as a mortgagee in possession;
  - 8.3.3 preserve, protect and maintain the Collateral and make such replacements thereof and repairs and additions thereto as the Secured Party may deem advisable;
  - 8.3.4 sell, lease or otherwise dispose of or concur in selling, leasing or otherwise disposing of all or any part of the Collateral; whether by public or private sale or lease or otherwise, in such manner, at such price as can be reasonably obtained therefor and on such terms as to credit and with such conditions of sale and stipulations as to title or conveyance or evidence of title or otherwise as to the Secured Party may seem reasonable; provided that the Debtor will not be entitled to be credited with the proceeds of any such sale, lease or other disposition until the monies therefor are actually received; and
  - 8.3.5 exercise all of the rights and remedies of a secured party under the PPSA.
- 8.4 A Receiver appointed pursuant to this General Security Agreement shall be the agent of the Debtor and not of the Secured Party and, to the extent permitted by law or to such lesser extent permitted by its appointment, shall have all the powers of the Secured Party hereunder, and in addition shall have power to carry on the business of the Debtor and for such purpose from time to time to borrow money either secured or unsecured, and if secured by a security on any of the Collateral, any such security may rank in priority to or *pari passu* with or behind the security constituted by this General Security Agreement, and if it does not so specify such security shall rank in priority to the security constituted by this General Security Agreement.
- 8.5 Subject to applicable law and the claims, if any, of the creditors of the Debtor ranking in priority to the security constituted by this General Security Agreement, all amounts realized from the disposition of the Collateral pursuant to this General Security

Agreement will be applied as the Secured Party, in its sole discretion, may direct as follows:

- Firstly:** in or toward payment of all costs, charges and expenses (including legal fees and disbursements on a solicitor and his own client basis) incurred by the Secured Party in connection with or incidental to:
  - (a) the exercise by the Secured Party of all or any of the powers granted to it pursuant to this General Security Agreement; and
  - (b) the appointment of the Receiver and the exercise by the Receiver of all or any of the powers granted to the Receiver pursuant to this General Security Agreement, including the Receiver's reasonable remuneration and all outgoings properly payable by the Receiver;
- Secondly:** in or toward payment to the Secured Party of all principal and other monies (except interest) due in respect of the Obligations;
- Thirdly:** in or toward payment to the Secured Party of all interest remaining unpaid in respect of the Obligations; and
- Fourthly:** any surplus will be paid to the Debtor.

**9. Deficiency**

- 9.1 If the amounts realized from the disposition of the Collateral are not sufficient to pay the Obligations in full to the Secured Party, the Debtor will immediately pay to the Secured Party the amount of such deficiency.

**10. Rights Cumulative**

- 10.1 All rights and remedies of the Secured Party set out in this General Security Agreement are cumulative and no right or remedy contained herein is intended to be exclusive but each will be in addition to every other right or remedy contained herein or in any existing or future general security agreement or now or hereafter existing at law or in equity or pursuant to any other agreement between the Debtor and the Secured Party that may be in effect from time to time.

**11. Appointment of Attorney**

- 11.1 The Debtor hereby irrevocably appoints the Secured Party or the Receiver, as the case may be, with full power of substitution, to be the attorney of the Debtor for and in the name of the Debtor to sign, endorse or execute under seal or otherwise any deeds, documents, transfers, cheques, instruments, demands, assignments, assurances or consents that the Debtor is obliged to sign, endorse or execute and generally to use the name of the Debtor and to do all things as may be necessary or incidental to the exercise of all or any of the powers conferred on the Secured Party or the Receiver, as the case may be, pursuant to this General Security Agreement.

**12. Liability of Secured Party**

- 12.1 The Secured Party shall not be responsible or liable for any debts contracted by it, for damages to persons or property or for salaries or non-fulfilment of contracts during any period when the Secured Party shall manage the Collateral upon entry of the business of the Debtor, as herein provided, nor shall the Secured Party be liable to account as mortgagee in possession or for anything except actual receipts or be liable for any loss or realization or for any default or omission for which a mortgagee in possession may be liable.
- 12.2 The Secured Party shall not be bound to do, observe or perform or to see to the observance or performance by the Debtor of any obligations or covenants imposed upon the Debtor nor shall the Secured Party, in the case of Securities, Instruments or Chattel Paper, be obliged to reserve rights against other persons, nor shall the Secured Party be obliged to keep any of the Collateral identifiable.
- 12.3 The Secured Party shall not be obliged to inquire into the right of any person purporting to be entitled under the PPSA to information and materials from the Secured Party by making a demand upon the Secured Party for such information and materials and the Secured Party shall be entitled to comply with such demand and shall not be liable for having complied with such demand notwithstanding that such person may in fact not be entitled to make such demand.
- 12.4 The Debtor will indemnify the Secured Party and hold the Secured Party harmless from and against any and all claims, costs, losses, demands, actions, causes of action, lawsuits, damages, penalties, judgments and liabilities of whatsoever nature and kind in connection with or arising out of any representation or warranty given by the Debtor, being untrue, the breach of any term, condition, proviso, agreement or covenant to the Secured Party, or the exercise of any of the rights and or remedies of the Secured Party, or any transaction contemplated in this General Security Agreement.
- 12.5 The Debtor hereby waives any applicable provision of law permitted to be waived by it which imposes higher or greater obligations upon the Secured Party than provided in this General Security Agreement.
- 12.6 The Debtor shall indemnify, reimburse and save harmless the Secured Party, any receiver, its directors, officers, employees, agents, and successors and assigns, from any and all liabilities, actions, damages, claims, losses, costs and expenses whatsoever (including without limitation, the full amount of all legal fees, costs, charges and expenses and the cost of removal, treatment, storage and disposal of any Hazardous Materials and remediation of the Premises) which may be paid, incurred or asserted against the Secured Party for, with respect to or as a direct or indirect result of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from the Premises or into or upon any other land, the atmosphere or any watercourse, body of water or wetland of any Hazardous Materials.

12.7 Any amount owing by the Debtor hereunder shall, from the date of disbursement until the date the Secured Party receives reimbursement, be deemed advanced to the Debtor by the Secured Party, shall be deemed to be Obligations and shall bear interest at the highest rate per annum from time to time charged by the Secured Party on any of the other Obligations until paid.

12.8 The Debtor agrees that the indemnity obligations hereunder shall survive the release of the security of this General Security Agreement and the payment and satisfaction of the indebtedness and liabilities hereby secured.

**13. Appropriation of Payments and Offset**

13.1 Subject to any applicable provisions of the PPSA, any and all payments made in respect of the Obligations from time to time and monies realized from any security held therefor (including monies collected in accordance with or realized on any enforcement of this General Security Agreement) may be applied to such part or parts of the Obligations as the Secured Party may see fit, and the Secured Party may at all times and from time to time change any appropriation as the Secured Party may see fit or, at the option of the Secured Party, such payments and monies may be held unappropriated in a collateral account or released to the Debtor, all without prejudice to the liability of the Debtor or to the rights of the Secured Party hereunder.

13.2 Without limiting any other right of the Secured Party, whenever any of the Obligations is immediately due and payable or the Secured Party has the right to declare any of the Obligations to be immediately due and payable (whether or not it has so declared), the Secured Party may, in its sole discretion, set off against any of the Obligations any and all monies then owed to the Debtor by the Secured Party in any capacity, whether or not due and to do so even though any charge therefor is made or entered on the Secured Party's records subsequent thereto, and the Secured Party shall be deemed to have exercised such right to set off immediately at the time of making its decision.

**14. Liability to Advance, Etc.**

14.1 Except to the extent that the Secured Party:

14.1.1 by accepting bills of exchange drawn on it by the Debtor; or

14.1.2 by issuing letters of credit or letters of guarantee on the application of the Debtor; is required to advance monies on the maturity of such bills or pursuant to such letters of credit or letters of guarantee, as the case may be, none of the preparation, execution, perfection and registration of this General Security Agreement or the advance of any monies shall bind the Secured Party to make any advance or loan or further advance or loan, or renew any note or extend any time for payment of any indebtedness or liability of the Debtor to the Secured Party or extend any term for performance or satisfaction of any obligation of the Debtor to the Secured Party.

14.2 Nothing herein contained shall in any way oblige the Secured Party to grant, continue, renew, extend time for payment of or accept anything which constitutes or would constitute Obligations or any of them.

15. **Waiver**

15.1 No delay or omission by the Secured Party in exercising any right or remedy hereunder or with respect to any of the Obligations shall operate as a waiver thereof or of any other right or remedy, and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy.

15.2 The Secured Party may from time to time and at any time waive in whole or in part any right, benefit or default under any clause of this General Security Agreement but any such waiver of any right, benefit or default on any occasion shall be deemed not to be a waiver of any such right, benefit or default thereafter, or of any other right, benefit or default, as the case may be.

16. **Extensions**

16.1 The Secured Party may grant extensions of time and other indulgences, take and give up security, accept compositions, compound, compromise, settle, grant releases and discharges, refrain from perfecting or maintaining perfection of security, and otherwise deal with the Debtor, Account Debtors of the Debtor, sureties and others and with the Collateral and other security as the Secured Party may see fit without prejudice to the liability of the Debtor or the Secured Party's right to hold and realize on the security constituted by this General Security Agreement.

17. **Assignment**

17.1 The Secured Party may, without further notice to the Debtor, at any time mortgage, charge, assign, transfer or grant a security interest in this General Security Agreement and the security constituted hereby.

17.2 The Debtor expressly agrees that the assignee, transferee or secured party of the Secured Party, as the case may be, shall have all of the Secured Party's rights and remedies under this General Security Agreement and the Debtor will not assert any defence, counterclaim, right of set-off or otherwise any claim which it now has or hereafter acquires against the Secured Party in any action commenced by such assignee, transferee or secured party, as the case may be, and will pay the Obligations to the assignee, transferee or secured party, as the case may be, as the Obligations become due.

18. **Satisfaction and Discharge**

18.1 Any partial payment or satisfaction of the Obligations, or any ceasing by the Debtor to be indebted to the Secured Party, shall be deemed not to be redemption or discharge of the security constituted by this General Security Agreement.

18.2 The Debtor shall be entitled to a release and discharge of the security constituted by this General Security Agreement upon full payment, performance and satisfaction of all Obligations, or the securing of the Obligations to the satisfaction of the Secured Party, and upon written request by the Debtor and payment to the Secured Party of all costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) incurred by the Secured Party in connection with the Obligations and such release and discharge.

19. **No Merger**

19.1 This General Security Agreement shall not operate so as to create any merger or discharge of any of the Obligations, or any assignment, transfer, guarantee, lien, contract, promissory note, bill of exchange or security in any form held or which may hereafter be held by the Secured Party from the Debtor or from any other person whomsoever.

19.2 The taking of a judgment with respect to any of the Obligations will not operate as a merger of any of the terms, conditions, covenants, agreements or provisos contained in this General Security Agreement.

19.3 The release and discharge of the security constituted by this General Security Agreement by the Secured Party shall not operate as a release or discharge of any right of the Secured Party to be indemnified and held harmless by the Debtor pursuant to clause 12.4 hereof or of any other right of the Secured Party against the Debtor arising under this General Security Agreement prior to such release and discharge.

20. **Interpretation**

20.1 In this General Security Agreement:

20.1.1 the invalidity or unenforceability of the whole or any part of any clause shall not affect the validity or enforceability of any other clause or the remainder of such clause;

20.1.2 the headings have been inserted for reference only and shall not define, limit, alter or enlarge the meaning of any provision of this General Security Agreement; and

20.1.3 when the context so requires, the singular shall be read as if the plural were expressed and the provisions hereof shall be read with all grammatical changes necessary dependent upon the person referred to being a male, female, firm or corporation.

21. **Paramountcy**

21.1 In the event that the terms or provisions of this General Security Agreement conflict or are inconsistent with the terms and provisions of the loan agreement dated March 2, 2013 made between SHS Services Management Inc., as borrower, and the Secured Party, as lender, as may be amended, restated, supplemented, extended, renewed, replaced or otherwise modified from time to time in accordance with the provisions thereof (the

"Loan Agreement"), the terms and provisions of the Loan Agreement shall prevail to the extent necessary to resolve such conflict or inconsistency.

**22. Notice**

- 22.1 Whenever either the Secured Party or the Debtor is required or entitled to notify or direct the other or to make a demand upon or request of the other relating to the Collateral, this General Security Agreement or the PPSA, such notice, direction, demand or request shall be sufficiently given if given in writing and delivered to the party for whom it is intended at the address of such party herein or as changed pursuant hereto or if sent by prepaid registered mail addressed to the party for whom it is intended at the address of such party herein set forth or as changed pursuant hereto.
- 22.2 Either the Secured Party or the Debtor may notify the other in accordance herewith of any change in its principal address to be used for the purposes hereof.

**23. Variation**

- 23.1 Save for any schedules which may be added hereto pursuant to the provisions hereof, no modification, variation or amendment of any provision of this General Security Agreement shall be made except by written agreement, executed by the parties hereto and no waiver of any provision hereof shall be effective unless in writing.

**24. Enurement**

- 24.1 This General Security Agreement shall enure to the benefit of the Secured Party and its successors and assigns and shall be binding upon the respective heirs, executors, personal representatives, successors and permitted assigns of the Debtor.

**25. Copy of Agreement and Financing Statement**

- 25.1 The Debtor hereby:
- 25.1.1 acknowledges receiving a copy of this General Security Agreement; and
- 25.1.2 waives all rights to receive from the Secured Party a copy of any financing statement, financing change statement or verification statement filed at any time or from time to time in respect of this General Security Agreement.

**26. Governing Law**

- 26.1 This General Security Agreement shall be governed by and construed in accordance with the laws of the Province, except to the extent that matters of title, creation, perfection or priority of the security interests granted hereby or procedural issues of foreclosure are required to be governed by the laws of a province in which the Collateral or any part thereof is located.

26.2 For the purpose of legal proceedings this General Security Agreement shall be deemed to have been made in the Province and to be performed there and the courts of the Province shall have jurisdiction over all disputes which may arise under this General Security Agreement and the Debtor hereby irrevocably and unconditionally submits to the non-exclusive jurisdiction of such courts, provided always that nothing herein contained shall prevent the Secured Party from proceeding at its election against the Debtor in the courts of any other province, country or jurisdiction.

27. **Non-Application of Saskatchewan Laws**

27.1 The Debtor covenants and agrees with the Secured Party that:

27.1.1 the *Land Contracts (Actions) Act* (Saskatchewan) shall have no application to any action as in such Act defined, with respect to any security interests given by the Debtor under this Agreement; and

27.1.2 the *Limitation of Civil Rights Act* (Saskatchewan) shall have no application to:

- (a) this Agreement,
- (b) any indenture, instrument or agreement entered into by the Debtor at any time hereafter, supplemental or ancillary to or in implementation of this Agreement and involving the payment by the Debtor of money, or the liability of the Debtor to payment,
- (c) any security interests for the payment of money made, given or created by this Agreement or by any indenture, instrument or agreement referred to or mentioned in clause (b) above,
- (d) any instrument or agreement entered into by the Debtor at any time hereafter renewing or extending or collateral to this Agreement, renewing or extending or collateral to any indenture, instrument or agreement referred to or mentioned in clause (b) above, or renewing or extending or collateral to any mortgage, charge or other security referred to or mentioned in clause (c) above, or
- (e) the rights, powers or remedies of the Secured Party under this Agreement or any security interests, indenture, instrument or agreement referred to or mentioned in this Section 27.1.2.

28. **Composite Mortgage**

28.1 This General Security Agreement is a composite security agreement covering the Collateral of the Debtor located in various provinces and territories of Canada and in each other jurisdiction in which the Debtor has assets and, as to portions of the Collateral located in such other jurisdictions, this General Security Agreement shall be a security agreement enforceable against the Debtor without regard to the application of this General Security Agreement to portions of the Collateral located in other jurisdictions.



All provisions hereof shall be applicable separately to the portions of the Collateral located in each separate jurisdiction with the same effect as if a separate security agreement with respect thereto had been executed and delivered by the Debtor to the Secured Party. Upon the reasonable request of the Secured Party, the Debtor shall prepare, execute, deliver and register, at its expense, a separate security agreement covering the portion of the Collateral located in any such jurisdiction or jurisdictions, such separate security agreement to be substantially in the form hereof except for such modifications as shall be required by the fact that such security agreement relates only to the Collateral located in such jurisdiction or jurisdictions or as may be required by the Secured Party in connection herewith.

In Witness Whereof the Debtor has executed this General Security Agreement as of the day and year first above written.

**FOR BRITISH COLUMBIA**

Officer Signature(s)	Execution Date			
	Y	M	D	
(For Corporation)				(Corporation Name) by its authorized signatories
_____ <i>Officer Signature</i>				_____ <i>Signature</i>
_____ <i>Name</i>				_____ <i>Name</i>
_____ <i>Address</i>				_____ <i>Title</i>
				_____ <i>Signature</i>
				_____ <i>Name</i>
				_____ <i>Title</i>
(For Individual)				
_____ <i>Officer Signature</i>				
_____ <i>Name</i>				_____ <i>Debtor Signature</i>
_____ <i>Address</i>				_____ <i>Name</i>

Officer Certification: Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

**FOR ALL JURISDICTIONS OTHER THAN BRITISH COLUMBIA**

(For Corporation)

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

Per:

\_\_\_\_\_  
*Name of Corporation*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
 Mike Clements  
*Name*

\_\_\_\_\_  
 Director  
*Title*

C/S

Per:

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Name*

\_\_\_\_\_  
*Title*

**FOR INDIVIDUAL**

**DEBTOR SIGNATURE**

Per:

\_\_\_\_\_  
*Signature of Witness*

\_\_\_\_\_  
*Name*

\_\_\_\_\_  
*Address*

\_\_\_\_\_  
*Occupation*

\_\_\_\_\_  
*Signature of Debtor*

\_\_\_\_\_  
*Name*

### Encumbrance Schedule

Those Encumbrances which are "Permitted Encumbrances" as such term is defined in the Loan Agreement. In the event that the Loan Agreement is terminated for any reason and this General Security Agreement remains outstanding, the term "Permitted Encumbrance" and the other terms of the Loan Agreement that are incorporated herein by reference shall be deemed to be to the terms defined in the Loan Agreement in effect immediately prior to such termination.

**Location Schedule**

**Address(es) for Location of the Collateral**

**Additional Covenants Schedule**

Additional Covenants of the Debtor further to Clause 4.1.15:

Each of the covenants contained in the guarantee dated March 2, 2013 made by the Debtor in favour of the Secured Party, as the same may be amended, restated, supplemented, extended, renewed, replaced or otherwise modified from time to time in accordance with the provisions thereof.

SEARS CANADA INC.

**HYPOTHEC ON MOVEABLE PROPERTY***(for use in Quebec only)***I Hypothec**

1. For good and valuable consideration, SHS SERVICES LIMITED PARTNERSHIP (the "Grantor") hereby grants to SEARS CANADA INC. ("Creditor") a hypothec on and a security interest in the following property ("hypothecated property"), for the sum of SEVENTEEN MILLION DOLLARS (Cdn.\$17,000,000), with interest at the rate of 25% per annum from the date hereof:

**DESCRIPTION OF HYPOTHECATED PROPERTY**

The universality of the Grantor's moveable property, corporeal or incorporeal present and future wherever situated, including and without restricting the generality of the foregoing: all of the Grantor's debts, book accounts, receivables, securities, security entitlements and other financial assets, claims and rights of action, present and future, regardless of where the debtors of these debts, claims and rights are located; all of the Grantor's inventory, present and future wherever situated; all trademarks, patents, licenses, copyrights as well as any intellectual right of the Grantor or of which the Grantor benefits; all monies which stand to the credit of the Grantor in any accounts at the Creditor; the principal sum, interest, and all other monies owing and payable or hereafter owing and payable to the Grantor pursuant to the terms of any and all deposit instruments issued by the Creditor in the name of the Grantor, and the entire title and interest of the Grantor in and to any deposit instruments issued by the Creditor, including all renewals and replacements thereof.

2. The following property constitutes "hypothecated property" and, to the extent that it is not already specifically included in the property described in paragraph 1 or in section "A" of the attached schedule, is also charged by the hypothec and security interest constituted hereunder:
  - a) the proceeds of any sale, lease or other disposition of the property described in paragraph 1 or in section "A" of the attached schedule, any debt resulting from such sale, lease or other disposition, as well as any property acquired to replace the hypothecated property, the Grantor not being hereby permitted to dispose of the hypothecated property in violation of the provisions hereof;
  - b) any insurance or expropriation indemnity payable in respect of the hypothecated property;
  - c) any rights attached to the hypothecated property, as well as the fruits and revenues produced thereby;
  - d) where the hypothecated property includes securities, shares and other financial assets, all securities, shares and other financial assets issued in replacement of these securities, shares and other financial assets;
  - e) all deeds, documents, registers, invoices and books of account evidencing the hypothecated property or relating thereto.

**II Obligations Secured**

1. This hypothec and security interest are granted to secure the payment of all indebtedness and the fulfillment of all other obligations of the Grantor to the Creditor arising from:
  - a. this deed; and

Page 1 of 8

THE GRANTOR DECLARES HAVING READ THIS DOCUMENT AND HAVING RECEIVED ADEQUATE EXPLANATIONS OF THE NATURE AND SCOPE OF THE GRANTOR'S OBLIGATIONS HEREUNDER.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of March, 2013

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

M. J. [Signature]  
Witness

per: [Signature]

\_\_\_\_\_  
Witness

per: \_\_\_\_\_

Address of the Grantor

*(for notice and correspondence purposes)*

245, 1209 59<sup>th</sup> Avenue S.E., Calgary, Alberta T2H 2P6



Schedule to the Hypothec on Movable Property executed this March, 2013  
between SEARS CANADA INC. and the undersigned Grantor.

A. Additional description of the hypothecated property:

As described above.

B. Real rights, hypothecs or security interests encumbering the hypothecated property:

As described above.

C. Description of the hypothecated property not situated in the Province of Quebec:

All property as described above as may be located outside of Quebec from time to time.

D. Description of the hypothecated property intended to be used in more than one province or country:

As described above.

E. Address of the Grantor's head or registered office (or domicile, if the Grantor is an individual):

245, 1209 59<sup>th</sup> Avenue S.E., Calgary, Alberta T2H 2P6

This schedule forms an integral part of the above-mentioned agreement.

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

per: 

per: \_\_\_\_\_

  
Witness

\_\_\_\_\_  
Witness

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## SEARS CANADA INC.

**HYPOTHEC ON MOVEABLE PROPERTY***(for use in Quebec only)***I Hypothec**

1. For good and valuable consideration, SHS SERVICES MANAGEMENT INC. (the "Grantor") hereby grants to SEARS CANADA INC. ("Creditor") a hypothec on and a security interest in the following property ("hypothecated property"), for the sum of SEVENTEEN MILLION DOLLARS (Cdn.\$17,000,000), with interest at the rate of 25% per annum from the date hereof:

**DESCRIPTION OF HYPOTHECATED PROPERTY**

The universality of the Grantor's moveable property, corporeal or incorporeal present and future wherever situated, including and without restricting the generality of the foregoing: all of the Grantor's debts, book accounts, receivables, securities, security entitlements and other financial assets, claims and rights of action, present and future, regardless of where the debtors of these debts, claims and rights are located; all of the Grantor's inventory, present and future wherever situated; all trademarks, patents, licenses, copyrights as well as any intellectual right of the Grantor or of which the Grantor benefits; all monies which stand to the credit of the Grantor in any accounts at the Creditor; the principal sum, interest, and all other monies owing and payable or hereafter owing and payable to the Grantor pursuant to the terms of any and all deposit instruments issued by the Creditor in the name of the Grantor, and the entire title and interest of the Grantor in and to any deposit instruments issued by the Creditor, including all renewals and replacements thereof.

2. The following property constitutes "hypothecated property" and, to the extent that it is not already specifically included in the property described in paragraph 1 or in section "A" of the attached schedule, is also charged by the hypothec and security interest constituted hereunder:
  - a) the proceeds of any sale, lease or other disposition of the property described in paragraph 1 or in section "A" of the attached schedule, any debt resulting from such sale, lease or other disposition, as well as any property acquired to replace the hypothecated property, the Grantor not being hereby permitted to dispose of the hypothecated property in violation of the provisions hereof;
  - b) any insurance or expropriation indemnity payable in respect of the hypothecated property;
  - c) any rights attached to the hypothecated property, as well as the fruits and revenues produced thereby;
  - d) where the hypothecated property includes securities, shares and other financial assets, all securities, shares and other financial assets issued in replacement of these securities, shares and other financial assets;
  - e) all deeds, documents, registers, invoices and books of account evidencing the hypothecated property or relating thereto.

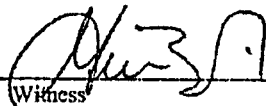
**II Obligations Secured**

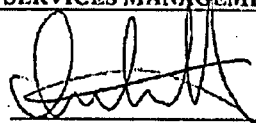
1. This hypothec and security interest are granted to secure the payment of all indebtedness and the fulfillment of all other obligations of the Grantor to the Creditor arising from:
  - a. this deed;

THE GRANTOR DECLARES HAVING READ THIS DOCUMENT AND HAVING RECEIVED ADEQUATE EXPLANATIONS OF THE NATURE AND SCOPE OF THE GRANTOR'S OBLIGATIONS HEREUNDER.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of March, 2013.

Grantor: SHS SERVICES MANAGEMENT INC.

  
\_\_\_\_\_  
Witness

per:   
\_\_\_\_\_

\_\_\_\_\_  
Witness

per: \_\_\_\_\_

Address of the Grantor

*(for notice and correspondence purposes)*

245, 1209 59<sup>th</sup> Avenue S.E., Calgary, Alberta T2H 2P6

Schedule to the Hypothec on Movable Property executed this March, 2013  
between SEARS CANADA INC. and the undersigned Grantor.

A. Additional description of the hypothecated property:

As described above.

B. Real rights, hypothecs or security interests encumbering the hypothecated property:

As described above.

C. Description of the hypothecated property not situated in the Province of Quebec:

All property as described above as may be located outside of Quebec from time to time.

D. Description of the hypothecated property intended to be used in more than one province or country:

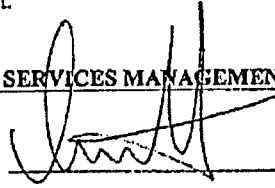
As described above.

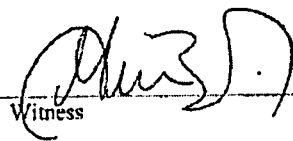
E. Address of the Grantor's head or registered office (or domicile, if the Grantor is an individual):

245, 1209 59<sup>th</sup> Avenue S.E., Calgary, Alberta T2H 2P6

This schedule forms an integral part of the above-mentioned agreement.

Grantor: SHS SERVICES MANAGEMENT INC.

per: 

  
Witness

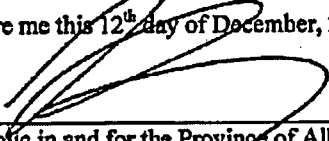
Witness  
108324837v2

per: \_\_\_\_\_

# TAB F

**EXHIBIT F**

This is the Exhibit marked "F" referred to  
in the Affidavit of Micheal Clements,  
sworn before me this 12<sup>th</sup> day of December, 2013.

  
\_\_\_\_\_  
Notary Public in and for the Province of Alberta

**Nolan Ritzel**  
**Student at Law**

**POSTPONEMENT AGREEMENT**

**THIS POSTPONEMENT AGREEMENT** is dated as of the 25<sup>th</sup> day of February, 2013

**AMONG:**

**SEARS CANADA INC.**, a corporation incorporated under the laws of Canada, having its head office in the City of Toronto, Province of Ontario ("SEARS")

- and -

**ALARIS INCOME GROWTH FUND PARTNERSHIP** a general partnership established pursuant to the laws of the Province of Alberta and having an office at 232, 2031 – 33<sup>rd</sup> Avenue SW, Calgary, Alberta T2T 1Z5 ("Alaris")

- and -

**SHS SERVICES MANAGEMENT INC.** (the "Debtor")

- and -

**SHS SERVICES LIMITED PARTNERSHIP** (the "SHS LP")

- and -

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

**WHEREAS** the Debtor carries on the business of providing full service residential & commercial installation services of flooring, window coverings, home décor, roofing, HVAC, and other programs as determined by SHS throughout Canada (the "Business");

**AND WHEREAS** the Debtor and Alaris have entered into a limited partnership agreement (the "Limited Partnership Agreement") dated as of February 25, 2013 to form the SHS LP;

**AND WHEREAS** pursuant to the terms of the Limited Partnership Agreement, it is intended that the Debtor will transfer beneficial title to all of its assets required to carry on the Business, to the SHS LP in exchange for the issuance voting common units of the SHS LP (the "Asset Contribution"), and Alaris will contribute the sum of \$15 million in cash to the SHS LP in exchange for the issuance of non-voting preferred units of the SHS LP (the "Alaris Contribution");

**AND WHEREAS** ISO, an affiliated entity of the Debtor, has provided an unsecured guarantee (the "Guarantee") to Alaris for payments required to be made by the SHS LP to Alaris, pursuant to a Guarantee Agreement dated as of February 25, 2013;

-2-

**AND WHEREAS** the Debtor and Sears are now parties to and may in the future become parties to certain loan and security documentation, security agreements, hypothecs and mortgages (collectively referred to as the "Sears Security") pursuant to which the Debtor has, *inter alia*,

- (i) granted or will in the future grant security interests, hypothecs or mortgages to Sears in all of the Debtor's present and after-acquired personal property and undertaking;
- (ii) caused its affiliates, the SHS LP and ISO (collectively, the "Guarantors"), to guarantee the obligations of the Debtor to Sears under such loan and security documents; and
- (iii) caused the SHS LP to grant security interests, hypothecs or mortgages to Sears in all of the SHS LP's present and after-acquired personal property and undertaking;

(such personal property and undertaking are collectively referred to as the "Sears Collateral"), in each case to secure all obligations owing from time to time by the Debtor to Sears (collectively, the "Sears Obligations");

**AND WHEREAS** pursuant to the Sears Security all other debts and liabilities of the Debtor are to be postponed and subordinated to the Sears Obligations;

**AND WHEREAS** Alaris has agreed to postpone and subordinate to the Sears Obligations any and all debts, liabilities and obligations that the Debtor may owe to Alaris;

**NOW THEREFORE** in consideration of the mutual covenants herein contained, the receipt and adequacy of which consideration is hereby acknowledged by each of the parties hereto, the parties hereby agree as follows:

1. Sears hereby consents to the formation of the SHS LP, the Asset Contribution, the Alaris Contribution, and the Guarantee;
2. Subject to the terms of this agreement, the Debtor, Alaris and Sears each acknowledge and agree that any and all obligations of the SHS LP or ISO to Alaris, as and when each becomes due and payable, including specifically any regularly scheduled distributions, payments, repayments, prepayments payable by the SHS LP to Alaris pursuant to the Limited Partnership Agreement (the "Distributions"), shall be and are hereby wholly postponed and subordinated to the Sears Obligations and each and every security interest or charge granted by the Debtor and the Guarantors, as applicable, to Sears. In addition, except as expressly permitted herein, Alaris shall not accept the payment of any distributions, payments, repayments, prepayments, including the Distributions, prior to the payment in full of the Sears Obligations.
3. Alaris hereby consents to the Debtor giving the security to Sears comprised in the Sears Security to which the Debtor or SHS LP is a party, and to the Guarantors guaranteeing the Sears Obligations and giving the other Sears Security to Sears.
4. The subordinations and postponements herein shall apply in all events and circumstances regardless of:
  - (a) the date of execution, attachment, registration or perfection of the Sears Security or any security interest held by Sears; or
  - (b) the date of any advance, advances or contribution made to the Debtor by Sears or Alaris or the date upon which any obligations to Sears may otherwise arise; or



- 3 -

- (c) the date of default by the Debtor under any of the Sears Security or the dates of crystallization of any floating charges held by Sears; or
  - (d) any priority granted by any principle of law or any statute, including the *Personal Property Security Act* (Ontario), or the equivalent legislation in any Province in Canada where any of the Debtor's or Guarantors assets are located; or
  - (e) any other factor of legal relevance affecting the priorities and ranking of payments contemplated hereby.
5. Any proceeds including, without limitation, any insurance proceeds received by the Debtor, the Guarantors, Sears or Alaris, in respect of the Sears Collateral shall be dealt with according to the preceding provisions hereof as though such proceeds were paid or payable as proceeds of realization of the collateral for which they compensate.
  6. Until such time as the Debtor or Sears issues and delivers written notice (the "Notice") to Alaris and the Debtor (if applicable) that the Debtor or any Guarantor is in default of any covenant or agreement (financial or otherwise) contained in the Sears Security or that payment of the Distributions to Alaris would cause a default by the Debtor or any Guarantor in any covenant or agreement (financial or otherwise) contained in the Sears Security, the SHS LP may pay to Alaris and Alaris may receive regularly scheduled payments of the Distributions from the SHS LP at the times and to extent provided for in the Limited Partnership Agreement as of the date hereof.
  7. Sears agrees that where it provides any written notice to the Debtor of any default of any covenant or agreement (financial or otherwise) contained in the Sears Security, it shall (prior to enforcing any rights or remedies against the Debtor or the Guarantors) provide Alaris with written notice of any such default together with reasonable particulars thereof and, to the extent such default is capable of being remedied, shall provide Alaris with the same time period (the "Cure Period") as is provided to the Debtor to remedy such default. To the extent such default is capable of being remedied, Alaris shall have the right to remedy such default during the Cure Period. If such default is not capable of being remedied by Alaris or is not remedied by Alaris by the end of the Cure Period, Sears shall be entitled to exercise any such rights or remedies against the Debtor or any Guarantor as it may have as a result of such default under the Sears Security and the Sears Obligations without requiring further notice to Alaris.
  8. Upon receipt by Alaris of the Notice, and until the earlier of (i) such time as the default that was the subject of the Notice (and any other default which has been the subject of a Notice) has been remedied by Alaris or the Debtor to the satisfaction of Sears or waived by Sears and (ii) such time as the irrevocable and unconditional repayment in full of the Sears Obligations has occurred, none of the SHS LP, ISO or the Debtor shall pay to Alaris and Alaris shall not receive from the SHS LP, ISO or the Debtor any distribution, payments, prepayments or prepayments (including any Distributions) without the prior written consent of Sears. Any distribution, payments, prepayments or prepayments (including any Distributions) received by Alaris in contravention of this agreement shall be deemed to be received in trust for Sears, and SHS LP, ISO, the Debtor or Alaris, as the case may be, shall pay such amounts to Sears forthwith upon receipt and without demand for such monies.
  9. None of Alaris, SHS or ISO shall at any time, directly or indirectly, dispute, challenge or contest the validity, enforceability or priority of the Sears Security.

- 4 -

10. All parties to this Agreement acknowledge and agree to such exchanges of information in respect of the Debtor and the Guarantors between Alaris and Sears as may be agreed upon from time to time between Sears and Alaris.
11. All notices, requests, demands and other communications hereunder shall be in writing and shall be furnished to the parties at the addresses listed below. Notices shall be deemed to have been duly given if delivered personally, by telex or facsimile transmission, or mailed by registered mail, prepaid, return receipt requested. Any such notice shall be deemed to be received when delivered personally, receipted or transmitted by telex or facsimile transmission on a business day unless such transmission is received after 5:00 p.m., Toronto time, in which case it shall be deemed to have been received the following business day, as the case may be:
- (a) if to Sears:
- Sears Canada Inc.  
290 Yonge Street, suite 700  
Toronto, Ontario M5B 2C3
- Attention: Vice-President, Specialty Services  
Facsimile number: (416) 941-4855
- With a Copy to:  
Sears Canada Inc.  
290 Yonge Street, suite 700  
Toronto, Ontario M5B 2C3
- Attention: General Counsel  
Facsimile number: (416) 941-2321
- (b) if to Alaris to:
- 232, 2031 - 33<sup>rd</sup> Avenue SW  
Calgary, AB T2T 1Z5
- Attention: Darren Driscoll, Chief Financial Officer  
Telephone No.: (403) 221-7303  
Telecopier No.: (403) 228-0906
- (c) if to the Debtor, the SHS LP or ISO:
- 245, 1209 59<sup>th</sup> Avenue SE  
Calgary, Alberta T2H 2P6
- Attention: Paul Verhoeff, Director  
Telephone No.: (587) 315-1026  
Telecopier No.: (403) 255-2839
12. This agreement is for the benefit of the parties hereto only and may not be relied upon by any third party for any reason whatsoever.

13. This agreement shall be governed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
14. This agreement sets forth the entire agreement of the parties hereto with respect to the subject matter hereof and there are no agreements, contracts, promises, representations, warranties, conditions, statements, arrangements or understandings between the parties hereto or their representatives, either express or implied, by operation of law or otherwise, except as set forth herein. No waiver, modification or amendment of any provision, term or condition hereof shall be valid unless in writing and signed by the party to be charged therewith, and any such waiver, modification or amendment shall be valid only to the extent therein set forth. Notwithstanding the foregoing, the signature or consent of the Debtor, SHS LP or ISO is not required to any amendment to the terms and provisions of this agreement.
15. This agreement shall be binding upon and enure to the benefit of Sears and its successors and assigns. None of the Debtor, the SHS LP or ISO shall be permitted to assign this agreement without the prior written consent of Alaris and Sears, which consent may be unreasonably withheld. Alaris shall not be permitted to assign this agreement without the prior written consent of Sears, which consent may not be unreasonably withheld. It shall be a condition of such assignment that the assignee assumes the obligations of the respective assignor under this agreement. Upon such assumption, this agreement will be deemed to be effectively assigned, and the respective assignor shall be released in full from all of its liabilities and obligations arising under this agreement, provided that all monies owing by the assignor to any of the other parties hereto shall have been paid in full at the date of effective assignment.
16. Sears shall be entitled to liquidate or dissolve into or amalgamate or merge with or into any successor corporation, which corporation shall succeed to the rights and obligations of that party hereunder.
17. In the event of any conflict or ambiguity between the provisions of this agreement and the provisions of any of the Sears Security or the Limited Partnership Agreement, as between the parties hereto, the provisions of this agreement shall prevail to the extent necessary to remove such conflict or ambiguity.
18. This agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute a single agreement. A facsimile, telecopy or other reproduction of this agreement may be executed by one or more of the parties hereto, and an executed copy of this agreement may be delivered by one or more of the parties hereto by facsimile or similar instantaneous electronic transmission device pursuant to which the signature of or on behalf of such party can be seen, and such execution and delivery shall be considered valid, binding and effective for all purposes.

[Remainder of this page left intentionally blank]

IN WITNESS WHEREOF the parties hereto have caused this agreement to be duly executed and delivered as of the date first above written.

SEARS CANADA INC.

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

Per: <u><i>P. Murphy</i></u> PAMELA MURPHY VP, SPECIALTY SERVICES, TRAVEL + HOME SERVICES	Per: <u><i>Stephen W. King</i></u> Stephen W. King President & Chief Executive Officer
Per: <u><i>P. Kelen</i></u> PETER KELEN EVP, SEARS FINANCIAL AND HOME SERVICES	

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

SHS SERVICES MANAGEMENT INC.

Per: \_\_\_\_\_ Per: \_\_\_\_\_

INSTALLATION SERVICES ORG. LTD.

Per: \_\_\_\_\_

IN WITNESS WHEREOF the parties hereto have caused this agreement to be duly executed and delivered as of the date first above written.

**SEARS CANADA INC.**

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

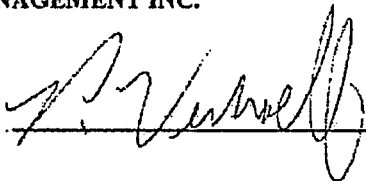
Per: \_\_\_\_\_

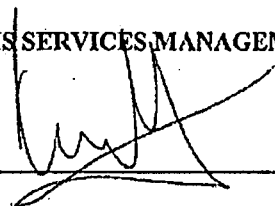
Per: \_\_\_\_\_

Per: \_\_\_\_\_

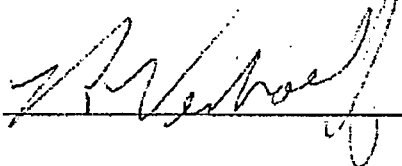
**SHS LIMITED PARTNERSHIP, by its  
general partner, SHS SERVICES  
MANAGEMENT INC.**

**SHS SERVICES MANAGEMENT INC.**

Per:  \_\_\_\_\_

Per:  \_\_\_\_\_

**INSTALLATION SERVICES ORG. LTD.**

Per:  \_\_\_\_\_

**TAB G**

**EXHIBIT G**

This is the Exhibit marked "G" referred to  
in the Affidavit of Micheal Clements,  
sworn before me this 12<sup>th</sup> day of December, 2013.

\_\_\_\_\_  
Notary Public in and for the Province of Alberta

**Nolan Ritzel**  
**Student-at-Law**

## LETTER OF UNDERSTANDING

TO: SHS Services Limited Partnership  
125 Commerce Valley Drive West, Suite 500  
Markham, Ontario L3T 7W4

and c/o Installation Services Org. Ltd.  
Unit H, 7003 - 5<sup>th</sup> Street SE  
Calgary, Alberta T2H 2G2

Date: September 30, 2013

Dear Sirs:

Re: Loans to SHS Services Limited Partnership (the "LP")

This letter of understanding (the "Letter of Understanding") is intended to set out the points of understandings and agreements reached between the parties to date in the context of ongoing negotiations between the LP, SHS Services Management Inc. (the "GP"), Sears Canada Inc. (the "Sears") and Alaris Income Growth Fund Partnership ("Alaris") in connection with term loans in the amount of up to \$4,000,000 in the aggregate to be provided by each of Alaris and Sears (each to fund \$2,000,000) (the "Loans").

It is understood that the Interim Loans (as defined below) will be advanced by each of Alaris and Sears on the date hereof in accordance with the terms of this Letter of Understanding and that this Letter of Understanding is an attempt to further negotiations with and to move forward with execution of definitive agreements in respect of the Loans and in respect of certain other agreements between the parties set out herein (collectively, the "Transaction Documents").

The parties anticipate that the understanding and points of agreement herein will form the basis of the Transaction Documents and will govern with respect to all matters contained herein, including, without limitation, the Interim Loans and the Loans, until the Transaction Documents are in force and effect. However, the parties acknowledge that through the process of further negotiations and the conduct of due diligence inquiries and reviews by Alaris and Sears further issues may be raised requiring the following to be supplemented, amended, or qualified, and may also give rise to issues not referred to in this Letter of Understanding requiring the further mutual agreement between the parties, all of which shall be incorporated in and made part of the applicable Transaction Documents.

The points of understanding and agreement reached by the parties to date are as follows:

1. Loans. Each of Alaris and Sears will provide \$2,000,000 each to the LP concurrent with execution by all parties of this Letter of Understanding (the "Interim Loans"). The Interim Loans will be evidenced by demand promissory notes granted in favour of each of Alaris and Sears and will bear interest at 7% compounded monthly, payable on demand with principal. The Interim Loans will be secured by all of the assets of the LP pursuant to general security agreements granted in favour of each of Alaris and Sears. Personal guarantees from Paul Verhoeff and Stephen Verhoeff, on a joint and several basis limited to an aggregate amount of \$2,000,000 in favour of Sears and Alaris, corporate guarantees from Installation Services Org. Ltd. ("ISO") each in the amount of \$750,000, and an unlimited corporate guarantee from the GP will be



provided in respect of the Interim Loans and the Loans (collectively, the "Guarantees"). Concurrently with funding of the Interim Loans, the LP shall provide a release in favour of Sears in respect of all claims and disputes, including any dispute of Purchase Price as defined in the Asset Transfer Agreement (as defined in such release) in the form attached hereto as Schedule A.

The Interim Loans will be replaced by the Loans and will be evidenced by a loan agreement between Alaris and the LP and a loan agreement between Sears and the LP, each on the following terms:

- (a) term loan with a maturity date of January 16, 2015, provided that commencing on February 16, 2015, the LP shall make 6 equal monthly installments to repay all outstanding amounts on the Loans by July 16, 2015;
- (b) secured by all assets of the LP, the GP and ISO, on a *pari passu* basis between Alaris and Sears;
- (c) Guarantees continue to secure the Loans (amended or replaced as required to reference the applicable loan agreement);
- (d) the LP shall be required to complete a sale of its hot water business, being on the date of this Letter of Understanding, the water heater equipment owned by the LP and rented to customers of the LP, together with all rental contracts and assets and liabilities associated therewith. Such sale shall be completed by no later than March 31, 2014 with a minimum of \$1,000,000 of the proceeds of such sale to be paid to each of Alaris and Sears as a repayment of the Loans on an equal basis. Failure to repay shall be an event of default entitling each of Alaris and Sears to immediately accelerate the Loans;
- (e) usual and customary representations and warranties, positive and negative covenants and events of default to similar corporations of similar size engaged in the same or similar business, as consented to by each of Alaris and Sears; and
- (f) the Loans will be subject to an intercreditor agreement between Alaris, Sears and the LP confirming that the Loans, the Guarantees and any security granted in connection with the Loans or the guarantees will be shared on a *pari passu* basis in right of payment between Sears and Alaris, notwithstanding the postponement agreement dated February 25, 2013 between Alaris, Sears, the LP, the GP and ISO. For clarity, such postponement agreement shall continue to apply and be in force with respect to any other payments postponed thereunder and each of Alaris, Sears, the LP, the GP and ISO agree that the "Sears Obligations" as defined therein shall include all other obligations owing to Sears by either the GP or the LP. Such postponement agreement shall be amended and restated to reflect the foregoing as part of the Transaction Documents. All consents, waivers, enforcement, acceleration rights and other lender decisions related to the enforcement of their Loan shall be a unanimous decision of Alaris and Sears, provided that if Alaris and Sears cannot agree whether to enforce any security following a default, after the expiry of a period of 15 days after any such default, the party wishing to demand the Loan (as applicable) and enforce the security shall be entitled to proceed with enforcement provided that all proceeds of any such enforcement shall be shared equally between Alaris and Sears in accordance with the terms of the intercreditor agreement. The parties hereto acknowledge and agree that the intercreditor principles as set out herein will apply to the Initial Loans until such time as the Loans are put into place and the Initial Loans repaid in full and cancelled.

Each of Sears and Alaris consents to the incurrence of debt, the granting of the security and the issuance of guarantees by the GP, the LP and ISO, as applicable, in favour of Alaris and Sears respectively, as provided for herein in respect of the Interim Loans and the Loans.

2. **Amendments to other Transaction Documents in respect of the LP and Sears.** Sears and the LP agree to amend the transition services agreement dated February 28, 2013 originally between Sears and the GP and as assigned to and assumed by the LP (the "Transition Agreement"), to delete the requirement in section 5(a)(i) to pay the weekly base fee. Sears also agrees, in respect of the Sears branded concession agreement dated effective March 2, 2013, originally between Sears and the GP and as assigned to and assumed by the LP (the "Concession Agreement"), that: (a) the LP shall not have to pay the Commission (as defined in the Concession Agreement) and such Commission shall not accrue to be payable for the months of September 2013 and October 2013, and (b) the amount of the Commission Guarantee (as defined in the Concession Agreement) payable in respect of the current fiscal year shall be reduced by an amount equal to the amount of the Commission that would have been payable for the months of September 2013 and October 2013. Commissions for the months of November 2013, December 2013 and January 2014 (the "Deferred Commissions") shall accrue from and after November 2013 but payment of the Deferred Commission by the LP to Sears shall be deferred to January 16, 2015; provided that the Deferred Commissions shall cease upon any enforcement of the Loans. Commencing with February 2014, Commissions are due in accordance with the terms of the Concession Agreement. Sears further agrees that compliance with the financial covenants in respect of the debt service coverage ratio, current ratio and the debt to tangible net worth ratio set out in the Concession Agreement shall be waived until the earlier of the date the Loans are repaid and October 1, 2014, and compliance with the minimum level of tangible net worth may also be waived or relaxed. Further amendments to the Transition Agreement or the Concession Agreement in respect of these matters shall require prior consent of Alaris.
3. **Amendments to other Transaction Documents in respect of the LP and Alaris.** Alaris and the GP agree to amend the limited partnership agreement in respect of the LP dated February 25, 2013 (the "LP Agreement"), to amend the definition of Preferred Distributions (as defined therein) to delete the 6% top end collar on distributions. In addition to all other rights/distributions Alaris is entitled to under the LP Agreement, the LP Agreement will be amended to add provisions entitling Alaris to a net profits interest on all profits of the LP. Such amendments to the LP Agreement (and any consequential amendments to give effect thereto) would take effect after the Loans have been repaid and the Deferred Commissions referenced in paragraph 2 above have been paid by the LP. Alaris also agrees that distributions payable by the LP under the LP Agreement shall not be payable for the months of September 2013 through and inclusive of January 2014. Commencing with February 2014, distributions shall be payable by the LP in accordance with the terms of the LP Agreement. Any amendments to the waiver of the distributions from September 2013 to January 2014 shall require prior consent of Sears.
4. **Changes to Management.** The LP and the GP agree that Paul Verhoeff and Stephen Verhoeff will be removed from all management and director functions of the LP and the GP, however, Paul and Stephen may remain shareholders of the GP. Micheal Clements will be appointed to act as CEO and Michael Strachan will be appointed to act as President of the GP. Micheal Clements and Michael Strachan will be the leaders working with Sears. Micheal Clements will be actively involved in the LP business, actively overseeing the operations and sales functions on a daily basis. This will consist of conference calls, time spent in Markham headquarters, and in the field nationally actively overseeing the operations and sales functions, and having continued granular engagement in the LP business. Micheal Clements, Michael Strachan and Adam Barnard of the LP will have a 2 hour conference call or in person meeting with Terri Lowe and Pamela Murphy

of Sears on Monday, September 30, 2013 at which time Sears will outline its expectations for ongoing reporting on the LP's 100 day turn-around plan. On October 4, 2013, Micheal Clements, Michael Strachan and Adam Barnard will meet with Terri Lowe and Pamela Murphy for the full day (8 hours) to go over the detail of the 100 day plan, which will discuss, among other things, sales, marketing and operations, as well as cost-cutting initiatives. Thereafter, there will be weekly meetings between such the LP employees and such Sears employees to discuss business and plans as Sears requests.

5. **Transaction Documents.** The parties shall proceed in good faith with the negotiation of the terms and conditions of the Transaction Documents and related documents collateral thereto, and shall make all reasonable efforts to negotiate and execute such Transaction Documents by October 15, 2013. In addition to the specific terms of the Transaction Documents outlined above, the Transaction Documents shall contain such terms, conditions, agreements, covenants, warranties and representations as are customarily included in agreements involving transactions similar to that contemplated hereby so as to reflect the understandings and points of agreement as set forth in this Letter of Understanding and such other and further understandings and points of agreement as may be subsequently negotiated between the parties.
6. **Publicity.** Subject to applicable securities legislation and regulation requiring otherwise, no press releases, announcements, or other publicity pertaining to the proposed transactions shall occur by any of the parties hereto unless it is mutually agreed upon and pre-approved by the parties.
7. **Confidentiality.** Each party hereto agrees to keep the negotiations regarding the transactions contemplated herein, including all correspondence, papers, documents, discussions, and third party communications arising therefrom, and the confidential information provided in the course of those negotiations, in strict confidence, provided that each party may disclose such confidential information: (a) to each of their directors, officers, employees, legal counsel and other advisors, as applicable, who are directly involved in the consideration of this matter and who have been informed of the confidential nature thereof and who have agreed to hold the same in confidence, or (b) as may be compelled in a judicial or administrative proceeding or as otherwise required by applicable law. Disclosure to any additional parties shall only be made with the prior written approval of each of the parties hereto.
8. **Transaction Costs.** Sears, Alaris, the GP and the LP shall each bear their own costs in connection with the transactions contemplated in the Letter of Understanding, including, without limitation, all legal and other professional fees.
9. **Expiry.** This Letter of Understanding shall be open for acceptance by the parties hereto for a period expiring on September 30, 2013 at 11:00 pm, Alberta time.
10. **Governing Law.** This Letter of Understanding shall be governed by, and construed in accordance with, the laws of the Province of Alberta and the federal laws of Canada applicable therein.
11. **Counterpart Execution.** This Letter of Understanding may be executed in any number of counterparts, each of which shall be an original, and all of which, when taken together, shall constitute one agreement. Delivery of an executed signature page of this letter agreement by facsimile or electronic transmission (including pdf) shall be effective as delivery of a manually executed counterpart hereof.

*The Remainder of this Page is Intentionally Left Blank*

Please indicate your acceptance of this Letter of Understanding by signing and returning one copy of this letter to the attention of each other party.

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

SHS SERVICES LIMITED PARTNERSHIP, by its general partner, SHS Services Management Inc.

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name: Micheal Clements  
Title: Director

SEARS CANADA INC.

SHS SERVICES MANAGEMENT INC.

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name: Micheal Clements  
Title: Director

Per: \_\_\_\_\_  
Name:  
Title:

INSTALLATION SERVICES ORG. LTD.

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

Witness \_\_\_\_\_  
Name:  
Title:

Michael Clements

Witness \_\_\_\_\_

Michael Strachan

Please indicate your acceptance of this Letter of Understanding by signing and returning one copy of this letter to the attention of each other party.

ALARIS INCOME GROWTH FUND SHS SERVICES LIMITED PARTNERSHIP,  
PARTNERSHIP, by one of its partners, by its general partner, SHS Services  
ALARIS IGF CORP. Management Inc.

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

SEARS CANADA INC.

SHS SERVICES MANAGEMENT INC.

Per: \_\_\_\_\_  
Name:  
Title:

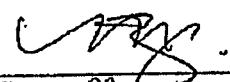
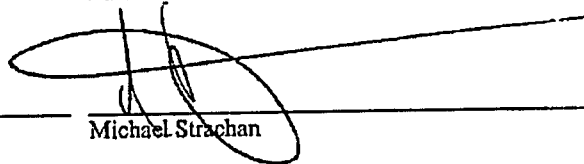
Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

INSTALLATION SERVICES ORG. LTD.

Per: \_\_\_\_\_  
Name:  
Title:

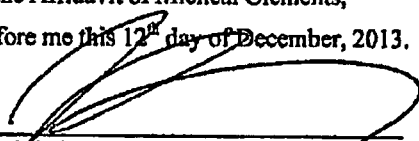
Witness \_\_\_\_\_ Micheal Clements

  
Witness Meaghan Bach \_\_\_\_\_  
  
Michael Strachan

**TAB H**

**EXHIBIT H**

This is the Exhibit marked "H" referred to  
in the Affidavit of Micheal Clements,  
sworn before me this 12<sup>th</sup> day of December, 2013.

  
\_\_\_\_\_  
Notary Public in and for the Province of Alberta  
**Nolan Ritzel**  
Student-at-Law

## GUARANTEE

This Guarantee is dated as of September 30, 2013 and is made by SHS Services Management Inc., an Alberta Corporation (the "Guarantor") in favour of Alaris Income Growth Fund Partnership, an Alberta General Partnership (the "Creditor").

### Recitals:

- A. The Guarantor desires to execute, deliver and perform this Guarantee in order to assist SHS Services Limited Partnership, an Alberta Limited Partnership (the "Borrower") for the mutual benefit of the Guarantor and the Borrower in connection with the Promissory Note.
- B. It is a condition of the Creditor's obligations to make advances under the Promissory Note that this Guarantee be entered into.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor covenants and agrees with the Creditor as follows:

## ARTICLE 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Guarantee, terms and expressions defined in the description of the parties and recitals shall have those meanings when used herein, and:

"Applicable Law" means, in relation to any person, property, transaction or event, all applicable provisions, whether now or hereafter in effect, of laws, statutes, rules or regulations, official directives and orders of all federal, provincial, municipal and local governmental bodies (whether administrative, legislative, executive or otherwise and, in the case of any central bank, fiscal or monetary authority, whether or not having the force of law) and judgments, orders and decrees of all courts, arbitrators, commissions or bodies exercising similar functions in actions or proceedings in which the person in question is a party or by which it is bound or having application to the property, transaction or event in question;

"Enforcement Event" means a demand by the Creditor on the Borrower for payment of the principal sum under the Promissory Note;

"Guarantee" means this guarantee, as amended, modified or supplemented from time to time and all acknowledgements in respect hereof;

"Guaranteed Obligations" means all obligations, indebtedness, liabilities, covenants, agreements and undertakings of the Borrower to the Creditor (including fees, expenses, costs and indemnities), present or future, direct or indirect, absolute or contingent, matured or not, extended or renewed, and any ultimate unpaid balance thereof, under the Promissory Note;

"Person" means an individual, a partnership, a corporation, a trust, a joint venture, an unincorporated organization, a union, a government or any department or agency thereof and the heirs, executors, administrators or other legal representatives of an individual; and



"Promissory Note" means the demand promissory note dated as of the date hereof granted by the Borrower in favour of the Creditor in the principal amount of Cdn. \$2,000,000.00.

## 1.2 References

Unless something in the subject matter or context is inconsistent herewith, all references to Sections, Articles and Schedules are to Sections and Articles of and Schedules to this Guarantee. The words "hereto", "hereof", "hereunder" and similar expressions mean and refer to this Guarantee. In this Guarantee words importing the singular number include the plural and vice versa; words importing gender include masculine, feminine and neuter; where any term or expression is defined herein, derivations of such term or expression shall have a corresponding meaning; words and terms denoting inclusiveness (such as "include" or "includes" or "including") or particularity (such as "in particular" or "such as") are, whether or not so stated, not limited by their context or by the words or phrases which precede or succeed them; references to any statute, act or other legislative enactment shall be to such statute, act or other legislative enactment as amended from time to time or replaced by a statute, act or other legislative enactment dealing with substantially the same subject matter as the statute, act or other legislative enactment so replaced; and references to any agreement, contract, document, license or other instrument shall be to such agreement, contract, document, license or other instrument as amended, modified, replaced, restated, extended, renewed or supplemented from time to time. The headings and the Article and Section titles are inserted for convenience of reference only and shall not affect the construction or interpretation of this Guarantee.

## ARTICLE 2 GUARANTEE AND POSTPONEMENT

### 2.1 Unconditional Guarantee

The Guarantor hereby jointly and severally, irrevocably, absolutely and unconditionally guarantees to the Creditor the due and punctual payment and performance as and when due (at stated maturity, by effluxion of time, by mandatory repayment or prepayment, by acceleration, on demand or otherwise howsoever) of the Guaranteed Obligations (and each of them) strictly in accordance with the terms thereof, and the Guarantor shall reimburse the Creditor for any and all expenses in accordance with Section 6.1.

### 2.2 Continuing Obligation

The obligation of the Guarantor hereunder shall be a continuing obligation and a fresh cause of action hereunder shall be deemed to arise in respect of each Enforcement Event. This Guarantee shall remain in full force and effect in accordance with its terms until the final and indefeasible payment in full and performance of the Guaranteed Obligations. The Guarantor agrees that it will from time to time at the request of the Creditor deliver to the Creditor suitable acknowledgments of its continued liability hereunder and under any instrument collateral or supplemental hereto, in such form as counsel for the Creditor may reasonably advise and as shall be necessary to prevent any action brought against the Guarantor in respect of any default hereunder or under any covenant herein contained being barred by any statute of limitations now or hereafter in force pursuant to Applicable Law, and in the event of the failure of the Guarantor to do so, it hereby irrevocably appoints the Creditor the lawful and duly constituted attorney and agent of the Guarantor to make, execute and deliver such written acknowledgments or other instruments as may from time to time become necessary or advisable, in the judgment of the Creditor, to fully maintain and keep in force the liability of the Guarantor hereunder or under any instrument collateral or supplemental hereto or in implementation hereof.

### **2.3 Receipt of Promissory Note**

The Guarantor hereby acknowledges having received a copy of the Promissory Note. The Guarantor shall be responsible for ensuring that it receives directly from the Borrower such copies as it desires to receive of all amendments, modifications or supplements to the Promissory Note and of any other documents, instruments or agreements which are executed in the future pursuant to which Guaranteed Obligations may arise, it being understood and agreed that the Creditor shall not in any manner have any obligation to ensure such receipt nor shall lack of receipt in any way affect the absolute and unconditional nature of the Guarantor's obligations hereunder.

### **2.4 Postponement**

The Guarantor hereby subordinates and postpones in all respects (including, the right to payment, priority of security and realization in respect of security) the payment of any and all amounts which the Borrower may owe to the Guarantor from time to time and at any time until the Guaranteed Obligations have been paid and satisfied in full, and in order to give further effect to this subordination and postponement, the Guarantor hereby agrees to hold in trust for the Creditor any amounts received from the Guarantor and to pay over such amounts to the Creditor on demand. The Guarantor hereby grants to the Creditor a continuing first priority security interest in and to all present and future indebtedness and liabilities of the Borrower to the Guarantor howsoever arising, whether direct or indirect, absolute or contingent, matured or not, and all security interests granted by the Borrower to the Guarantor in respect thereof.

## **ARTICLE 3 PAYMENTS**

### **3.1 Payments**

If an Enforcement Event has occurred, then the Guarantor shall, on demand by the Creditor, at any time and from time to time thereafter, forthwith pay to the Creditor the Guaranteed Obligations which are in default, including all interest thereon at the rate prescribed in the Promissory Note, until payment is received in full by the Creditor or otherwise perform the Guaranteed Obligations in respect of which demand was made, as the case may be.

### **3.2 Currency**

The Guarantor expressly acknowledges that the Guaranteed Obligations may be payable in Canadian dollars or in one of several other currencies or partly in one currency and partly in others, and the Guarantor agrees to make all payments in the currency or currencies in which the Guaranteed Obligation is then denominated.

## **ARTICLE 4 REMEDIES**

### **4.1 Exercise of Remedies**

If an Enforcement Event shall occur and if the Guarantor shall fail to pay or perform the Guaranteed Obligations forthwith on demand as herein provided, the Creditor shall have the right in its discretion to proceed against the Guarantor for enforcement of this Guarantee or any instrument collateral or supplemental hereto or in implementation hereof by any remedy provided or permitted

hereby and thereby or by Applicable Law, and whether by legal proceedings or otherwise, and to recover from the Guarantor such sums as the Guarantor may be liable to pay hereunder and any and all such sums actually received by the Creditor shall be applied against the Guarantor's obligations hereunder and the Guaranteed Obligations in such manner as the Creditor deems appropriate.

#### **4.2 Other Guarantees Not Affected**

This Guarantee shall be in addition to and not in substitution of or for any other guarantee now or hereafter held by the Creditor for the Guaranteed Obligations, and this Guarantee shall not, nor be deemed to, operate as a merger of any other obligations of the Guarantor to the Creditor, all of which shall remain in full force and effect.

#### **4.3 No Waiver**

No failure or delay on the part of the Creditor in exercising any right or remedy under this Guarantee shall operate as a waiver of such right or remedy, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy in law, by statute, equity or otherwise conferred. No waiver of any provision of this Guarantee shall be effective otherwise than by an instrument in writing dated subsequent to the date hereof, executed by a duly authorized representative of the Creditor and then only for the particular instance for which it is so given. No notice to or demand on the Guarantor shall be deemed to be a waiver of the obligation of the Guarantor or of the right of the Creditor to take further action without notice or demand as provided herein.

### **ARTICLE 5 ACKNOWLEDGEMENTS**

#### **5.1 No Release of Guarantor's Obligations**

The Guarantor acknowledges and agrees that:

- (a) the Creditor may (i) grant extensions of time or other indulgences, renew, take, give up or surrender any security interest, accept compositions, grant releases and discharges and otherwise deal with the Borrower, any other Person, the Guaranteed Obligations and any security interest in respect thereof as the Creditor may see fit, (ii) directly or indirectly waive, change, amend, modify, supplement or grant consents or acknowledgements under the Promissory Note or any security interests in respect thereof, (iii) apply all monies received from the Borrower or any other Person, or from the enforcement of any security interest, against such part of the Guaranteed Obligations as the Creditor may deem appropriate, all of the foregoing without prejudice to or in any way releasing, discharging, terminating, limiting, reducing, lessening, impairing or in any way affecting the indebtedness, obligations and liabilities of the Guarantor under this Guarantee, or otherwise subjecting the Creditor to a defence of any kind, including any defence of set-off, counterclaim or recoupment;
- (b) the Creditor shall not be bound to commence or exhaust its recourse against the Borrower, other guarantors or other Persons it may hold before being entitled to payment from the Guarantor under this Guarantee;
- (c) none of the following events shall discharge, terminate, release, limit, reduce, lessen, impair or in any way affect the indebtedness, obligations and liabilities of the Guarantor under this Guarantee

or otherwise subject the Creditor to a defence of any kind, including any defence of set-off, counterclaim or recoupment:

- (i) the release of, failure to obtain or perfect or loss or exchange of or in respect of any security interests received by the Creditor with respect to any Guaranteed Obligation, whether from the Borrower, any other guarantor or any other Person, whether occasioned through the fault of the Creditor or otherwise;
- (ii) the release or failure to prove or assert any claim or demand or enforce any right or remedy against the Borrower, any other guarantor or others, in any manner whatsoever including in any bankruptcy, winding-up, compromise or other proceeding relating to the creditors of such parties;
- (iii) the rescission, illegality, invalidity or unenforceability of all or any part of the Guaranteed Obligations;
- (iv) merging of any document, instrument or agreement relating to the Guaranteed Obligations or the obligations of the Borrower, any other guarantor or any other Person thereunder;
- (v) any change in the identity, ownership or capacity of the Creditor, whether by amalgamation, consolidation, merger, reorganization, addition, substitution, removal, succession, assignment, grant of a participation, transfer or otherwise;
- (vi) any act or proceeding in relation to the Promissory Note, this Guarantee, or any other guarantee;
- (vii) any amendment or change in the manner, time, place of payment or calculation of the amounts owing under, or any other term of, any Guaranteed Obligation, or any other amendment or waiver of or consent to or departure from the terms of the Promissory Note;
- (viii) the (A) liquidation, winding-up, bankruptcy, dissolution, compromise, proposal, arrangement, plan of reorganization or other event or proceeding relating to, or which might affect the existence, obligations, creditors, assets, business or affairs of, (B) change or changes in the name of, or (C) amalgamation, consolidation, merger or reorganization of any kind, of, or with respect to, the Borrower, the Guarantor or any other guarantor or Person;
- (ix) the impossibility or impracticality of performance, or force majeure, any act of any governmental authority, or any other circumstance which might constitute a defence available to, or a discharge of, the Borrower in respect of the Guaranteed Obligations or of the Guarantor under this Guarantee;
- (x) the existence of any claim, set-off or other rights which the Guarantor may have at any time against the Borrower or the Creditor; or
- (xi) any other circumstance, event or happening whatsoever, whether foreseen or unforeseen and whether similar or dissimilar to anything referred to in any of the foregoing;

- (d) the Creditor shall not be concerned to see or inquire into the powers of the Borrower or its directors, officers or agents acting or purporting to act on its behalf, and moneys, advances or credits in fact borrowed or obtained from the Creditor in professed exercise of such powers shall be deemed to form part of the Guaranteed Obligations, even though the borrowing or obtaining thereof was irregularly, defectively, informally or illegally effected or in excess of the powers of the Borrower or its directors, officers or agents;
- (e) any account settled or stated by or between the Creditor and the Borrower shall be accepted by the Guarantor as conclusive evidence, absent manifest error, that the balance or amount thereby appearing due by the Borrower to the Creditor is so due; and
- (f) this Guarantee shall continue to be effective or be reinstated, as the case may be, if for any reason at any time any payment or performance hereunder or of the Guaranteed Obligations, or any part thereof, is rescinded, reversed, nullified, rendered void or voidable or must otherwise be restored, refunded, returned or reimbursed by the Creditor.

#### 5.2 Certain Acknowledgments of the Guarantor

The Guarantor acknowledges, covenants and agrees with the Creditor as follows:

- (a) upon making demand hereunder, the Creditor shall be entitled to continue to exercise such rights and remedies notwithstanding that the default may subsequently have been remedied or cured; and
- (b) all of the Creditor's remedies hereunder and under any document, instrument or agreement relating to the Guaranteed Obligations, are cumulative and not exclusive and action thereon or procurement of judgment shall not operate as a merger of or preclude or lessen any other remedy or right.

#### 5.3 Subrogation

Upon the payment or performance in full by the Guarantor of the Guaranteed Obligations, the Guarantor shall be immediately subrogated to all right, title and interest of the Creditor with respect thereto and under the Promissory Note, and shall be entitled, in its sole discretion, to pursue all rights and remedies available to it with respect to such subrogated right, title and interest and to receive for its own account payments otherwise due to the Creditor under the Promissory Note or by operation of law with respect thereto. The Creditor agrees that at any time and from time to time after payment or performance in full by the Guarantor of the Guaranteed Obligations and there being no remaining amounts owing under the Promissory Note it will, without recourse, promptly and duly execute and deliver any and all such further instruments and documents and take such action as may reasonably be requested by the Guarantor in order to obtain the full benefits of the subrogation rights contained herein and by action of law, including the assignment and transfer to the Guarantor of all of the Creditor's right, title and interest in and to the Promissory Note and notice of such assignment and transfer to the parties to and beneficiaries of the Promissory Note. Notwithstanding the foregoing, the Guarantor shall have no right to be subrogated in any rights of the Creditor under the Promissory Note until the Creditor shall have received full, final and indefeasible payment and performance in full of the Promissory Note and the Creditor has no further obligation to extend credit or advance money to or for the benefit of the Borrower.

**ARTICLE 6  
EXPENSES, INDEMNITY AND JUDGMENT CURRENCY**

**6.1 Expenses**

The Guarantor shall pay all reasonable expenses (including legal fees and expenses on a solicitor and his own client, full indemnity, basis) incurred by the Creditor in connection with the preparation, perfection, execution, protection, enforcement of and advice with respect to this Guarantee (including the protection and enforcement of the rights of the Creditor hereunder) and such expenses shall, from the time they are paid by the Creditor until repaid by the Guarantor, bear interest at the highest rate applicable to the Guaranteed Obligations.

**6.2 Indemnity**

The Guarantor will and does hereby indemnify and save harmless the Creditor from and against any and all liabilities, actions, claims, judgments, obligations, costs, charges or expenses, including reasonable legal fees and expenses on a solicitor and his own client, full indemnity, basis, made against or incurred by the Creditor as a result of taking this Guarantee. The Creditor shall have the right to defend against any such liabilities, actions, claims and charges and to claim from the Guarantor all expenses incurred in connection therewith, together with all legal fees and expenses on a solicitor and his own client, full indemnity, basis that may be paid in connection therewith. It is understood and agreed that the covenants and conditions of this Section shall remain in full force and effect notwithstanding the termination of this Guarantee.

**6.3 Judgment Currency**

In the event of a judgment or order being rendered by any court or tribunal for the payment of any amount owing under this agreement, or for the payment of damages in respect of any breach of or default under this agreement, or in respect of a judgment or order of another court or tribunal for the payment of such amount or damages, such judgment or order being expressed in a currency (the "Judgment Currency") different from the currency which the Borrower and a Creditor have agreed shall apply thereto under any document, instrument or agreement relating thereto (the "Agreed Currency"), the Guarantor shall indemnify and hold harmless each Creditor against any deficiency in terms of the Agreed Currency in the amounts actually received by the Creditor arising or resulting from any difference between: (i) the rate of exchange at which the Agreed Currency is converted into the Judgment Currency for the purposes of such judgment or order; and (ii) the rate of exchange at which the Creditor is able to purchase the Agreed Currency with the amount of the Judgment Currency actually received by the Creditor on the Business Day following receipt. The indemnity in this Section 8.3 shall constitute a separate and independent obligation of the Guarantor from its other obligations under this Guarantee. The term "rate of exchange" as used in this Section 8.3 shall include any premiums and costs of exchange payable in connection with the purchase of, or conversion into, the relevant currency.

**ARTICLE 7  
MISCELLANEOUS**

**7.1 No Collateral Agreements**

There are no representations, collateral agreements or conditions with respect to this Guarantee or affecting the Guarantor's obligations and liabilities hereunder other than as contained herein.

**7.2 Joint and Several Guaranteed Obligations**

The obligations of the Guarantors hereunder are joint and several, and the Guarantor agrees that it is jointly and severally liable for the Guaranteed Obligations and all other payment and performance obligations hereunder.

**7.3 Assignment by Guarantor**

The Guarantor shall not assign, in whole or in part, its rights and obligations in this Guarantee without the prior written consent of the Creditor.

**7.4 Governing Law**

This Guarantee is conclusively deemed to be made under, and for all purposes to be governed by and construed in accordance with, the laws of the Province of Alberta and of Canada applicable therein. There shall be no application of any conflict of laws or rules which would result in any laws other than internal laws in force in the Province of Alberta applying to this Guarantee. The Guarantor hereby irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of the Province of Alberta for all matters arising out of or relating to this Guarantee, or any of the transactions contemplated hereby, without prejudice to the rights of a Creditor to take proceedings in other jurisdictions.

**7.5 Notice**

All notices, advices, requests and demands hereunder shall be in writing (including facsimile transmissions) and shall be given to the Guarantor or the Creditor at the following addresses or at such other address as any party shall designate for itself and all notices shall be effective upon actual receipt:

125 Commerce Valley Drive West, Suite 500  
Markham Ontario, L3T 7W4

Attention: President

Telefax No. 905-747-2405

AND TO

C/o Installation Services Org. Ltd.  
Unit H, 7003 -5 Street SE  
Calgary, AB T2H 2G2

Attention: Theresa Lea  
Fax 403-255-2839

if to the Creditor, at:

Suite 232 - 2031 33rd Avenue S.W., Calgary, Alberta, Canada  
T2T 1Z5

Attention: Darren Driscoll, Chief Financial Officer  
Telefax No. (403) 228-0906

**7.6 Invalidity of Provisions**

In case any of the provisions of this Guarantee should be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

**7.7 Further Assurances**

The Guarantor hereby agrees with the Creditor that it shall, forthwith and from time to time execute and do or cause to be executed and done all documents, deeds, acts and assurances which in the reasonable opinion of the Creditor are necessary or advisable to give effect to the obligations of the Guarantor as contemplated hereunder.

**7.8 Amendment**

This Guarantee shall not be varied in its terms otherwise than by an instrument in writing dated subsequent to the date hereof, executed by duly authorized representatives of the Guarantor and the Creditor.

**7.9 Time of the Essence**

In this Guarantee, time is of the essence.

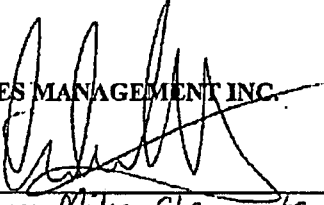
**7.10 Enurement**

This Guarantee shall be binding upon the Guarantor and its successors and permitted assigns and shall enure to the benefit of each Creditor and their respective successors and assigns.

IN WITNESS WHEREOF the Guarantor has duly executed this Guarantee as of the date and year first above written.

SHS SERVICES MANAGEMENT INC.

Per:

  
Name: Mike Clements  
Title: Director

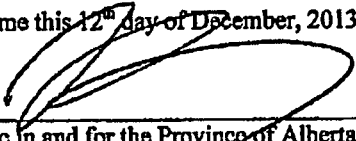




# TAB I

**EXHIBIT I**

This is the Exhibit marked "T" referred to  
in the Affidavit of Micheal Clements,  
sworn before me this 12<sup>th</sup> day of December, 2013.

  
\_\_\_\_\_  
Notary Public in and for the Province of Alberta

**Nolan Ritzel**  
**Student-at-Law**

## SECURITY AGREEMENT

This Security Agreement is dated as of September 30, 2013 and is made by SHS Services Limited Partnership, an Alberta Limited Partnership and having its principal place of business in Calgary, Alberta (the "Debtor") in favour of Alaris Income Growth Fund Partnership, an Alberta General Partnership having its principal place of business in Calgary, Alberta (the "Secured Party").

NOW THEREFORE, the Debtor covenants and agrees with the Secured Party as follows:

### ARTICLE 1 INTERPRETATION

#### 1.1 Definitions

In this Agreement terms and expressions defined in the description of the parties and Schedule "A" shall have those meanings when used herein.

#### 1.2 Schedules

The Definitions contained in Schedule "A" are incorporated into and made a part of this Agreement. Any reference to a Schedule in this Agreement includes, unless the context otherwise requires, such Schedule as amended from time to time by one or more agreements supplemental hereto.

#### 1.3 Interpretation.

The words "hereto", "hereof", "hereunder" and similar expressions mean and refer to this Agreement. In this Agreement words importing the singular number include the plural and vice versa; words importing gender include masculine, feminine and neuter; where any term or expression is defined herein, derivations of such term or expression shall have a corresponding meaning; words and terms denoting inclusiveness (such as "include" or "includes" or "including") or particularity (such as "in particular" or "such as") are, whether or not so stated, not limited by their context or by the words or phrases which precede or succeed them; references to any statute, act or other legislative enactment shall be to such statute, act or other legislative enactment as amended from time to time or replaced by a statute, act or other legislative enactment dealing with substantially the same subject matter as the statute, act or other legislative enactment so replaced; and references to any agreement, contract, document, license or other instrument shall mean and refer to such agreement, contract, document, license or other instrument as amended, modified, replaced, restated, extended, renewed or supplemented from time to time. The headings and the Article and Section titles are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

### ARTICLE 2 SECURITY

#### 2.1 Security

To secure the payment, performance and final and indefeasible satisfaction in full of each and every Obligation, the Debtor hereby (subject to the exceptions contained in Sections 2.3 and 2.4):

- (a) assigns, transfers, pledges, mortgages and charges to and in favour of the Secured Party and grants to and in favour of the Secured Party a continuing first priority security interest in and to all of the Debtor's present and after-acquired personal property; and

- (b) mortgages and charges as and by way of a first floating charge to and in favour of the Secured Party the undertaking and all the property and assets, rights and things of the Debtor both present and future, legal or equitable, of which the Debtor may be possessed or to which it may be entitled or which may hereafter be acquired by the Debtor, including all its right, title, estate and interest in and to any and all real, personal or mixed property, now owned or hereafter acquired by the Debtor, and all its present and future revenues, incomes, moneys, rights, franchises, goods, wares, merchandise, inventories, materials, supplies, book debts, accounts and accounts receivable, negotiable and non-negotiable instruments, judgments, investment property, choses in action, chattel paper, shares and investments, and all other property and things of value of every kind and nature, tangible or intangible, legal or equitable and all proceeds and all products of, and all accessions to, any of the foregoing;

TO HAVE AND TO HOLD the Collateral and the Charge and all rights hereby conferred unto the Secured Party.

## **2.2 Attachment**

The Debtor acknowledges conclusively that the Debtor and the Secured Party intend the Charge in the Collateral to attach immediately upon the execution of this Agreement, except in the case of Collateral in which the Debtor subsequently acquires rights, in which case the Charge shall attach contemporaneously with the Debtor acquiring rights therein without the need for any further or other deed, act or consideration. The Charge shall be effective and shall attach as of the date hereof whether the monies hereby secured or any part thereof shall become owing by the Debtor before or after or upon the date of execution of this Agreement. The Debtor acknowledges conclusively that value has been given.

## **2.3 Leases**

The last day of any term reserved by any lease, oral or written, or any agreement therefor, now held or hereafter acquired by the Debtor, is hereby excepted out of the Charge and does not and shall not form part of the Collateral, but the Debtor shall stand possessed of the reversion remaining in the Debtor of any leasehold premises for the time being demised as aforesaid upon trust to assign and dispose thereof as the Secured Party shall direct and upon any sale of the leasehold premises, or any part thereof, the Secured Party, for the purpose of vesting the aforesaid reversion of any such term or any renewal thereof in any purchaser or purchasers thereof, shall be entitled by deed or writing to appoint such purchaser or purchasers or any other Person or Persons as trustee or trustees of the aforesaid reversion of any such term or any renewal thereof in the place of the Debtor and to vest same accordingly in the new trustee or trustees so appointed freed and discharged from any obligation respecting same.

## **2.4 Contractual Rights**

In the event the validity and effectiveness of the Charge over any of the Collateral requires the consent, approval or waiver of a third person in order to be effective as against such third person, the Charge with respect to any such Collateral shall be effective as against the Debtor and all Persons other than such third person and shall be effective as against such third person when the applicable consent, approval or waiver is obtained, retroactively, to the fullest extent legally possible, to the later of the date hereof or the date such consent, approval or waiver is obtained or becomes effective, as applicable, and until such consent, approval or waiver is obtained, the Debtor shall (subject to the other terms hereof) stand possessed of such Collateral upon trust to assign and dispose thereof as the Secured Party shall for such purposes direct.

## 2.5 Negative Pledge

The Debtor covenants and agrees that it will not grant, create, incur, assume or permit or suffer to exist any Security Interest upon or with respect to any of the Collateral, except for Permitted Encumbrances. The fact that the Debtor is permitted to create or suffer to exist any Permitted Encumbrance shall not, in any circumstances, be taken to constitute a subordination of the Charge to any Permitted Encumbrance.

## 2.6 Permitted Activities

Until an Event of Default occurs, the Debtor shall be entitled to sell, assign, dispose of and otherwise deal with the Collateral in the ordinary course of business.

## 2.7 Investment Property

If the Collateral at any time includes investment property which is or is to be credited to a securities account established by the Debtor with a securities intermediary, the Debtor shall notify the Secured Party and, at the request of the Secured Party, shall and shall procure that the relevant securities intermediary shall enter into an agreement with the Secured Party which includes such terms as may be required by the Secured Party to ensure that the Secured Party has exclusive control over all investment property held in the relevant securities account following the occurrence of an Event of Default including, but not limited to, an agreement of the securities intermediary that it will comply with entitlement orders that are originated by the Secured Party without the further consent of the Debtor.

## 2.8 British Columbia Floating Charges

For greater certainty, it is hereby confirmed that the floating charge created hereby is a floating charge within the meaning of Section 203 of the *Land Title Act* (British Columbia) and does not become a fixed charge on specific land until the occurrence of an Event of Default or until the Secured Party has made demand for payment of the Obligations.

### ARTICLE 3 REPRESENTATIONS AND WARRANTIES

#### 3.1 Representations and Warranties

The Debtor hereby represents and warrants to the Secured Party that:

- (a) the Debtor is a limited partnership duly created and validly existing under the laws of the Province of Alberta;
- (b) the Debtor has the power, capacity and authority to enter into this Agreement and to do all acts and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in accordance with the terms hereof;
- (c) the Debtor has taken all necessary partnership action to authorize the creation, execution, delivery, observance and performance of this Agreement;
- (d) this Agreement constitutes the legal, valid and binding obligation of the Debtor, enforceable against the Debtor in accordance with its terms, except as enforceability may be limited by

general principles of equity and by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally;

- (e) this Agreement and the execution and delivery by the Debtor of this Agreement do not, and the consummation of the transactions and performance of the obligations contemplated hereby will not violate any provision of or constitute a default (whether with notice or the lapse of time or both) or require any consent or waiver of rights of any Person, or any authorization or approval, under:
  - (i) any Applicable Laws to which the Debtor is subject;
  - (ii) any provision of any indenture, mortgage, lien, lease, agreement, instrument, order, judgment or decree to which the Debtor is a party or by which the assets or properties of the Debtor are bound; or
  - (iii) any other governing document of the Debtor or any applicable court order, judgment, injunction, award or decree;
- (f) there are no actions, suits or proceedings at law or in equity or by or before any court or governmental agency now pending, or, to the Debtor's knowledge, threatened against or affecting the Debtor or any of its properties or assets, which, if adversely determined, would impair the ability of the Debtor to carry out the transactions contemplated hereby;
- (g) all approvals, consents, licenses, authorizations and other actions of or filings or registrations with any department, agency or other administrative authority which are presently necessary under applicable law in order for the Debtor:
  - (i) to execute and deliver this Agreement and any other documents and instruments delivered or to be delivered by the Debtor hereunder upon or concurrently with the execution hereof;
  - (ii) to incur the obligations of the Debtor provided for by this Agreement; and
  - (iii) to perform and observe the terms and provisions of this Agreement;
 have been duly obtained and are in full force and effect;
- (h) subject to Sections 2.3 and 2.4, the Borrower has the right to mortgage the Collateral as contemplated by this Agreement; and
- (i) upon the occurrence of an Acceleration Event, the Secured Party shall be entitled to quiet possession of the Collateral, free from all Security Interests except Permitted Encumbrances.

### 3.2 Survival

All representations and warranties of the Debtor made in this Agreement for the benefit of the Secured Party shall survive the issuance of this Agreement and shall continue in full force and effect without time limit. The Secured Party shall be deemed to have relied upon each such representation and warranty notwithstanding any investigation made by or on behalf of the Secured Party at any time.

**ARTICLE 4  
COVENANTS OF THE DEBTOR**

- 4.1 The Debtor hereby covenants with the Secured Party that:
- (a) the Debtor will conduct its business in a proper and business-like manner and will keep proper books of account and records of its business, and upon request will furnish access to its books and records at all reasonable times, and will give to the Secured Party any information which it may reasonably require relating to the Debtor's business;
  - (b) the Debtor will punctually pay all rents, taxes, rates and assessments lawfully assessed or imposed upon any property or income of the Debtor and will punctually pay all debts and obligations to labourers, workers, employees, contractors, subcontractors, suppliers of materials and other creditors which, when unpaid, might under applicable federal, provincial, state or other laws have priority over the Security Interest granted by this Agreement;
  - (c) the Debtor will punctually make all payments and perform all of its obligations under any contracts under which any material Collateral is held or to which it is subject;
  - (d) the Debtor will not, without the prior written consent of the Secured Party:
    - (i) any change of its name or of any trade or business name used by it;
    - (ii) any change of its place of business, or if it has more than one place of business, of its chief executive office; and
    - (iii) any merger or amalgamation of the Debtor with any person;
  - (e) the Debtor will immediately give notice to the Secured Party if:
    - (i) the details of any material acquisition or disposition of Collateral (whether authorized by the Secured Party or not);
    - (ii) any material loss of or damage to Collateral;
    - (iii) the details of any claims or litigation that could adversely affect the Debtor or the Collateral in any material way; and

the Debtor agrees not to effect or permit any of the changes referred to in clauses (i), (ii), (iii) above unless all filings have been made and all other actions have been taken that are required or desirable (as determined by the Secured Party) in order for the Secured Party to continue to have a valid and perfected Security Interest in respect of the Collateral at all times following such change;
  - (f) the Debtor will insure and keep insured the Collateral (or, in the case of any real property, the buildings located on and constituting part of the Collateral) against loss or damage by fire, lightning, explosion, smoke, impact by aircraft or land vehicle, riot, windstorm, hail and other insurable hazards to the extent of its full insurable value, and will maintain all such other insurance as the Secured Party may reasonably require;
  - (g) the Debtor will observe the requirements of any regulatory or governmental authority with respect to the Collateral, except to the extent any failure to do so would not reasonably be



expected to have a material adverse effect on its business, operations or financial condition or affect the priority of the Security Interest created hereunder or affect the rights and remedies of the Secured Party hereunder; and

- (h) the Debtor will not permit the Collateral constituting personal property to become affixed to real or other personal property (unless the Debtor owns such real or other personal property, and the Secured Party has a Security Interest therein having the same priority as in respect of the Collateral becoming so affixed) without the prior consent of the Secured Party in writing, and will obtain and deliver to the Secured Party such waivers regarding the Collateral as the Secured Party may reasonably request from any owner, landlord or mortgagee of the premises where the Collateral is or may be located.

## ARTICLE 5 EVENTS OF DEFAULT

### 5.1 Events of Default

The following events constitute Events of Default hereunder:

- (a) if the Debtor fails to make punctual payment of the Obligations when due;
- (b) the Debtor shall fail to maintain in force any or all of the Insurance in accordance with the terms of this Agreement;
- (c) the Debtor shall fail to perform or observe in any material respect, any other material covenant, condition or provision of this Agreement or any agreement relating hereto and such failure to perform is not remedied within 30 days after receiving notice from the Secured Party of such failure to perform;
- (d) if the Debtor shall (A) institute or commence proceedings to be adjudicated a bankrupt or insolvent or consent to the filing of a bankruptcy or insolvency proceeding against it, (B) file, institute or commence or otherwise take any proceeding relating to reorganization, adjustment, arrangement, composition, compromise, stay of proceedings or relief similar to any of the foregoing under any applicable law regarding bankruptcy, insolvency, reorganization or relief of debtors (including under the *Companies' Creditors Arrangement Act* or the *Bankruptcy and Insolvency Act*), (C) consent to the filing of any such proceeding, (D) consent to the appointment of a receiver, liquidator, trustee or assignee in bankruptcy or similar official or to the liquidation, dissolution or winding-up of the Debtor or of all or a substantial part of its property and assets, (E) make an assignment for the benefit of creditors, (F) admit in writing its inability to pay its debts generally as they become due, (G) generally not be paying its debts as they come due or otherwise be insolvent, or (H) take any partnership or other action authorizing or in furtherance of any of the foregoing;
- (e) if any proceeding is filed, instituted or commenced by any Person seeking (A) to adjudicate the Debtor a bankrupt or insolvent or the liquidation, reorganization, winding-up, adjustment, arrangement, compromise, composition, stay of proceedings or similar relief of or for the Debtor under any applicable law regarding bankruptcy, insolvency, reorganization or relief of debtors (including under the *Companies' Creditors Arrangement Act* or the *Bankruptcy and Insolvency Act*), or (B) to appoint a receiver, liquidator, trustee or assignee in bankruptcy or similar official of the Debtor or of all or a substantial part of its property and assets, unless such proceeding or action is being contested at the time in good faith by the Debtor;

- (f) any representation or warranty made in this Agreement or any other document or report furnished to the Secured Party in respect of the Debtor or the Collateral is false or misleading in any material respect;
- (g) the Debtor ceases or demonstrates an intention to cease to carry on business or disposes or purports to dispose of all or a substantial part of its assets;
- (h) any of the licenses, permits or approvals granted by any government or any government authority and material to the business of the Debtor is withdrawn, cancelled or significantly altered;
- (i) any material adverse change occurs in the financial position of the Debtor; or
- (j) the Secured Party considers that it is insecure, or that the prospect of payment or performance by the Debtor of the Obligations is or is about to be impaired, or that the Collateral is or is about to be placed in jeopardy.

#### ARTICLE 6 REMEDIES

##### 6.1 Acceleration

Upon the occurrence of an Event of Default (other than an Event of Default specified in Sections 5.1(d) and 5.1(e)) the Secured Party shall have the option (upon notice to the Debtor) to declare the Obligations to be immediately due and payable and the Debtor shall immediately pay to the Secured Party all of the outstanding Obligations. Upon the occurrence of an Event of Default specified in Sections 5.1(d) and 5.1(e), the Obligations shall automatically become due and payable to the Secured Party without any requirement that notice be given to the Debtor and the Debtor shall immediately pay to the Secured Party all of the outstanding Obligations.

##### 6.2 Remedies - General

Upon the occurrence and during the continuance of an Acceleration Event, the Secured Party may, in its absolute discretion:

- (a) exercise such rights and remedies as are provided by the PPSA with respect to the Collateral or any part thereof that constitutes personalty and all other rights and remedies recognized under Applicable Law against the Debtor or in respect of the Collateral or any part thereof for the enforcement of full payment and performance of all the Obligations;
- (b) either with or without notice, enter into and upon and take possession of all or any part of the Collateral with full power to exclude the Debtor and additionally shall have full power and authority:
  - (i) to carry on, manage and conduct the business operations of the Debtor respecting such Collateral and the power to borrow money in its own name or advance its own money for the purpose of such business operations, the maintenance and preservation of such Collateral or any part thereof and the making of such replacements thereof and additions thereto as it shall deem desirable and the payment of taxes, wages and other charges ranking in priority to the Charge; and

- (ii) to receive the revenues, incomes, issues and profits of such Collateral and to pay therefrom the costs, charges and expenses of the Secured Party in carrying on the said business operations or otherwise, and to pay all taxes, assessments and other charges against such Collateral ranking in priority to the Charge the payment of which may be necessary to preserve such Collateral, and to apply the remainder of the monies so received in the same manner as if the same arose from a sale or realization of such Collateral;
- (c) either after entry as aforesaid or after other entries, or without any entry, sell or dispose of the Collateral, either as a whole or in separate parcels, by private contract, at public auction, by public tender, by lease or by deferred payment arrangement;
- (d) make any such sale or disposition of the Collateral either for cash or upon credit and upon such reasonable conditions as to upset or reserve bid or price and terms of payment as it may deem proper; to rescind or vary any contract or sale that may have been entered into and re-sell with or under any of the powers conferred herein; to adjourn such sale from time to time; and to execute and deliver to the purchaser or purchasers of the Collateral or any part thereof, good and sufficient deed or deeds for the same, and any such sale or disposition made as aforesaid shall be a perpetual bar at law and in equity against the Debtor and all other Persons claiming the Collateral or any part or parcel thereof; by, from, through, or under the Debtor. The Secured Party may become a purchaser at any sale of the Collateral or any part thereof;
- (e) with or without entry or sale as aforesaid, in its discretion, proceed to protect and enforce its rights under this Agreement by sale under judgment order in any judicial proceeding or by foreclosure or a suit or suits in equity or at law or otherwise whether for the specific performance of any covenant or agreement contained in this Agreement or in aid of the execution of any power granted in this Agreement or in aid of the execution of this Agreement or for the filing of such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claim of the Secured Party lodged in any bankruptcy, winding-up or other judicial proceeding, or for the enforcement of any other legal or equitable remedy as the Secured Party shall deem most effective to protect and enforce any of the rights or duties of the Secured Party; or
- (f) in lieu of appointing a Receiver as provided in Section 6.6, apply to any court or courts of competent jurisdiction for the appointment of a Receiver of the Collateral or any part thereof, with such powers as the court or courts making such appointment or appointments shall confer.

#### 6.3 Possession

The Debtor shall on demand by the Secured Party or any Receiver, following the occurrence of an Acceleration Event, yield up possession of the Collateral or any part thereof as demanded by the Secured Party and put no obstacle in the way of, but facilitate by all legal means, the actions of the Secured Party or any Receiver and not interfere with the carrying out of the powers hereby granted to the Secured Party or any Receiver.

#### 6.4 Judgment

The Debtor covenants and agrees with the Secured Party that, in the case of any judicial or other proceeding to enforce the Charge or any part thereof, judgment may be rendered against the Debtor in favour of the Secured Party for any amount of the Obligations, after the application to the payment thereof of the proceeds of any sale of the Collateral or any part thereof. The covenant of the Debtor to pay interest at the rate provided in any agreement giving rise to the Obligations shall not merge

in any such judgment and such judgment shall bear interest at the applicable rate of the Obligations until such judgment and all interest thereon has been paid in full.

**6.5 Account Debtors and Securities Intermediaries**

- (a) All Persons being a debtor on an intangible or chattel paper, an obligor on an instrument or any other Person being obligated to pay any account receivable or other debt due, owing or accruing due to the Debtor are entitled at all times to treat and regard the Secured Party as the assignee and transferee from the Debtor, entitled in the place and stead of the Debtor to receive such proceeds, accounts and other debts. The Secured Party may give notice to all or any of such Persons of the Charge and to remit all such proceeds, accounts and other debts directly to the Secured Party, whether or not the Debtor was making collections on such Collateral prior to notification by the Secured Party; and all such Persons shall be fully protected in so treating and regarding the Secured Party and shall be under no obligation to see to the application in any particular manner by the Secured Party of any such proceeds, accounts and other debts received by it. The Debtor will, at the request of the Secured Party, furnish the Secured Party with the names of all such Persons being indebted or obligated to the Debtor.
- (b) All securities intermediaries that are required to act upon entitlement orders of the Debtor are entitled to treat and regard the Secured Party as the entitlement holder, entitled in the place and stead of the Debtor to give entitlement orders. The Secured Party may give notice to each securities intermediary with whom the Debtor maintains a securities account and require each such securities intermediary to act in accordance with entitlement orders of the Secured Party in relation to the investment property held in such securities account; and all such securities intermediaries shall be fully protected in treating and regarding the Secured Party as the entitlement holder and will be under no obligation to see to the application in any particular manner by the Secured Party of any investment property of the Debtor held by the securities intermediary. The Debtor will, at the request of the Secured Party, furnish the Secured Party with a list of all securities intermediaries with whom the Debtor maintains accounts together with all relevant account information.
- (c) Any money collected or received by the Secured Party pursuant to paragraph (a) or (b) above shall be applied in the manner set out in Section 6.8. The Secured Party shall not be liable or accountable for its failure to collect, realize, sell or obtain payment of accounts, chattel paper, instruments, intangibles, investment property, choses in action or rights to payment or any part thereof and shall not be bound to institute proceedings for the purpose of collecting, realizing or obtaining payment of the same or for the purpose of preserving any right to payment of the Secured Party, the Debtor or any other Person in respect thereof.
- (d) All money collected or received by the Debtor in respect of accounts, chattel paper, instruments, documents of title, intangibles, investment property, choses in action, rights to payment or other interests of the Debtor described herein shall be held by the Debtor in trust for the absolute use and benefit of the Secured Party and shall be paid or delivered over to the Secured Party upon demand in the identical form received and, until demand, shall be held by the Debtor separate and apart from any other funds belonging to the Debtor or any other funds over which it has possession or control.

**6.6 Receiver**

Upon the occurrence and during the continuance of an Acceleration Event, the Secured Party may in its absolute discretion appoint a Receiver of the Collateral or any part thereof and upon any such appointment by the Secured Party the following provisions shall apply:

- (a) such appointment shall be made in writing signed by the Secured Party and such writing shall be conclusive evidence for all purposes of such appointment; the Secured Party may from time to time in the same manner remove any Receiver so appointed and appoint another in its stead; in making any such appointment the Secured Party shall be deemed to be acting as the attorney for the Debtor and the Debtor hereby consents to the appointment of a Receiver;
- (b) any such appointment may be limited to any part or parts of the Collateral or may extend to the whole thereof;
- (c) every Receiver may, in the discretion of the Secured Party, be vested with all or any of the powers, rights, benefits, discretions, protection and relief of the Secured Party hereunder and shall be vested with all of the powers and protections afforded to a Receiver under Applicable Law;
- (d) the Secured Party may from time to time fix the reasonable remuneration of the Receiver and direct the payment thereof, in priority to the other Obligations, out of the Collateral, the income therefrom or the proceeds thereof;
- (e) the Secured Party may from time to time require any Receiver to give security for the performance of its duties and may fix the nature and amount thereof, but the Secured Party shall not be bound to require such security;
- (f) every such Receiver may, with the consent in writing of the Secured Party, borrow money for the purpose of carrying on the business of the Debtor in respect of any part of the Collateral or for the maintenance, protection or preservation of the Collateral or any part thereof, and any Receiver may issue certificates (in this Section called "Receiver's Certificates"), for such sums as will in the opinion of the Secured Party be sufficient for carrying out the foregoing, and such Receiver's Certificates may be payable either to order or bearer and may be payable at such time or times as the Secured Party may consider expedient, and shall bear such interest as shall therein be declared and the Receiver may sell, pledge or otherwise dispose of the same in such manner as the Secured Party may consider advisable and may pay such commission on the sale thereof as the Secured Party may consider reasonable, and the amounts from time to time payable by virtue of such Receiver's Certificates shall at the option of the Secured Party form a charge upon the Collateral in priority to this Agreement;
- (g) every Receiver shall, regarding its acts or omissions, be deemed the agent of the Debtor, and in no event the agent of the Secured Party and the Secured Party shall not, in making or consenting to such appointment, incur any liability to any Receiver for its remuneration or otherwise howsoever;
- (h) except as may be otherwise directed by the Secured Party, all monies from time to time received by any Receiver shall be paid over to the Secured Party at the place where this Agreement is payable; and
- (i) the Secured Party may pay over to any Receiver any monies constituting part of the Collateral to the extent that the same may be applied for the purposes hereof by such Receiver and the Secured

Party may from time to time determine what funds any Receiver shall be at liberty to keep on hand with a view to the performance of its duties as such Receiver.

**6.7 Remedies Not Exclusive**

No right, power or remedy herein conferred upon or reserved to the Secured Party or any Receiver is intended to be exclusive of any other right, power or remedy or remedies, and each and every right, power and remedy shall, to the extent permitted by Applicable Law, be cumulative and shall be in addition to every other right, power or remedy given hereunder or now or hereafter existing at law, in equity or by statute. The Secured Party shall have the power to waive any default, provided no such waiver shall be effective unless made in writing and shall not constitute a waiver of any other or subsequent default. No delay or omission of the Secured Party in the exercise of any right, power or remedy accruing upon any default shall impair any such right, power or remedy or shall be construed to be a waiver of any such default or an acquiescence therein. Every right, power and remedy given to the Secured Party or to a Receiver by this Agreement or under Applicable Law may be exercised from time to time and as often as may be deemed expedient by the Secured Party or such Receiver, as applicable. In case the Secured Party shall have proceeded to enforce any right under this Agreement and the proceedings for the enforcement thereof shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Secured Party, then and in every such case the Debtor and the Secured Party shall, without any further action hereunder, to the fullest extent permitted by Applicable Law, subject to any determination in such proceedings, severally and respectively, be restored to their former positions and rights hereunder and thereafter all rights, remedies and powers of the Secured Party shall continue as though no such proceeding had been taken.

**6.8 Application of Proceeds**

Except as herein otherwise expressly provided, the monies arising from any enforcement in whole or in part of the Charge, or from any sale or realization of the whole or any part of the Collateral, whether under sale by the Secured Party or by judicial process or otherwise, and all incomes, rents and profits of the Collateral, together with any other monies then in the hands of the Secured Party or any Receiver available for such purpose, shall be applied against the Obligations in the order, manner and time as the Secured Party deems appropriate:

- (a) first, to pay or reimburse to the Secured Party and any Receiver for the costs, charges, expenses, borrowings, advances and reasonable compensation of the Secured Party and any Receiver in connection with the exercise and performance of their duties hereunder, with interest thereon as herein provided;
- (b) second, in or towards payment of the other Obligations; and
- (c) third, the surplus, if any, of such monies shall be paid to whomever may be legally entitled thereto.

**6.9 Power of Attorney**

The Debtor hereby irrevocably constitutes and appoints the Secured Party its true and lawful attorney and agent, with full power and authority in the Debtor's name, place and stead from time to time to do all acts and things and execute and deliver all share transfers, certificates, proxies, resolutions, consents, assignments, transfers, conveyances and agreements, in such form as the Secured Party considers necessary or desirable, and to do all things which the Debtor is required to sign, execute and do hereunder if the Debtor has failed to sign, execute or do the same and generally to use the name of

the Debtor in the exercise of all or any of the powers hereby conferred on the Secured Party, with full powers of substitution and revocation; provided that this power of attorney may not be exercised by the Secured Party until an Acceleration Event shall have occurred and be continuing. Such appointment and power of attorney is hereby declared by the Debtor to be an irrevocable power coupled with an interest.

**6.10 Deficiency**

If there is any deficiency of payment in respect of the Obligations, the Debtor shall be and at all times remain liable for the payment thereof to the Secured Party.

**ARTICLE 7  
LIABILITIES, WAIVERS AND EXPENSES**

**7.1 Liability of Secured Party**

Neither the Secured Party nor any Receiver shall (i) be responsible or liable for any debts contracted by it, for damages to Persons or property, for salaries or for non-fulfilment of contracts during any period when the Secured Party or any Receiver shall manage or be in possession of the Collateral; (ii) be liable to account as mortgagee in possession or for anything except actual receipts or be liable for any loss on realization or for any default or omission for which a mortgagee in possession may be liable; (iii) be bound to do, observe or perform or to see to the observance or performance by the Debtor of any obligations or covenants imposed upon the Debtor; or (iv) in the case of any chattel paper, security, investment property or instrument, be obligated to preserve rights against any other Persons. The Debtor hereby waives any provision of Applicable Law permitted to be waived by it which imposes higher or greater obligations upon the Secured Party or any Receiver than aforesaid.

**7.2 Mandatory Provisions of Applicable Law**

Subject to Section 7.3, all rights, remedies, and powers provided herein may be exercised only to the extent that the exercise thereof does not violate any mandatory provision of Applicable Law and all the provisions of this Agreement are intended to be subject to all mandatory provisions of Applicable Law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Agreement invalid, unenforceable or not entitled to be recorded, registered or filed under any mandatory provisions of Applicable Law. Subject to Section 7.3, if any mandatory provision of Applicable Law shall provide for different or additional requirements than or to those specified herein as prerequisites to or incidental to the realization, sale or foreclosure of the Charge or any part thereof, then, to that extent, such laws shall be deemed to have been set forth herein at length, and any conflicting provisions hereof shall be disregarded, and the method of realization, sale or foreclosure of the Charge required by any such laws shall, insofar as may be necessary, be substituted herein as the method of realization, sale or foreclosure in lieu of that set forth above. Any provision hereof contrary to mandatory provisions of Applicable Law shall be deemed to be ineffective and shall be severable from and not invalidate any other provision of this Agreement.

**7.3 Waivers of Applicable Laws**

- (a) To the extent not prohibited by Applicable Law, the Debtor hereby waives its rights, if any, under all provisions of Applicable Law that would in any manner, limit, restrict or otherwise affect the Secured Party's rights and remedies hereunder or impose any additional obligations on the Secured Party. The Debtor waives the right to receive any amount which it may now or hereafter be entitled to receive (whether by way of damages, fine, penalty or otherwise) by reason of the failure of the Secured Party to deliver to the Debtor a copy of any financing statement or any

verification statement issued by any registry that confirms registration of a financing statement relating to this Agreement and the Debtor waives its right to receive a copy of such financing or verification statements.

- (b) The Debtor hereby authorizes the Secured Party to provide information to any Person who requests information under section 18 of the PPSA or similar legislation and the Secured Party will not be required to investigate whether or not the inquiring Person is in fact a Person entitled to request information pursuant to section 18 of the PPSA or similar legislation.
- (c) To the full extent that it may lawfully do so, the Debtor hereby:
- (i) waives and disclaims any benefit of, and shall not have or assert any right under any statute or rule of law pertaining to, the marshalling of assets or any other matter whatever, to defeat, reduce or affect the rights of the Secured Party under the terms of this Agreement to a sale of the Collateral or any part thereof or for the collection of all amounts secured hereby;
  - (ii) agrees that it shall not have or assert any right or equity of redemption or any right under any statute or otherwise to redeem the Collateral or any part thereof after the completion of the sale hereunder to any Person, whether such sale is by the Secured Party, any Receiver or otherwise, notwithstanding, that the Secured Party may have purchased same;
  - (iii) agrees that the *Land Contracts (Actions) Act* (Saskatchewan) shall have no application to any action (as defined in such Act) with respect to the Charge; and
  - (iv) agrees that the *Limitation of Civil Rights Act* (Saskatchewan) shall have no application to:
    - (A) this Agreement or any instrument or agreement in implementation hereof;
    - (B) any Security Interest or security for the payment of money made, given or created pursuant to this Agreement or such instruments or agreements;
    - (C) any agreement or instrument entered into at any time hereafter by the Debtor renewing or extending or collateral to this Agreement; or
    - (D) the rights, powers or remedies of the Secured Party or any Receiver under any of the foregoing agreements or instruments.
- (d) The Debtor hereby agrees that any payments from insurance monies shall be applied in the manner set out in Section 6.8.

#### 7.4 Expenses

If the Debtor fails to pay any amounts required to be paid by it under this Agreement or to observe or perform any of the covenants and obligations set forth in this Agreement to be observed or performed by it, the Secured Party and any Receiver may, but shall be under no obligation to, pay such amounts or do such acts or things as may be required to ensure such observance and performance, without waiving any of its rights under this Agreement. No such payment, act or thing by the Secured Party or any Receiver shall relieve the Debtor from any default under this Agreement or the consequences of such default. The reasonable expenses (including the cost of any insurance, environmental assessment or audit



and payment of taxes or other charges and legal fees and expenses on a solicitor and his own client, full indemnity, basis) paid by the Secured Party or any Receiver in respect of the care, custody, preservation, use or operation of the Collateral, shall be deemed advanced to the Debtor by the Secured Party or such Receiver, shall become part of the Obligations, and shall, from the time they are paid by the Secured Party or such Receiver until repaid by the Debtor, bear interest at the highest rate applicable to the Obligations. In addition, the Debtor shall pay all reasonable expenses (including legal fees and expenses on a solicitor and his own client, full indemnity, basis) incurred by the Secured Party or any Receiver in connection with the preparation, perfection, execution, protection, enforcement of and advice with respect to this Agreement (including the realization, disposition, retention, protection or collection of the Collateral or any part thereof and the protection and enforcement of the rights of the Secured Party and any Receiver hereunder together with all remuneration paid to a Receiver and all costs, charges and expenses of or incidental to any receivership) and such expenses shall become part of the Obligations, and shall, from the time they are paid by the Secured Party or such Receiver until repaid by the Debtor, bear interest at the highest rate applicable to the Obligations.

#### 7.5 Indemnity

The Debtor will and does hereby indemnify and save harmless the Secured Party, every Receiver and their respective directors, officers, employees and agents from and against any and all liabilities, actions, claims, judgments, obligations, costs, charges or expenses, including legal fees and expenses on a solicitor and his own client, full indemnity, basis, made against or incurred by the Secured Party or any Receiver as a result of taking this Agreement. The Secured Party and every Receiver shall have the right to defend against any such liabilities, actions, claims and charges and to claim from the Debtor all expenses incurred in connection therewith, together with all legal fees and expenses on a solicitor and his own client, full indemnity, basis that may be paid in connection therewith. It is understood and agreed that the covenants and conditions of this Section shall remain in full force and effect notwithstanding the payment of the Obligations or the release of the Charge.

#### 7.6 Environmental Indemnity

- (a) The Debtor shall forthwith on demand fully indemnify, defend and save the Secured Party, any Receiver and their respective directors, officers, employees and agents, and any of them, (in this Section any one or more or all of such persons is referred to as the "Indemnified Party") harmless from and against any and all indebtedness, liabilities, obligations, losses, claims, damages and expenses (including all legal fees on a solicitor and his own client, full indemnity, basis and accountant fees and expenses, court costs and all other reasonable out-of-pocket expenses) sustained, paid, incurred or suffered by the Indemnified Party arising in any manner whatsoever out of or as a result of any Environmental Liabilities directly or indirectly relating to or affecting the Debtor or its assets and properties (all or any item or part of the foregoing indebtedness, liabilities, obligations, losses, claims, damages and expenses are referred to in this Section as a "Loss"). The Debtor acknowledges that the Secured Party is entering into the provisions of this Section 7.6 on its own behalf and as agent and trustee for any Receiver and the directors, officers, employees and agents of the Secured Party and any Receiver.
- (b) If any claim (in this Section referred to as a "Claim") shall be asserted by any person against the Indemnified Party which may give rise to a Loss, the Indemnified Party shall promptly notify the Debtor of all particulars of such Claim upon learning of same. The failure to give any such notice, however, shall not affect the Debtor's liability to indemnify the Indemnified Party unless such failure adversely and materially affects the Debtor's ability to defend, object to, oppose or contest that Claim.

- (c) The Debtor shall at all times have the right, if no Event of Default has occurred and is continuing, but shall not be required, at its sole expense to resist, defend and compromise any Claim in the name of the Indemnified Party, by legal counsel reasonably acceptable to the Indemnified Party who will co-operate in such defence on a reasonable basis; provided that the Indemnified Party shall have the right to participate in the defence or compromise of any Claim by other legal counsel of its choosing if the Indemnified Party, acting reasonably, determines it should so participate; provided that subject to Section 7.6(d) the fees and disbursements of such other counsel shall be paid by the Debtor. Except during the continuance of an Event of Default, the Debtor may effect any settlement or compromise of any Claim without the written consent of the Indemnified Party, provided it obtains a full release of such Claim for the benefit of the Indemnified Party. Notwithstanding anything herein to the contrary, the Debtor on its own behalf must defend diligently and reasonably throughout the period while such Claim exists. If the Debtor exercises its rights under this Section 7.6, it may not, after the occurrence of an Event of Default which is continuing, compromise or otherwise settle a Claim without the consent of the Indemnified Party suffering such Claim, which consent shall not be unreasonably withheld or delayed. The inability of the Debtor to pay such Claim in full shall constitute a sufficient reason to withhold such consent.
- (d) The Debtor shall not, in connection with any Claim in the same jurisdiction, be liable for the fees and expenses of more than one separate legal firm for the Indemnified Parties unless such representation by the same legal counsel would be inappropriate due to actual or potential differing interests or the employment thereof has been specifically authorized by the Debtor in writing and such firm or firms shall be designated in writing by the Secured Party on behalf of each Indemnified Party.

## ARTICLE 8 REGISTRATION AND DISCHARGE

### 8.1 Composite Security Agreement

This Agreement is a composite agreement covering the Collateral of the Debtor located in various Provinces and Territories of Canada and, as to portions of the Collateral located in such separate jurisdictions, this Agreement shall be a separate security agreement enforceable against the Debtor without regard to the application of this Agreement to portions of the Collateral located in other jurisdictions. All provisions hereof shall be applicable separately to the portions of the Collateral located in each separate jurisdiction with the same effect as if a separate security agreement with respect thereto had been executed and delivered by the Debtor to the Secured Party. Upon the reasonable request of the Secured Party, the Debtor shall prepare, execute and deliver, at its expense, a separate security agreement covering the portion of the Collateral located in any such jurisdiction or jurisdictions, such separate security agreement to be substantially in the form hereof except for such modifications as shall be required by the fact that such security agreement relates only to the property of the Debtor located in such jurisdiction or jurisdictions or as may be required by the Secured Party in connection therewith.

### 8.2 Further Assurances

The Debtor hereby covenants and agrees that it will at all times do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, deeds, mortgages, hypothecs, transfers, assignments and assurances as the Secured Party may reasonably require for the better assuring mortgaging, charging, transferring, assigning, granting, delivering and confirming unto the Secured Party the Collateral, or any part thereof, and for the better accomplishing and effectuating the purpose of this Agreement, including the execution and delivery of agreements

supplemental hereto more particularly describing the Collateral or to correct or amplify the description of the Collateral or to better assure, convey and confirm unto the Secured Party any of the Collateral. Upon the execution of any supplemental agreement under this Section, this Agreement shall be modified in accordance therewith, and each such supplemental agreement shall form part of this Agreement for all purposes.

### **8.3 Registration**

The Debtor will ensure that this Agreement and all such supplementary and corrective instruments and all additional mortgage and security documents described in Sections 8.1 or 8.2, and all documents, caveats, security notices and financing statements in respect thereof, are promptly filed and refiled, registered and re-registered and deposited and re-deposited, in such manner, in such offices and places, and at such times and as often as may be required by Applicable Law or as may be necessary or desirable to perfect and preserve the Charge as a first priority Security Interest and the rights conferred or intended to be conferred upon the Secured Party by the Charge and will cause to be promptly furnished to the Secured Party, as soon as is reasonably practicable, evidence satisfactory to the Secured Party of such filing, registering and depositing.

### **8.4 Discharge**

Upon the full, final and indefeasible payment and performance of the Obligations, this Agreement and the rights hereby granted shall, at the request of the Debtor, be terminated and thereupon the Secured Party shall at the request and at the expense of the Debtor cancel and discharge the Charge and execute and deliver to the Debtor such deeds and other instruments as shall be requisite to cancel and discharge the Charge; provided that this Agreement shall continue to be effective or be reinstated, as the case may be, if for any reason at any time any payment or performance of the Obligations, or any part thereof, is rescinded, reversed, nullified, rendered void or voidable or must otherwise be restored, refunded, returned or reimbursed by the Secured Party.

### **8.5 Partial Discharge**

No postponement or partial release or discharge of the Charge in respect of all or any part of the Collateral shall in any way operate or be construed so as to release and discharge the Charge except as therein specifically provided, or so as to release or discharge the Debtor from its liability to the Secured Party to fully pay and satisfy the Obligations.

## **ARTICLE 9 MISCELLANEOUS**

### **9.1 Additional Security**

Nothing in this Agreement contained shall detract from or limit the absolute obligation of the Debtor to perform or observe any act or condition which it is required to perform or observe hereunder whether or not the Charge is operative, and the rights under this Agreement shall be in addition to and not in substitution for any other Security Interests of any and every character now or hereafter held by the Secured Party for the Obligations. The taking of any action or proceedings or refraining from so doing, or any other dealing with any other Security Interest for the obligations, shall not release or effect the Charge or any proceedings hereunder for realization and shall not release or effect any other Security Interests held by the Secured Party for the Obligations.

**9.2 Third Parties**

No Person dealing with the Secured Party or any Receiver shall be concerned to inquire whether the Charge (or any part thereof) has become enforceable, or whether the powers which the Secured Party or any Receiver is purporting to exercise have become exercisable, or whether any of the Obligations remain outstanding or as to the necessity or expediency of the stipulations and conditions subject to which any sale shall be made, or otherwise as to the propriety or regularity of any sale or of any other dealing by the Secured Party with the Collateral or any part thereof or to see to the application of any money paid to the Secured Party, and, in the absence of fraud on the part of such Person, such dealings shall be deemed, as regards the safety and protection of such Person, to be within the powers hereby conferred upon the Secured Party and to be valid and effective accordingly.

**9.3 Severability**

Any provision of this Agreement which is or becomes prohibited or unenforceable in any jurisdiction does not invalidate, affect or impair the remaining provisions hereof in such jurisdiction and any such prohibition or unenforceability in any jurisdiction does not invalidate or render unenforceable such provision in any other jurisdiction.

**9.4 Amendments**

No provision of the Agreement may be amended verbally and any such amendment may only be made by way of an instrument in writing signed by the Debtor and the Secured Party.

**9.5 Governing Law**

This Agreement is conclusively deemed to be made under, and for all purposes to be governed by and construed in accordance with, the laws of the Province of Alberta and of Canada applicable therein. There shall be no application of any conflict of laws or rules which would result in any laws other than internal laws in force in the Province of Alberta applying to this Agreement. The Debtor hereby irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of the Province of Alberta for all matters arising out of or relating to this Agreement, or any of the transactions contemplated hereby, without prejudice to the rights of the Secured Party to take proceedings in other jurisdictions in which any Collateral may be situate.

**9.6 Time of Essence**

Time shall be of the essence of this Agreement.

**9.7 Enurement**

This Agreement shall be binding upon the Debtor and its successors and permitted assigns and shall enure to the benefit of the Secured Party and its successors and assigns. The Secured Party may assign its rights and obligations (if any) under this Agreement and the Promissory Note on notice to the Debtor and the Debtor may not assign its rights and obligations under this Agreement or the Promissory Note.

**9.8 Notices**

Every notice, request, demand or other communication under this Agreement shall be in writing and shall be sent by telefax or overnight courier, as to each party hereto, to it at its address set

forth below or at such other address as shall have been or be designated by it in a written notice to the other party hereto. All such notices, requests, demands, and other communications shall be deemed to have been given when delivered or sent, as the case may be:

if to the Debtor, at:

125 Commerce Valley Drive West, Suite 500  
Markham Ontario, L3T 7W4

Attention: President  
Telefax No. 905-747-2405

and to:

245, 1209 – 59<sup>th</sup> Avenue S.E.  
Calgary, AB T2H 2P6

Attention: Theresa Lea  
Telefax No. (403) 255-2839

if to the Secured Party, at:

Suite 232 - 2031 33rd Avenue S.W., Calgary, Alberta, Canada  
T2T 1Z5

Attention: Darren Driscoll, Chief Financial Officer  
Telefax No. (403) 228-0906

#### 9.9 Receipt

The Debtor hereby acknowledges receipt of an executed copy of this Agreement.

IN WITNESS WHEREOF the Debtor has issued this Agreement signed by its duly authorized officers as of the date and year first above written.

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

By: 

Name: Mike Clements  
Title: Director

Schedule "A" attached to and forming part of a Security Agreement dated as of September 30, 2013 given by SHS Services Limited Partnership, as debtor, in favour of Alaris Income Growth Fund Partnership, as secured party

#### DEFINITIONS

In this Agreement:

"Acceleration Event" means demand by the Secured Party for payment of any of the Obligations or the occurrence of an Event of Default specified in Sections 5.1(d) or 5.1(e), whichever occurs earlier;

"Applicable Law" means, in relation to any Person, property, transaction or event, all applicable provisions, whether now or hereafter in effect, of laws, statutes, rules or regulations, official directives and orders of all federal, provincial, municipal and local governmental bodies (whether administrative, legislative, executive or otherwise and, in the case of any central bank, fiscal or monetary authority, whether or not having the force of law) and judgments, orders and decrees of all courts, arbitrators, commissions or bodies exercising similar functions in actions or proceedings in which the Person in question is a party or by which it is bound or having application to the property, transaction or event in question;

"Charge" means the Security Interests created by or intended to be created by this Agreement;

"Collateral" means the whole, or any item or part, of the property, assets, rights and undertaking of the Debtor from time to time subjected or intended to be subjected to the Charge;

"Environmental Liabilities" means any and all obligations and liabilities for any Release, any environmental damage, any contamination or any other environmental problem caused or alleged to have been caused to any Person, property or the environment as a result of any Release or the condition of any property or asset, whether or not caused by a breach of Applicable Laws, including all obligations and liabilities arising from or related to: any surface, underground, air, groundwater, or surface water contamination; the abandonment or plugging of any well; restorations and reclamations; the removal of or failure to remove any foundations, structures or equipment; the cleaning up or reclamation of storage sites; any Release; violation of pollution standards; and personal injury (including sickness, disease or death) and property damage arising from the foregoing;

"Event of Default" means any of the events specified in Article 5 in respect of which any requirement therein stipulated of notice or lapse of time or the happening of any further condition or event has occurred or been fulfilled;

"Obligations" means all obligations, indebtedness, liabilities, covenants, agreements and undertakings of the Debtor to the Secured Party (including fees, expenses, costs and indemnities), present or future, direct or indirect, absolute or contingent, matured or not, extended or renewed, wheresoever and howsoever incurred, and any ultimate unpaid balance thereof, including all future advances and re-advances, and whether the same is from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again and whether the Debtor is bound alone or with others and whether as principal or surety, including under or in any way connected with, arising out of or contemplated by the Promissory Note;

**"Permitted Encumbrances"** means as of any particular time in relation to the Collateral any of the following Security Interests or rights:

- (i) Security Interests for taxes, assessments or governmental charges and other statutory Security Interests which (i) are not at the time due or delinquent or (ii) relate to claims being diligently contested at the time in good faith by the Debtor;
- (ii) Security Interests of any judgments rendered, or claims filed, against the Debtor which the Debtor shall be contesting in good faith if, and for so long as, a stay of enforcement of such judgment or claim (if enforceable by seizure, sale or other remedy against any property), as the case may be, shall be in effect;
- (iii) Security Interests in favour of a public utility or any municipality or governmental or other authority when required by such public utility or municipality or other authority in connection with the operations of the Debtor in the ordinary course of business, which in the aggregate do not detract materially from the value of any part of the Collateral or its use in the operations of the Debtor;
- (iv) Security Interests in favour of the Secured Party;
- (v) any other Security Interest consented to in writing by the Secured Party; and
- (vi) Security Interests in favour of Sears Canada Inc. ("Sears") pursuant to one or more general security agreements dated as of the date hereof, granted by the Debtor in favour of Sears.

**"Person"** means an individual, a partnership, a corporation, a trust, a joint venture, an unincorporated organization, a union, a government or any department or agency thereof and the heirs, executors, administrators or other legal representatives of an individual;

**"PPSA"** means the *Personal Property Security Act* (Alberta), as amended from time to time; and the terms "securities intermediary", "entitlement order", "investment property", "securities account", "proceeds", "chattel paper", "intangible", "instrument", "accessions", "document of title" and "account" shall, when used herein, have the same meanings as are ascribed thereto in the PPSA;

**"Promissory Note"** means the Promissory Note dated as of the date hereof granted by the Debtor, as borrower in favour of Alaris Income Growth Fund Partnership, as lender, providing for a demand loan in the aggregate principal amount of Cdn. \$2,000,000.00;

**"Receiver"** means any receiver, manager, or receiver and manager of the Collateral or any part thereof or the business and undertaking of the Debtor, or any part thereof, whether appointed by the Secured Party under this Agreement or by a court pursuant to Applicable Law and any nominee of the Secured Party or any other Person that is appointed by the Secured Party to exercise all or any of the powers, rights, benefits and discretion of the Secured Party under this Agreement;

**"Release"** means any presence, release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, leeching or migration of any element or compound in or into the indoor or outdoor environment (including the abandonment or disposal of any barrels, tanks, containers or receptacles containing any contaminant), or in, into or out of any vessel or

facility, including the movement of any contaminant through the air, soil, subsoil, surface, water, groundwater, rock formation or otherwise;

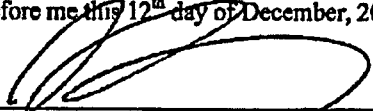
"Security Interest" means any assignment, mortgage, charge, pledge, lien, hypothec, encumbrance, security interest or insurance securing or in effect securing any obligation, conditional sale or title retention agreement, contractual deposit, trust deposit, escrow arrangement or other preferential arrangement whatsoever, howsoever created or arising, whether absolute or contingent, fixed or floating, legal or equitable, perfected or not, and includes the rights of a lessor pursuant to an operating lease, capitalized lease or sale-leaseback arrangement, any right of set-off and any guarantees or indemnities.



# TAB J

**EXHIBIT J**

This is the Exhibit marked "J" referred to  
in the Affidavit of Micheal Clements,  
sworn before me this 12<sup>th</sup> day of December, 2013.



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Notary Public in and for the Province of Alberta

**Nolan Ritzel**  
**Student-at-Law**

**LOAN AGREEMENT dated as of the 31<sup>st</sup> day of October, 2013****BETWEEN:****SHS SERVICES LIMITED PARTNERSHIP (the "Borrower")****- and -****ALARIS INCOME GROWTH PARTNERSHIP (the "Lender")****RECITALS:**

A. The Borrower, Lender and Sears Canada Inc. ("Sears") are parties to a letter of understanding dated September 30, 2013 (the "LOU").

B. Pursuant to the terms of the LOU each of the Lender and Sears provided loans (the "Interim Loans") to the Borrower in the aggregate principal amount of Two Million Canadian Dollars (Cdn. \$2,000,000.00), as evidenced by a demand promissory note granted by the Borrower in favour of the Lender (the "Original Promissory Note" and a demand promissory note granted by the Borrower in favour of Sears).

C. Pursuant to the terms of the LOU, each of the Interim Loans are to be replaced by non-revolving term loans (in respect of the Lender, the "Loan" and in respect of Sears, the "Sears Loan") in the aggregate principal amount of Two Million Canadian Dollars (Cdn. \$2,000,000.00) (the "Principal Sum") and the Lender has agreed to provide such Loan on the terms and subject to the conditions set forth herein.

**AGREEMENT:**

In consideration of the covenants and agreements between the Parties contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. Establishment of Loan**

Subject to the terms and conditions of this Agreement, the Lender hereby establishes a term credit facility (the "Credit Facility") in favour of the Borrower in the amount of Principal Sum.

**2. Purpose**

The Borrower shall use the Credit Facility for general operating purposes.

**3. Repayment of Principal and Interest**

The Principal Sum shall bear interest at rate equal 7.00% per annum ("Interest") and shall be compounded and calculated monthly and payable monthly in arrears on the second business day of each month (each such day being referred to herein as a "Payment Date") until the Maturity Date.

#### 4. Repayment

Commencing February 16, 2015, the Borrower shall make six (6) equal monthly blended payments of principal and interest with the final payment of all outstanding principal and interest on July 16, 2015 (the "Maturity Date"), subject to terms of the Intercreditor Agreement (as defined below).

#### 5. Optional Repayment

The Borrower may at any time and from time to time, upon two (2) days prior written notice to the Lender, repay, without penalty, to the Lender the whole or any part of the outstanding amounts owing under this Loan Agreement, subject to terms of the Intercreditor Agreement.

#### 6. Manner, Method, Place and Time of Payment

All payments made by the Borrower to the Lender shall be made in lawful currency of Canada and in immediately available funds, and shall be paid to the Lender at #232, 2031 33<sup>rd</sup> Avenue S.W., Calgary, Alberta T2T 1Z2 (Attention: Darren Driscoll) or by wire transfer to such account as the Lender may designate from time to time in writing. All payments shall be first applied to Interest and lastly to the Principal Sum (with any payments applied to the Principal Sum over and above the amount of scheduled payments then due being applied against any remaining installments in inverse order of maturity). Should any amounts owing hereunder become due and payable on any day other than a Business Day, the due date shall be extended to the next succeeding business day and, in the case of principal, interest shall be payable thereon at the rate per annum herein specified during such extension. As used in this Loan Agreement, a "Business Day" shall be any day that is not a Saturday, Sunday, or legal holiday in the Province of Alberta.

#### 7. Security

The Borrower, together with SHS Services Management Inc. (the "GP"), Installation Services Org. Ltd. ("ISO", together with the GP, the "Corporate Guarantors"), Paul Verhoeff and Stephen Verhoeff (each such persons, together with the Corporate Guarantors collectively, the "Guarantors"), shall deliver the following guarantees and security agreements (collectively, unless otherwise specified, the "Security Documents") as continuing security for the obligations of the Borrower hereunder:

- (a) joint and several limited guarantee dated as of September 30, 2013 (the "J&S Guarantee") granted by Paul Verhoeff and Stephen Verhoeff, limited to amount of Cdn \$1,000,000.00 in favour of the Lender;
- (b) limited guarantee dated as of September 30, 2013 granted by ISO limited to an aggregate amount of Cdn. \$750,000.00 in favour of the Lender;
- (c) guarantee dated as of September 30, 2013 granted by the GP in favour of the Lender;
- (d) general security agreement dated as of September 30, 2013 granted by the Borrower in favour of the Lender, providing a charge on all of the present and after-acquired assets, undertaking and property of the Borrower;
- (e) general security agreement dated as of September 30, 2013 granted by the GP in favour of the Lender, providing a charge on all of the present and after-acquired assets, undertaking and property of GP;

- (f) general security agreement dated as of September 30, 2013 hereof granted by ISO in favour of the Lender, providing a charge on all of the present and after-acquired assets, undertaking and property of ISO;
- (g) a confirmation and acknowledgement granted by the Borrower and each of the Guarantors in favour of the Lender confirming and acknowledging the continued effect of the documents listed in (a)-(f) above, as applicable;
- (h) *Guarantees and Acknowledgement Act* (Alberta) Certificate dated on or about the date hereof in respect of the J&S Guarantee granted by Paul Verhoeff in favour of the Lender;
- (i) *Guarantees and Acknowledgement Act* (Alberta) Certificate dated on or about the date hereof in respect of the J&S Guarantee granted by Stephen Verhoeff in favour of the Lender;
- (j) an intercreditor agreement between the Borrower, the Lender, the Guarantors and Sears confirming, among other things, that the Security Documents will be shared *pari passu* in right of payment between the Lender and Sears (as amended, restated, modified or supplemented from time to time, the "Intercreditor Agreement");
- (k) an amended and restated postponement agreement dated as of the date hereof between the Borrower, the Lender, Sears, the GP and ISO (as amended, restated, modified or supplemented from time to time, the "Amended and Restated Postponement Agreement"),

together with such supporting certificates and opinions, as applicable, in relation to the Borrower, the Corporate Guarantors and the Security Documents, as are requested by the Lender, acting reasonably.

The Lender acknowledges to the Borrower that it has received the items listed in (a) – (f) above.

#### 8. CONDITIONS PRECEDENT:

The effectiveness of this Loan Agreement and the obligation of the Lender to make the Principal Sum available to the Borrower hereunder is subject to and conditional upon the receipt (if not already received), in form and substance satisfactory to the Lender and its legal counsel, acting reasonably of:

- (a) a duly executed copy of this Loan Agreement;
- (b) duly executed copies of the Security Documents, which shall have been registered by the Lender in all applicable jurisdictions in order to perfect and maintain the security created by the Security Documents;
- (c) an officer's certificate of the GP, in its own capacity and in its capacity as general partner of the Borrower, and ISO certifying certain general corporate and partnership matters, as applicable:
  - (i) confirming previous delivery of its articles and by-laws and in the case of the GP, the partnership agreement of the Borrower and all amendments thereto;
  - (ii) a certified copy of a resolution of the board of directors of such party relating to such party's authority to execute, deliver and perform its obligations under this

Loan Agreement or the Security Documents to which it is a party, as applicable, and in the case of the GP, on behalf of the Borrower, and the manner in which and by whom they are to be executed and delivered;

- (iii) an incumbency certificate of an officer of the GP and ISO setting forth specimen signatures of the individuals authorized to execute this Loan Agreement or the Security Documents to which it is a party, as applicable, on such party's behalf and in the case of the GP, on behalf of the Borrower;
- (d) an amendment to the transition services agreement dated February 28, 2013 between Sears and the GP, as assigned to and assumed by the Borrower (the "Transition Agreement"), to delete the requirement in Section 5(a)(i) thereto to pay the weekly base fee;
- (e) an amendment to the branded concession agreement dated March 2, 2013 between Sears and the GP, as assigned to and assumed by the Borrower (the "Concession Agreement") providing, *among other things*, that:
  - (i) the Borrower shall not have to pay the Commission (as defined therein) and such Commission shall not accrue to be payable for the months of September 2013 and October 2013;
  - (ii) the amount of the Commission Guarantee (as defined therein) payable in respect of the current fiscal year shall be reduced by an amount equal to the amount of the Commission that would have been payable for the months of September 2013 and October 2013;
  - (iii) commissions for the months of November 2013, December 2013, and January 2014 (the "Deferred Commissions") shall accrue from and after November 30, 2013 but payment of the Deferred Commissions shall cease upon any enforcement of either of the Loan or the Sears Loan; and
  - (iv) confirmation that commissions for February 2014 are due in accordance with the terms of the Concession Agreement.
- (f) an amendment (collectively with (e) above, the "Amendments") to the limited partnership agreement in respect of the Borrower dated February 25, 2013 (the "LP Agreement"), providing, *among other things*, that:
  - (i) the definition of Preferred Distributions (as defined therein) shall be amended to delete the 6% top end collar on distributions;
  - (ii) the Lender shall be entitled to a ten percent (10%) net profits interest on all profits of the Borrower (as may be specified in a separate side letter between the Lender and the Borrower);
  - (iii) amendments to the LP Agreement (and any consequential amendments to give effect thereto) will take effect after the Loans have been repaid and the Deferred Commissions referenced above have been paid by the Borrower;

- (iv) distributions payable by the Borrower under the LP Agreement shall not be payable for the months of September 2013 through and inclusive of January 2014; and
- (v) commencing February 2014, distributions shall be payable by the Borrower in accordance with the terms of the LP Agreement;
- (g) evidence of the appointment of Michael Clements as CEO of the GP;
- (h) evidence that Michael Strachan is President of the GP;
- (i) a certificate of status/compliance or partnership search, as applicable, dated on or about the date hereof in respect of the GP, ISO and the Borrower in its jurisdiction of incorporation or formation;
- (j) legal opinions from counsel to the Borrower, the GP and ISO;
- (k) consent by HSBC Bank Canada in respect of grant by ISO of the Security Documents to which it is a party;
- (l) consent by each of the Lender and Sears in respect of the Hot Water Business Sale; and
- (m) all necessary governmental, regulatory, shareholder and other consents and approvals required to be obtained, if any, by the Borrower and the Guarantors in connection with the transactions contemplated by this Loan Agreement and the Security Documents.

The conditions in this Section 8 are inserted for the sole benefit of the Lender and may be waived by the Lender in whole or in part (with or without terms or conditions).

## 9. Representations and Warranties

The Borrower represents and warrants as follows:

- (a) **Creation and Power.** The Borrower is a corporation or limited partnership, as applicable, duly incorporated or formed, as applicable, and existing under the laws of its jurisdiction of incorporation or formation. The Borrower has the corporate or partnership, as applicable, power and capacity to enter into and perform its obligations under this Loan Agreement the Security Documents.
- (b) **Authorization.** The execution and delivery of, and performance by the Borrower of its obligations under, this Loan Agreement and the Security Documents to which it is a party have been authorized by all necessary corporate and partnership action, as applicable.
- (c) **No Conflict.** The execution and delivery of, and performance by the Borrower of their respective obligations under this Loan Agreement and the Security Documents to which it is a party:
  - (i) does not constitute or result in a violation or breach of, or conflict with, or allow any person to exercise any rights under, any of the terms or provisions of its respective articles or by-laws or its partnership agreement, as applicable, or under

any material contract, license or instrument to which it is a party or to which its assets or business operations are subject;

- (ii) do not result in a breach of, or cause the termination or revocation of, any governmental or other authorization held by it that is necessary to the ownership of its assets or the operation of its business; and
  - (iii) do not result in the violation of any applicable law.
- (d) **Execution and Binding Obligation.** This Loan Agreement and the Security Documents to which it is a party have been duly executed and delivered by it and constitute legal, valid and binding agreements of it, each enforceable against it in accordance with its terms, subject only to any limitation under applicable laws relating to (i) bankruptcy, winding-up insolvency, arrangement, fraudulent preference and conveyance, assignment and preference and other similar laws of general application affecting creditors' rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies including specific performance and injunction.
- (e) **No Event of Default.** As of the date hereof, no Event of Default has occurred and is continuing and no event has occurred which with the giving of notice, lapse of time, or both, would constitute an Event of Default.
- (f) **Title to Properties.** It has good and valid title to its property, subject only to Permitted Encumbrances (as defined below). It is entitled to charge or pledge its interests in its property in favour of the Lender as provided in the Security Documents to which it is a party without the need to obtain any consent of or release from any other person which has not been obtained and such property is not held in trust by it for any person.
- (g) The sole partners of the Borrower are the GP and the Lender and its sole general partner is the GP.

#### 10. Covenants

So long as any amounts owing hereunder remain outstanding, the Borrower covenants and agrees as follows:

- (a) **Punctual Payment.** It shall make all payments when due hereunder.
- (b) **Existence.** It shall do or cause to be done all things necessary or desirable to maintain the Borrower's corporate or partnership existence, as applicable, and the Borrower's corporate or partnership, as applicable, power and capacity to own its property and assets.
- (c) **Compliance with applicable law and contracts.** It shall comply in all material respects with the requirements of all applicable laws, rules and regulations applicable to it and all material contracts to which it is a party or by which it or its property is bound, including, without limitation the Concession Agreement and the Transition Agreement.
- (d) **Payment of taxes and claims.** It shall cause to be paid and discharged all taxes, remittances, source deductions and other claims payable by it.



- (e) **Insurance.** It shall maintain adequate insurance in respect of its assets, property and undertaking, as is customary in the case of businesses of established reputation engaged in the same or similar businesses and to the extent available on commercially reasonable terms, with reputable insurance companies (and in any event at least to the extent required by the Concession Agreement) and will provide the Lender with copies of all insurance policies or certificates relating thereto if so requested. All such insurance policies will contain a loss payable clause and mortgage clause in favour of the Lender and Sears, in accordance with the Intercreditor Agreement.
- (f) **Maintain Title to Properties.** It shall maintain good and valid title to its assets, property and undertaking, subject only to the following (the "Permitted Encumbrances"):
- (i) liens for taxes, rates, assessments or other governmental charges or levies not yet due (or if overdue are being contested by such person diligently and in good faith by appropriate proceedings and then, only for so long as such contestation effectively postpones the rights of the holders thereof to enforce such liens);
  - (ii) Purchase Money Security Interests and capital leases which Purchase Money Security Interests and capital leases, in respect of the Borrower, do not at any time secure obligations exceeding \$2,000,000 in the aggregate;
  - (iii) inchoate liens, charges or encumbrances imposed or permitted by laws such as garagemens' liens, carriers' liens, builders' liens, materialmens' liens and other liens, privileges or other charges of a similar nature which relate to obligations not due or delinquent or if due or delinquent are being contested by such person diligently and in good faith by appropriate proceedings;
  - (iv) liens to secure its assessments or current obligations which are not at the time overdue or otherwise dischargeable by the payment of money, and which are incurred in the ordinary course of its business under workers' compensation laws, employment insurance or other social security legislation or similar legislation, provided that such liens are in amounts commensurate with such current obligations;
  - (v) liens or any rights of distress reserved in or exercisable under any lease or sublease to which it is a lessee which secure the payment of rent or compliance with the terms of such lease or sublease, provided that such rent is not then overdue and it is then in compliance in all material respects with such terms;
  - (vi) the right reserved to or vested in any governmental or regulatory body by the terms of any lease, license, grant or permit or by any statutory or regulatory provision to terminate any such lease, license, grant or permit or to require annual or other periodic payments as a condition of the continuance thereof;
  - (vii) good faith deposits made in the ordinary course of business to secure the performance of bids, tenders, contracts (other than for the repayment of borrowed money), leases, surety, customs, performance bonds and other similar obligations;

- (viii) security granted to Sears in accordance with the Concession Agreement or Transition Agreement;
- (ix) any security in favour of the Sears which is subject to, and granted in accordance with, the terms of the Intercreditor Agreement;
- (x) any security in favour of the Lender which is subject to, and granted in accordance with, the terms of the Intercreditor Agreement;
- (xi) any security which secures the obligations of the Borrower or GP under a credit agreement that may be entered into by the GP with a financial institution or a syndicate of financial institutions as lenders thereunder (as the same may be further amended, modified, supplemented or restated from time to time in accordance with the provisions thereof, the "Senior Credit Agreement");
- (xii) any security created by any of the Security Documents; and
- (xiii) other encumbrances agreed to in writing by the Lender from time to time,

and to minor defects of title which in the aggregate do not affect its rights of ownership therein or the value thereof in any material way. In this Loan Agreement, the term "Purchase Money Security Interest" means any lien, charge or other encumbrance created by the Borrower securing indebtedness incurred to finance the acquisition of personal property; provided that (i) such encumbrance is created substantially simultaneously with the acquisition of such personal property, (ii) such encumbrance does not at any time encumber any personal property other than the personal property financed by such indebtedness, (iii) the amount of indebtedness secured thereby is not increased subsequent to such acquisition, and (iv) the principal amount of indebtedness secured by any such encumbrance at no time exceeds 100% of the original purchase price of such property at the time it was acquired.

- (g) **Operation of Properties.** It shall operate its respective property in accordance with sound industry practice, with all insurance policies and in all material respects with applicable laws.
- (h) **Protection of Security.** It shall do all things reasonably requested by the Lender to protect and maintain the Security Documents and the priority thereof contemplated hereby in relation to other persons in each jurisdiction in which it may do business or have assets.
- (i) **Security Interests.** It shall ensure that the security interest granted by it to the Lender as security for its obligations under this Loan Agreement is at all times a valid and enforceable security interest, perfected in the Provinces of Ontario and Alberta (and any other jurisdiction in which it may do business or have assets from time to time) and ranking ahead of all other liens, charges or other security interests, except as otherwise contemplated by this Loan Agreement or the Intercreditor Agreement.
- (j) **Financial Reporting.** The Borrower shall provide the Lender with the following:
  - (i) quarterly unaudited financial statements for itself and GP within 30 days of the end of each fiscal quarter;

- (ii) annual audited financial statements for itself and GP within 90 days of the end of each fiscal year; and
  - (iii) such other financial and operating statements and reports for itself and GP as the Lender may reasonably request from time to time.
- (k) **Notice of Event of Default and other matters.** The Borrower shall, as soon as practicable after it shall become aware of the same, give notice to the Lender of the commencement of any proceeding against, any development which might have a material adverse effect upon its ability to perform its obligations under this Loan Agreement or its or the Guarantors ability (taken as a whole) to perform their respective obligations under the Security Documents to which they are a party or any Event of Default of which it has knowledge, giving in each case the details thereof and specifying the action proposed to be taken with respect thereto.
- (l) **Limitation on Change or Cessation of Business.** It shall not alter the nature of the business conducted by it or cease to carry on such business.
- (m) **Limitation on Indebtedness.** It shall not incur any any indebtedness for borrowed money or provide any guarantee or financial assistance to another person in respect thereof, other than the following:
  - (i) indebtedness under this Loan Agreement;
  - (ii) indebtedness under the Scars Loan Agreement;
  - (iii) indebtedness under the Concession Agreement and the Transition Agreement;
  - (iv) indebtedness to the Lender which is subject to the Amended and Restated Postponement Agreement; and
  - (v) indebtedness which is either secured by a Permitted Encumbrance or unsecured and which does not in the aggregate exceed \$3,000,000;
- (n) **Limitation on Liens.** It shall not provide or permit a security interest, charge, encumbrance or other lien over any of its assets, property or undertaking, except for Permitted Encumbrances.
- (o) **Limitation on Distributions.** It shall not make:
  - (i) any declaration or payment of dividends, distributions, fees or management fees of any kind directly or indirectly to any of its unitholders or affiliates;
  - (ii) any repurchase, retraction or redemption of its units;
  - (iii) any repayment of any amount of principal, interest or other amounts in respect of any indebtedness for borrowed money owed to any affiliate; or
  - (iv) any loan or advance that is made in favour of a holder of its units or an affiliate,

in each case whether any of the foregoing is made, paid or satisfied in or for cash, property or both, unless all indebtedness under the Loan Agreement has been fully and finally paid; provided that the Lender acknowledges and agrees that (a) the Borrower may make distributions to the Lender as permitted under, and in accordance with, the terms of the Postponement Agreement (the "Alaris Distributions"), unless and until an Event of Default has occurred and is then continuing or would reasonably be expected to occur as a result thereof; and (b) in addition to the Alaris Distributions, the Borrower may make payments of normal salary, bonus, management fees or other remuneration to its shareholders in connection with such services rendered to the Borrower which are payable in the ordinary course.

- (p) **Limitation on Mergers, Amalgamation and Consolidations.** It shall not merge, amalgamate or consolidate with another person or enter into any corporate reorganization or merger, or liquidate, wind-up or dissolve itself, or permit any liquidation, wind-up or dissolution;
- (q) **Limitation on Asset Dispositions.** It shall not make any dispositions of its assets, other than the following:
- (i) inventory in the ordinary course of business;
  - (ii) used, surplus, obsolete or worn-out property for nominal consideration;
  - (iii) other property to arm's length third parties for fair market value, provided the aggregate amount of such asset dispositions does not exceed the amount of equal to 5% of the Borrower's consolidated tangible assets in any fiscal year; and
  - (iv) in connection with the Hot Water Business Sale.
- (r) **Limitation on Transactions with Affiliates.** It shall not enter into any transaction (including, without limitation, the purchase, sale or exchange of any property or the rendering of any services) with any of its affiliates, or with any of its or their directors or officers, or enter into, assume or suffer to exist any employment, consulting or analogous agreement or arrangement with any such affiliate or with any of its directors or officers, except a transaction or agreement or arrangement which is in the ordinary course of business of the Borrower and such affiliate and which is upon fair and reasonable terms not materially less favourable to the Borrower or applicable affiliate than it would obtain in a comparable arm's length transaction.
- (s) **Most Favoured Lender.** In the event that the Borrower or GP enters into, assumes or otherwise agrees to or becomes bound by or becomes obligated under any other agreement in respect of indebtedness which provides for any covenants which are either in addition to the covenants contained herein (each, an "Additional Covenant") or if provided for herein, are on terms which are more restrictive or onerous (each, a "Restrictive Covenant") than the terms of the equivalent covenant contained in this Loan Agreement, then this Loan Agreement shall be automatically deemed to be amended to include such Additional Covenant or to revise the equivalent existing covenant herein to correspond with the more restrictive or onerous terms of such Restrictive Covenant, as applicable, effect as of the date the Borrower or GP, as applicable, becomes subject to such Additional Covenant or Restrictive Covenant. Upon the request of the Lender, the Borrower shall promptly execute and deliver, at its expense (including the fees and expenses of the Lender and its counsel in

connection therewith), an amendment to this Loan Agreement in form and substance satisfactory to the Lender; provided for certainty that the execution and delivery of such amendment shall not be a precondition to the effectiveness of the amendments deemed to be made pursuant to this subsection (s).

- (t) **Hot Water Business Sale of Hot Water Business.** The Borrower shall be required to complete a sale (the "Hot Water Business Sale") of its hot water business, being on the date of this Loan Agreement, the water heater equipment owned by the Borrower and rented to customers of the Borrower, together with all rental contracts and assets and liabilities associated therewith, on the following conditions:
- a. the Hot Water Business Sale shall be completed by no later than March 31, 2014; and
  - b. a minimum of \$1,000,000 of the proceeds of the Hot Water Business Sale to be paid to each of the Lender and Sears as a repayment of the Loan and the Sears Loan, respectively, and on an equal basis.

#### 11. Events of Default

Any one or more of the following described events that has occurred and is continuing constitutes an "Event of Default" with respect to this Loan Agreement:

- (a) the Borrower shall fail to make any payment on account of the Principal Sum or Interest (or portion thereof) on the applicable date due hereunder and such failure remains unremedied for 3 business days;
- (b) if a decree or order of a court of competent jurisdiction is entered adjudging the Borrower or a Guarantor bankrupt or insolvent under the *Companies' Creditors Arrangement Act* (Canada), the *Bankruptcy and Insolvency Act* (Canada) or any other bankruptcy, insolvency or analogous laws or ordering the winding up or liquidation of its affairs and the continuance of any such decree or order remains unstayed and in effect for a period of 30 consecutive days;
- (c) if the Borrower or a Guarantor makes any assignment in bankruptcy or makes any other assignment for the benefit of creditors, makes any proposal under the *Bankruptcy and Insolvency Act* (Canada) or any comparable law, seeks relief under the *Companies' Creditors Arrangement Act* (Canada) or any other bankruptcy, insolvency or analogous law, files a petition or proposal to take advantage of any act of insolvency, consents to or acquiesces in the appointment of a trustee in bankruptcy, receiver, receiver and manager, interim receiver, custodian, sequestrator or other person with similar powers of itself or of all or any substantial portion of its assets, or files a petition or otherwise commences any proceeding seeking any reorganization, arrangement, composition, administration or readjustment under any applicable bankruptcy, insolvency, moratorium, reorganization or other similar law affecting creditors' rights or consents to, or acquiesces in, the filing of such assignment, proposal, relief, petition, proposal, appointment or proceeding;
- (d) any of the representations and warranties of the Borrower or a Guarantor in Section 9 above and any of the Security Documents, proves to be incorrect, false or inaccurate in any material respect as of the date hereof;

- (e) the Borrower or a Guarantor fails to comply with any of the covenants contained herein not otherwise referenced in this Section 11, or in any Security Document to which it is a party, and where capable of being remedied, such failure remains unremedied for 30 days after receipt by the Borrower of written notice thereof from the Lender;
- (f) failure of the Borrower to complete and consummate the Hot Water Business Sale upon the terms and conditions specified in Section 10(t) herein;
- (g) the sale of all or substantially all of the assets of the Borrower;
- (h) a change of control occurs; where "change of control" means if after the date hereof any person acquires, directly or indirectly, alone or in concert with other persons, over a period of time or at any one time, units in the capital of the Borrower aggregating in excess of 50% of all of the then issued and outstanding voting securities of the Borrower;
- (i) an "Event of Default" as defined in the Concession Agreement, in each case has occurred and is continuing which results in the acceleration of indebtedness thereunder prior to the stated maturity thereof, the termination of such agreement prior to its stated termination date or the exercise of material rights and remedies by the Lender or other counterparty thereunder, as applicable; or
- (j) the Borrower or a Guarantor challenges or threatens to challenge the validity or enforceability of this Loan Agreement or any of the Security Documents to which it is a party.

## 12. Remedies

Subject to the provisions of the Intercreditor Agreement, upon the occurrence of any Event of Default, the Lender may declare all outstanding amounts hereunder to be immediately due and payable and pursue any right or remedy provided herein or otherwise allowed by law. The Lender may pursue any such rights or remedies separately, together or successively. Exercise of any such right or remedy shall not be deemed an election of remedies. Extension of time for payment of all or any part of the amounts owing hereunder at any time, or failure of the Lender to enforce any of its rights or remedies hereunder, shall not release the Borrower and shall not constitute a waiver of the rights of the Lender to enforce such rights and remedies thereafter.

## 13. Default Interest

Any amount owing hereunder which is not paid when due (including, without limitation, overdue and unpaid interest) shall bear interest at the rate aforesaid plus 2.0%, calculated and compounded on the last business day of each calendar month, and shall be paid without the necessity for any demand being made, but if demand is made, on demand.

## 14. Governing Law

This Loan Agreement has been executed under and shall be construed and enforced in accordance with the laws of the Province of Alberta.

**15. Severability**

If any provision of this Loan Agreement is found by a court of competent jurisdiction to be invalid or unenforceable as written, then the parties intend and desire that (a) such provision be enforceable to the fullest extent permitted by law, and (b) the invalidity or unenforceability of such provision shall not affect the validity and enforceability of the remainder of this Loan Agreement.

**16. Amendment**

This Loan Agreement may not be amended, modified or changed, nor shall any provision hereof be deemed waived, except by an instrument in writing signed by the parties.

**17. Waivers**

Time shall be of the essence of this Loan Agreement. The Borrower hereby waives presentment for payment, notice of non-payment, protest, or a notice of protest of this Loan Agreement and agrees that it shall remain liable in respect hereof as if presentment, notice of non-payment, protest and notice of protest had been duly made or given. No waiver by the Lender of any right contained in this Loan Agreement shall be deemed a waiver as to any future transaction or occurrence.

**18. Calculation of Interest**

Interest shall be calculated hereunder without deduction or allowance in respect of deemed reinvestment or otherwise and on the basis of the actual number of days elapsed in a year of 365 days. The rate of interest specified herein is intended to be a nominal rate and not an effective rate of interest.

**19. Right of Setoff**

Notwithstanding anything else contained herein or elsewhere, the Borrower acknowledges and agrees that upon the occurrence of an Event of Default that is continuing the Lender shall be entitled to, but not obligated to, set off any amounts or other rights owing by the Lender to the Borrower against the amounts payable by the Borrower hereunder.

**20. Evidence of Obligations**

The Lender shall maintain an account evidencing the indebtedness and liabilities of the Borrower hereunder and the amounts of principal, interest and other amounts owing and paid from time to time hereunder. Such accounts maintained by the Lender shall, at all times and for all purposes, be conclusive evidence of the existence and amounts of the obligations of the Borrower therein recorded, absent manifest error.

**21. Successors and Assignment**

This Loan Agreement shall be binding upon the successors and permitted assigns of the Borrower and the Lender. The Borrower shall not be entitled to assign its rights or obligations hereunder without the prior written consent of the Lender. Any assignment of this Loan Agreement in violation of the terms hereof shall be void *ab initio*.

The Lender shall be entitled to assign its rights or obligations hereunder without the prior written consent of the Borrower.

**22. Payment of Obligations**

Upon the payment of the full amount of the Principal Sum and Interest and any additional amounts owing hereunder in respect thereof this Loan Agreement shall terminate. At such time, any and all guarantees made in favour of the Lender and/or liens of the Lender on any property of the Borrower or the Guarantors or other collateral securing the Borrower's or the Guarantors' obligations or security interests hereunder shall be automatically terminated and released, and the Lender shall take such actions as the Borrower may reasonably request to accomplish and reflect on public record such termination and release.

**23. Original Promissory Note**

The Original Promissory Note shall be and is hereby replaced in the form of this Loan Agreement. All amounts outstanding under the Original Promissory Note as of the date hereof shall continue to be outstanding under this Loan Agreement and shall be deemed to be obligations owing by the Borrower to the Lender under this Loan Agreement.

**24. Notices**

Notices hereunder shall be given by the parties hereto in the manner set forth in the LP Agreement, or at such other address as either party may advise the other in writing from time to time.

**25. Indemnity**

The Borrower agrees to pay all expenses, including reasonable counsel fees and legal expenses, incurred by the Lender in enforcing payment of any amounts payable hereunder.

**26. Counterparts**

This Loan Agreement may be executed in any number of counterparts (including by facsimile transmission or other electronic transmission (including in .pdf format) and by different parties in separate counterparts, each of which when so executed will be deemed to be an original and all of which taken together will constitute one and the same instrument.

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

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


Per: *R. Colabella* Per: \_\_\_\_\_  
Name: *Rachel Colabella* Name:  
Title: *Chief Legal Officer +* Title:  
*Corporate Secretary*

*[Signature page to Alaris Loan Agreement]*

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

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

Per: \_\_\_\_\_  
Name:  
Title:

Per:   
Name: Micheal Clements  
Title: CEO

*[Signature page to Alaris Loan Agreement]*

**BARRY PATRICK KENNY**  
Plaintiff

-and-

**SHS SERVICES MANAGEMENT INC. et al.**  
Defendants

Court File No. 802/15

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**PROCEEDING COMMENCED AT**  
**LONDON**

**MOTION RECORD**  
**CERTIFICATION**  
**Volume 1 of 3**

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Barry Patrick Kenny

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., CORBEIL ELECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING OCRP., SEARS FLOOR CLVERING 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.

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE**  
(Commercial list)

PROCEEDING COMMENCED AT  
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