

**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**

**SUPPLEMENTAL MOTION RECORD OF SEARS CANADA INC.  
(Continuation of Receivership)  
(Returnable January 9, 2014)**

Date: January 7, 2014

**TORYS LLP**  
79 Wellington St. W., Suite 3000  
Box 270, TD Centre  
Toronto, ON M5K 1N2

Fax: 416.865.7380

**Scott A. Bomhof** (LSUC#: 37006F)  
Tel: 416.865.7370  
Email: [sbomhof@torys.com](mailto:sbomhof@torys.com)

**Adam M. Slavens** (LSUC#: 54433J)  
Tel: 416.865.7333  
Email: [aslavens@torys.com](mailto:aslavens@torys.com)

Lawyers for Sears Canada Inc.

# INDEX

**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**

**INDEX**

**Tab Document**

1. Affidavit of Daniel Westreich sworn January 7, 2014
2. Draft Order

**TAB 1**

**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 DANIEL WESTREICH  
(sworn on January 7, 2014)**

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

I. I am the Divisional Vice-President, Central Administration & Senior Corporate Counsel of Sears Canada Inc. ("Sears"). I have personal knowledge of the matters to which I depose in this affidavit. Where I do not possess such personal knowledge, I have stated the source of my information and, in all such cases, do verily believe it to be true.

2. This Affidavit is sworn in support of Sears' motion for an order (the "Receivership Order"), *inter alia*:

- (a) continuing the receivership of SHS Services Management Inc. / Gestion Des Services SHS Inc. and SHS Services Limited Partnership (collectively, the "Debtors") pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA"), by appointing PricewaterhouseCoopers Inc. ("PwC") as receiver (in such capacity, the "Receiver") without security, of all of the assets, undertakings and properties

(collectively, the "Property") of the Debtors acquired for, or used in relation to, a business carried on by the Debtors; and

- (b) approving the Rental Portfolio Sales Process, substantially as described in the Second Report to the Court of the Interim Receiver, to be filed (the "Second Report").

### ***Background***

3. Sears is a leading Canadian retailer. Sears' department stores across the country offer a broad range of merchandise and services, from apparel and home fashions to appliances. Sears' head office is located at 290 Yonge Street, Suite 700 in Toronto, Ontario.

4. Pursuant to an Asset Transfer Agreement (the "ATA") dated December 20, 2012, a Branded Concession Agreement (the "BCA") dated December 20, 2012, and related agreements and transactions entered into with Sears, the Debtors sold certain products and services under the Sears brand name, including: (i) a full suite of interior and exterior home renovations, repairs, and other home maintenance services provided under the Sears brand name; and (ii) air conditioners, furnaces, fireplaces and interior and exterior renovation related products. Copies of the ATA and the BCA, without schedules, are attached hereto as Exhibits "A" and "B", respectively.

5. On December 13, 2013, pursuant to an order (the "Appointment Order") of this Court, PwC was appointed as interim receiver (in such capacity, the "Interim Receiver"), without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, pursuant to section 47 of the BIA and section 101 of the CJA.

6. In connection with the Debtors' application for the Appointment Order, I swore an affidavit dated December 13, 2013 (the "December 13 Affidavit"), that set out certain facts that were relevant to the Appointment Order. A copy of the December 13 Affidavit is attached hereto as Exhibit "C").

7. On December 23, 2013, this Court issued an order (the “Amended and Restated Appointment Order”) amending and replacing the Appointment Order in order to, *inter alia*, provide Sears with a limited exemption from the stay of proceedings.

8. It is my understanding based on my review of the Interim Receiver’s First Report to the Court dated December 20, 2013, that since the Appointment Order, the Interim Receiver has, *inter alia*: (i) issued notices of termination to certain employees of the Debtors; (ii) retained certain employees of the Debtors on a temporary basis; and (iii) suspended substantially all business operations of the Debtors.

9. In addition, Sears has worked with the Interim Receiver since the date of the Appointment Order to commence portions of the Debtors’ business on an interim basis to permit outstanding, but unfulfilled, orders to be completed and for the duct-cleaning and carpet-cleaning parts of the business to operate. In order to ensure that the operation of these parts of the business on an interim basis does not result in additional costs to the Debtors’ estates, Sears has agreed to back-stop any losses resulting from the operations during the interim period, on an aggregate basis, pursuant to a Backstop Agreement dated December 27, 2013 (the “Backstop Agreement”). Pursuant to the Backstop Agreement, Sears has agreed to waive certain rights of set-off during the interim period and to provide a backstop for any aggregate losses on an unsecured basis. The Backstop Agreement is more fully described in the Second Report of the Interim Receiver dated January 7, 2014. A copy of the Backstop Agreement is attached hereto as Exhibit “D”.

#### ***Loans to the Debtors***

10. In connection with, and following, the entry into the ATA, the BCA and related agreements and transactions, Sears and Alaris Income Growth Fund Partnership (“Alaris”) provided secured funding to the Debtors, pursuant to, *inter alia*, a Letter of Understanding (the “Letter of Understanding”) effective September 30, 2013, that was entered into among, *inter alia*, SHS LP, Sears, and Alaris, whereby Sears and Alaris would each provide term loans to SHS LP in amounts up to \$2,000,000, for a total term loan amount of up to \$4,000,000, and SHS provided a guarantees (the “Guarantee”) to Sears in connection therewith. Sears and SHS LP subsequently entered in to a Loan Agreement (the “Loan Agreement”) dated October 31, 2013,

and SHS provided Sears with an Acknowledgement and Confirmation of Security (the "Acknowledgment") on even date therewith. Copies of the Letter of Understanding, the Guarantee and the Loan Agreement are attached hereto as Exhibits "E", "F" and "G", respectively. A copy of the Acknowledgment is attached as Exhibit "A" to the December 13 Affidavit.

11. The Debtors granted in favour of Sears, General Security Agreements, each dated March 2, 2013 (the "GSAs"), and Hypothecs on Moveable Property (the "Hypothecs") dated March, 2013, and such security interests were perfected pursuant to security registrations made pursuant to the *Personal Property Security Act* (Ontario) and other equivalent provincial personal property security registries. Copies of the GSAs and Hypothecs and search results from provincial personal property security registries are attached hereto as Exhibits "H" and "I", respectively.

12. A Postponement Agreement (the "Postponement Agreement") dated February 25, 2013, was entered into among, *inter alia*, the Debtors, Sears, and Alaris, whereby Alaris agreed to postpone and subordinate all debts, liabilities and obligations owed by the Debtors to Alaris in favour of certain debts, liabilities and obligations owed by the Debtors to Sears. A copy of the Postponement Agreement is attached hereto as Exhibit "J".

13. On December 11, 2013, Alaris issued a notice of default under a Limited Partnership Agreement dated February 25, 2013, between SHS and Alaris that was entered into in connection with the ATA, the BCA and related agreements and transactions.

14. As a result of defaults by the Debtors under the Loan Agreement, on December 12, 2013, Sears issued to the Debtors a demand letter and a Notice of Intention to Enforce Security pursuant to section 244(1) of the BIA (collectively, the "BIA Notice"), receipt of which was acknowledged by the Debtors' counsel on December 13, 2013. Copies of the BIA Notice and such acknowledgement are attached hereto as Exhibits "K" and "L", respectively.

15. On December 13, 2013, this Court appointed the Interim Receiver pursuant to the Appointment Order.

16. As at December 12, 2013, the indebtedness under the Loan Agreement owed by the Debtors to Sears was \$2,028,511.37.



## ***Receivership Order***

17. Pursuant to the Amended and Restated Appointment Order, the Interim Receiver's appointment is currently due to terminate on January 11, 2014. In order to provide for the continued control of the Debtors' Property by a receiver, Sears now seeks the Receivership Order to permit the Receiver to take control of, and to take possession of, the Debtors' Property, so that the Property can be placed under the control of a court-appointed receiver for the benefit of all stakeholders.

18. As of the date hereof, the Debtors' indebtedness to Sears has not been repaid and the Debtors remain in default under the Loan Agreement. Sears, by virtue of its issuance of the BIA Notice and the expiry of cure periods and notice periods in connection therewith, is entitled to enforce its security in respect of the Debtors and to seek the appointment of the Receiver in respect of the Property of the Debtors. PwC, the current Interim Receiver, has agreed to continue to act as Receiver.

19. The reasons that supported the granting by this Court of the Appointment Order and the Amended and Restated Appointment Order also support the granting by this Court of the Receivership Order.

20. In order to maximize the realization of value for the benefit of stakeholders, the Receivership Order will: (i) authorize, but not obligate, the Receiver to: (A) take possession of and exercise control over the Property; (B) manage, operate, and carry on the business of the Debtor; (C) disclaim any contracts entered into by the Debtors; and (D) sell, convey, transfer, lease or assign the Property, pursuant to such order; and (ii) approve Rental Portfolio Sales Process.

21. The granting of the Receivership Order is in the interests of justice and is just, convenient, and necessary for the protection of the Debtors, their estates, and the interests of Sears and other creditors.

## *Clements Affidavit*

22. Michael Clements, the sole director of SHS, swore an affidavit on December 12, 2013 (the "Clements Affidavit"), in connection with the application for the Appointment Order. Sears disputes certain of the statements made therein, but does not intend to respond fully to them on this motion. Sears does, however, reserve all of its rights in this respect. For the purposes of this affidavit, I do note the following facts:

- (a) In connection with the ATA, the BCA and related agreements and transactions, SHS and Sears entered into a loan agreement dated March 2, 2013 (the "VTB Loan Agreement"), whereby Sears loaned SHS \$5,676,525.80.<sup>1</sup> This loan is referred to at paragraph 18 of the Clements Affidavit. At paragraph 23 of the Clements Affidavit, Mr. Clements states that the amounts under the VTB Loan Agreement "had matured and required payment". Sears disputes the accuracy of this statement, as the loan was not due at that time. Instead SHS elected to prepay the loan on 2 days' notice pursuant to the early payment option provided for in section 5 of the VTB Loan Agreement. A copy of this notice is attached hereto as Exhibit "M". Upon receiving this notice, Sears was surprised by this election and advised SHS that this action would place the Debtors in financial difficulty. Alaris was also surprised by this decision and expressed the same concerns to SHS. Nevertheless, SHS prepaid the loan and went on to experience financial difficulty. The negotiations that culminated in the Letter of Understanding, described above, began at this time. It is Sears' view that the financial difficulties of the Debtors stemmed from, *inter alia*, the unnecessary prepayment of the VTB loan.
- (b) The initial capital to fund the Debtors was advanced in the form of approximately \$15,000,000 in financing from Alaris and the approximately \$5,000,000 VTB loan from Sears. In connection with the ATA, the BCA and related agreements and transactions, SHS agreed to maintain at all times a minimum of debt and

---

<sup>1</sup> In accordance with the terms of the VTB Loan Agreement, the amount of the loan was adjusted to reflect the final purchase price of \$5,344,763.66, as acknowledged in article 2 of the Acknowledgment (attached as Exhibit "A" to the December 13 Affidavit).

equity of \$18,000,000, observe certain other financial covenants and limit the dividends to be paid to its principals. However, without notice to Sears, on the very first day of its operations, SHS immediately paid dividends to its four principals, including Mr. Clements, in the amount of \$8,000,000, and repaid a related party loan in excess of \$500,000 (on behalf of Installation Services Org. Ltd., a guarantor of loans made to the Debtors, which loans were also personally guaranteed by two other principals, Paul Verhoeff and Stephen Verhoeff). A copy of a direction from SHS showing this flow of funds is attached hereto as Exhibit "N". In June, 2013, Sears learned of these payments and noted SHS in default. Though some funds were repaid into SHS, approximately \$3,000,000 was not repaid into SHS by the principals. It is Sears' view that the financial difficulties of the Debtors stemmed from, *inter alia*, the payments made to its principals.

**Conclusion**

23. In summary, it is essential that the Receiver be appointed immediately to ensure that there is no gap between the current interim receivership and the proposed receivership, so that the Property remains safeguarded and protected. The Receivership Order will provide the Receiver with the authority to preserve the Debtors' business and Property so that maximum value is realized for the benefit of stakeholders.

SWORN before me at the City  
of Toronto, in the Province of  
Ontario on January 7, 2014.

Sam Golder  
A Commissioner for taking affidavits

Daniel Westreich  
DANIEL WESTREICH

**Sam Golder,  
a Commissioner, etc., Province of  
Ontario, while a Student-at-Law.  
Expires August 26, 2016.**

**TAB A**

This is Exhibit "A" referred to in the  
Affidavit of Daniel Westreich  
Sworn before me, this 7  
day of January, 2014.

A handwritten signature in black ink, appearing to read "Sam Golder".

**Sam Golder,  
a Commissioner, etc., Province of  
Ontario, while a Student-at-Law.  
Expires August 26, 2016.**

**SEARS CANADA INC.**

as Transferor

and

**SHS SERVICES MANAGEMENT INC.**

as Transferee

---

**ASSET TRANSFER AGREEMENT**

December 20, 2012

---

## TABLE OF CONTENTS

### ARTICLE 1 INTERPRETATION

Section 1.1	Defined Terms.....	1
Section 1.2	Gender and Number.....	10
Section 1.3	Headings, etc.....	10
Section 1.4	Currency.....	10
Section 1.5	Certain Phrases, etc.....	10
Section 1.6	Knowledge.....	10
Section 1.7	Accounting Terms.....	10
Section 1.8	Schedules.....	10
Section 1.9	Statutes.....	11
Section 1.10	Non-Business Days.....	11

### ARTICLE 2 TRANSFERRED ASSETS, ASSUMED LIABILITIES AND PURCHASE PRICE

Section 2.1	Asset Transfer.....	11
Section 2.2	Purchase Price and Closing Cash Payment.....	12
Section 2.3	Satisfaction of the Closing Cash Payment.....	12
Section 2.4	Payment of the Purchase Price Balance.....	12
Section 2.5	Source Revenue.....	13
Section 2.6	Sales Taxes.....	14
Section 2.7	Income Tax Act Section 20(24) Election.....	14
Section 2.8	Transferred Assets.....	14
Section 2.9	Excluded Assets.....	15
Section 2.10	Post-Closing Receipts.....	16
Section 2.11	Assumed Liabilities.....	16
Section 2.12	Excluded Liabilities.....	17

### ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF THE TRANSFEROR

Section 3.1	Representations and Warranties of the Transferor.....	18
-------------	---	----

### ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE TRANSFEREE

Section 4.1	Representations and Warranties of the Transferee.....	24
-------------	---	----

### ARTICLE 5 PRE-CLOSING COVENANTS OF THE PARTIES

Section 5.1	Conduct of Business Prior to Closing.....	27
Section 5.2	Access for Due Diligence.....	27
Section 5.3	Confidentiality.....	28
Section 5.4	Actions to Satisfy Closing Conditions.....	28
Section 5.5	Notice of Assignment to Licensees and Contractors.....	28



Section 5.6	Filings and Authorizations.....	29
Section 5.7	Notice of Untrue Representation or Warranty.....	30
Section 5.8	Risk of Loss.....	30
Section 5.9	Home Services Employee Personal Information and Access.....	30
Section 5.10	Notice of Non-Transferring Employees. ....	31
Section 5.11	Employee Transfer .....	31
Section 5.12	Employment and Benefit Arrangements Prior to Closing. ....	32
Section 5.13	Business Personal Information. ....	33
Section 5.14	BlackBerrys.....	34

## ARTICLE 6 CONDITIONS OF CLOSING

Section 6.1	Conditions for the Benefit of the Transferee.....	34
Section 6.2	Conditions for the Benefit of the Transferor.....	35

## ARTICLE 7 CLOSING

Section 7.1	Date, Time and Place of Closing. ....	37
Section 7.2	Closing Procedures. ....	37

## ARTICLE 8 TERMINATION

Section 8.1	Termination Rights.....	37
Section 8.2	Effect of Termination. ....	38

## ARTICLE 9 INDEMNIFICATION

Section 9.1	Survival.....	38
Section 9.2	Indemnification in Favour of the Transferee.....	38
Section 9.3	Indemnification in Favour of the Transferor.....	39
Section 9.4	Limitations.....	39
Section 9.5	Notification.....	41
Section 9.6	Procedure for Third Party Claims.....	41
Section 9.7	Exclusion of Other Remedies.....	42
Section 9.8	One Recovery.....	43
Section 9.9	Duty to Mitigate.....	43

## ARTICLE 10 POST-CLOSING COVENANTS

Section 10.1	Termination Payment Contribution for Terminated Employees. ....	43
Section 10.2	Non-Termination of Hired Employees.....	44
Section 10.3	Access to Books and Records.....	44
Section 10.4	Litigation Assistance.....	45
Section 10.5	Business Personal Information. ....	45
Section 10.6	Further Assurances. ....	45

**ARTICLE 11**  
**MISCELLANEOUS**

Section 11.1	Notices.....	46
Section 11.2	Time of the Essence.....	47
Section 11.3	Brokers.....	47
Section 11.4	Announcements.....	47
Section 11.5	Third Party Beneficiaries.....	47
Section 11.6	Expenses.....	47
Section 11.7	Amendments.....	48
Section 11.8	Waiver.....	48
Section 11.9	Non-Merger.....	48
Section 11.10	Entire Agreement.....	48
Section 11.11	Successors and Assigns.....	48
Section 11.12	Severability.....	48
Section 11.13	Governing Law.....	49
Section 11.14	Counterparts.....	49

## 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.

**"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.

"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).

"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

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 Transferee.

**"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).

**"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



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

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.

"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:

- (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.

**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

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



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,

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"):

- (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.

- (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

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.

- (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

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 thereto.
- (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;

- (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



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

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 TRANSFEEE**

##### **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

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.

- (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

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;

- (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.

- (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,



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

(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

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

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,

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.

- (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.

**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



- (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

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

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

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.

- (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

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

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



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

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

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

A handwritten signature in black ink, appearing to be 'Terri Lowe', written over a horizontal line.

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: \_\_\_\_\_

**TAB B**



This is Exhibit "B" referred to in the  
Affidavit of Daniel Westreich  
Sworn before me, this 7  
day of January, 2014.

A handwritten signature in black ink, appearing to read "Sam Golder". The signature is fluid and cursive, with a long horizontal stroke at the end.

A Commissioner, Etc.

**Sam Golder,  
a Commissioner, etc., Province of  
Ontario, while a Student-at-Law.  
Expires August 26, 2016.**

---

# Branded Concession Agreement

---

Sears Home Services

December 20, 2012

ARTICLE 1. INTERPRETATION .....	8
1.1 Definitions .....	8
1.2 Schedules .....	17
1.3 Interpretation .....	17
ARTICLE 2. TERM .....	19
2.1 Initial Term .....	19
2.2 Renewal Terms .....	19
2.3 Overholding .....	19
ARTICLE 3. GRANT OF CONCESSION .....	19
3.1 Grant of Concession .....	19
3.2 Use of Brand Name .....	19
3.3 Exclusivity .....	19
ARTICLE 4. PRODUCTS AND SERVICES .....	20
4.1 Assortment of Products and Services .....	20
4.2 Quantity of Products .....	20
4.3 Quality of Products and Services .....	20
4.4 Pricing of Products and Services .....	20
4.5 Prohibited Products and Services .....	20
4.6 Product Servicing and Repair .....	20
ARTICLE 5. LICENSED AREAS .....	21
5.1 Right to Occupy Licensed Areas .....	21
5.2 Use of the Licensed Area .....	21
5.3 Remodelling, Reconfiguration and Relocation of Licensed Areas by Sears .....	21
5.4 Initial Construction .....	21
5.5 Licensee Furnishings and Leasehold Improvements .....	22
5.6 Plans and Drawings .....	23
5.7 Sears Furnishings and Leasehold Improvements .....	23
5.8 Licensed Area Remodelling .....	23
5.9 Relocation and Reconfiguration of Licensed Areas by Sears .....	23
5.10 Relocation and Reconfiguration of Licensed Areas by Licensee .....	24
5.11 Sears Maintenance and Repairs .....	24
5.12 Licensee Maintenance and Repairs .....	24
5.13 Notice of Incident or Damage .....	25
5.14 Examination of Licensed Areas .....	25
5.15 Control of Building .....	25
5.16 Utilities .....	26
5.17 Energy Conservation .....	26
5.18 HVAC .....	26
5.19 Telephone .....	26
5.20 Elevators & Escalators .....	27
5.21 Janitorial Services .....	27
5.22 Garbage Removal .....	27

5.23	Sears Product Bags and Boxes .....	28
5.24	Licensee Operational Supplies .....	28
5.25	Shipping and Receiving .....	28
5.26	Prohibited Activities .....	28
5.27	Damage and Disturbance .....	28
5.28	Sound and Lights .....	29
5.29	Signage.....	29
5.30	Property Taxes .....	29
5.31	Landlord Common Area Maintenance Charges.....	29
ARTICLE 6. ADVERTISING, MARKETING AND PROMOTIONS.....		30
6.1	Licensee's Marketing Commitment.....	30
6.2	Promotion of Brand Name and Sears Credit Services.....	31
6.3	Joint Marketing .....	31
6.4	Sears Rewards Program.....	31
6.5	Participation in Sears Advertising Vehicles.....	31
6.6	Designated Store Promotional Events .....	31
6.7	Telemarketing Solicitation.....	32
6.8	Internet Solicitation .....	32
6.9	Concession Website .....	32
6.10	Marketing Plan.....	32
6.11	Marketing Agencies .....	33
6.12	Advertising Approval.....	33
ARTICLE 7. CUSTOMER PAYMENTS AND CREDIT .....		33
7.1	Tender .....	33
7.2	Promotion of Sears Card .....	33
7.3	Cash .....	34
7.4	Gift Cards and Merchandise Certificates .....	34
7.5	Sears Rewards Program Redemption .....	34
7.6	Credit Sales .....	34
7.7	Merchant Fee.....	35
7.8	Sears Card Revenues.....	35
7.9	Licensee to Collect Sales Tax.....	35
ARTICLE 8. CUSTOMER RELATIONS AND ADJUSTMENTS .....		35
8.1	Customer Satisfaction Policy .....	35
8.2	Customer Complaints .....	35
8.3	Customer Contact Centre .....	36
ARTICLE 9. OPERATIONS AND STAFFING .....		36
9.1	Normal Business Hours .....	36
9.2	Operational Supervision.....	36
9.3	Policies and Practices.....	36
9.4	Conduct of Business.....	36
9.5	Compliance With Applicable Law.....	36
9.6	Compliance With Sears Guidelines and Service Levels .....	37

9.7	Protection of Personal Information.....	37
9.8	Permits and Licenses.....	37
9.9	Business License.....	38
9.10	Staffing.....	38
9.11	Sub-Contracting.....	39
9.12	Supervision of Employees.....	39
9.13	Labour and Employment Standards.....	39
9.14	Compensation & Benefits.....	39
9.15	No Connection to Sears.....	39
9.16	Sears Discount for Licensee Employees.....	40
9.17	Licensee Discount for Sears Employees.....	40
9.18	Sears Identification Cards.....	40
9.19	Licensee Identification Cards.....	40
9.20	Removal of Employees.....	41
ARTICLE 10. LICENSEE'S SUPPLIERS, PURCHASES AND PAYMENTS.....		41
10.1	Purchase in the Name of Licensee.....	41
10.2	Notification to Supplier.....	41
10.3	Invoices Issued in Error.....	41
10.4	Prompt Payment of Invoices.....	42
10.5	Accounts Payable Report.....	42
10.6	Withholding and Payment.....	42
10.7	Business Fees and Taxes.....	42
10.8	Supplier Agreements.....	43
ARTICLE 11. INSURANCE.....		43
11.1	Licensee's Property and Liability Insurance.....	43
11.2	Additional Insured.....	44
11.3	Waiver of Subrogation.....	45
11.4	Evidence of Insurance.....	45
11.5	Sears Approval.....	45
11.6	Failure to Insure, Cancellation.....	45
ARTICLE 12. COMMISSION, FEES AND REMITTANCE.....		45
12.1	Commission.....	45
12.2	Maintenance and Administration Fee.....	46
12.3	Sales Tax.....	46
12.4	Payment Settlement Process.....	46
12.5	Interest on Overdue Amounts.....	47
ARTICLE 13. SECURITY FOR PAYMENT AND FINANCIAL COVENANTS.....		47
13.1	Setoff.....	47
13.2	Lien.....	47
13.3	No Lien on Sears Assets.....	48
13.4	Creditor Non-Interference Agreement.....	48
13.5	Financial Covenants.....	48

ARTICLE 14. GOVERNANCE, COMMITTEES AND SUPPORT .....	48
14.1 Executive Committee and Governing Principles .....	48
14.2 Operational Committee .....	49
14.3 Sears Support .....	50
ARTICLE 15. RECORD KEEPING, REPORTING, MONITORING & AUDITING .....	50
15.1 Point of Sale Register System .....	50
15.2 Licensee Reporting .....	51
15.3 Accounting Records .....	51
15.4 No Waiver or Prejudice .....	51
15.5 Audit .....	51
15.6 Notice of Collective Agreements and Negotiations .....	52
ARTICLE 16. TRADEMARK LICENSE .....	52
16.1 Grant of Trademark License .....	52
16.2 Use of Trademark .....	52
16.3 Prior Approval on Use of Sears Trademark .....	53
16.4 Advertising of Sears Trademark .....	53
16.5 Restrictions on Use of the Sears Trademark by Licensee .....	53
16.6 Ownership of Trademarks .....	54
16.7 Remedies for Unauthorized Use .....	54
16.8 Trademark Owner's Remedies .....	54
16.9 Changes to Sears Trademark .....	54
ARTICLE 17. GOODWILL AND INTELLECTUAL PROPERTY .....	55
17.1 Goodwill Generated by the Operation of the Concession .....	55
17.2 Sears Intellectual Property .....	55
17.3 Licensee Intellectual Property .....	56
17.4 Establishment of New Intellectual Property Rights .....	56
17.5 Protection of Intellectual Property .....	57
17.6 Residual Rights .....	57
ARTICLE 18. CONFIDENTIAL INFORMATION .....	57
18.1 Customer Lists, Customer Information; Sales Information .....	57
18.2 Sears Confidential Information .....	58
18.3 Licensee's Confidential Information .....	58
18.4 No Disclosure of Confidential Information .....	58
18.5 Protection of All Sears Confidential Information .....	59
18.6 Restricted Use of Confidential Information .....	59
18.7 Maintenance of Confidential Information .....	59
18.8 Return of Confidential Information .....	59
ARTICLE 19. INDEMNITY AND LIMITATION OF LIABILITY .....	59
19.1 Sears's Indemnity .....	59
19.2 Licensee's Indemnity .....	61
19.3 Notification of Third-Party Claims .....	62
19.4 Limitation of Liability .....	62

ARTICLE 20. NON-SOLICITATION AND NON-COMPETITION DURING THE TERM .....	62
20.1 Non-Solicitation of Customers .....	62
20.2 Non-Solicitation of Employees by Sears .....	63
20.3 Non-Solicitation of Employees by Licensee .....	63
20.4 Non-Competition During the Term .....	63
ARTICLE 21. CHANGES TO CONCESSION .....	64
21.1 Reduction of Designated Channels or Designated Markets.....	64
21.2 Reduction of Designated Stores by Sears .....	64
21.3 Reduction of Designated Stores by Licensee .....	64
21.4 Increase of Designated Stores.....	64
ARTICLE 22. ASSIGNMENT AND CHANGE OF CONTROL .....	64
22.1 Assignment by Sears .....	64
22.2 Assignment by Licensee .....	65
22.3 Change of Control.....	65
22.4 Right of First Offer .....	65
22.5 Right of First Refusal .....	65
ARTICLE 23. DEFAULT AND TERMINATION.....	66
23.1 No Fault Termination .....	66
23.2 Termination Due to Event of Default.....	66
23.3 Events of Default by Licensee .....	66
23.4 Bankruptcy Event.....	68
ARTICLE 24. SOFTWARE AND DATA.....	70
24.1 Licensee Software Escrow.....	70
24.2 List of Licensee Software.....	70
24.3 Concession Data .....	71
ARTICLE 25. AFTER TERMINATION.....	71
25.1 Surrender .....	71
25.2 Withholding of Remittance .....	72
25.3 Disengagement Costs.....	72
25.4 Licensed Area Restoration Costs .....	72
25.5 Protected Asset Values.....	72
25.6 Option to Transfer Assets .....	72
25.7 Option to Assign Contracts .....	74
25.8 Licensee Work-in-Progress Put Option.....	74
25.9 Post-Termination Transfer Further Assurances .....	74
25.10 Transition Assistance.....	75
25.11 Option to Acquire Software License.....	75
25.12 Concession Data .....	76
25.13 Licensee Non-Competition After Termination .....	76
25.14 Non-Solicitation of Customers .....	77
25.15 Non-Solicitation of Employees by Sears .....	77

---

25.16 Non-Solicitation of Employees by Licensee .....	77
25.17 Sears Business After the Term .....	77
ARTICLE 26. REPRESENTATIONS, WARRANTIES AND COVENANTS .....	78
26.1 Representations and Warranties of Licensee .....	78
26.2 Representations and Warranties of Sears .....	79
26.3 Nature and Survival .....	79
ARTICLE 27. CONDITIONS PRECEDENT .....	80
27.1 Conditions Precedent.....	80
ARTICLE 28. GENERAL MATTERS .....	80
28.1 Enurement .....	80
28.2 Notices.....	80
28.3 Time of Essence .....	81
28.4 Failure to Give Notice .....	81
28.5 Independent Contractor .....	81
28.6 Not a Lease .....	82
28.7 Independent Legal Advice .....	82
28.8 Further Assurances .....	82
28.9 Approvals and Consents.....	82
28.10 Announcements.....	82
28.11 Currency .....	82
28.12 Invalidity of Provisions .....	82
28.13 Entire Agreement.....	83
28.14 Survival .....	83
28.15 No Representations .....	83
28.16 Waiver, Amendment .....	83
28.17 Governing Law.....	84
28.18 Applicable Law.....	84
28.19 Cumulative Remedies.....	84
28.20 Injunctive Relief .....	84
28.21 Counterparts/Facsimile.....	84
28.22 Language.....	84



## **SEARS BRANDED CONCESSION AGREEMENT**

**BRAND NAME: Sears Home Services / Services résidentiels Sears**

**EFFECTIVE DATE: March 2, 2013**

**THIS AGREEMENT is made as of the 20<sup>th</sup> day of December, 2012,**

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

**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 -**

**SHS SERVICES MANAGEMENT INC.**, a corporation incorporated under the laws of Canada, having its head office in the City of Toronto, Province of Ontario

**("Licensee")**

### **RECITALS:**

Sears is a national retailer offering products and services to its Customers through various channels including retail stores, free standing speciality stores, catalogues, direct marketing media and the internet.

Licensee has represented to Sears that, upon the Effective Date, Licensee will be fully qualified, experienced, licensed, capitalized, staffed and equipped to successfully establish and operate a business for the purpose of procurement, presentation, merchandising, marketing, provision and sale of the products and services contemplated by this Agreement.

Sears has approved Licensee to operate the Concession business selling Products and Services using the Sears Trademark under the Brand Name.

In consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties have entered into this Agreement.

### **ARTICLE 1. INTERPRETATION**

#### **1.1 Definitions**

The following words and phrases used in this Agreement (including, for greater certainty, the Schedules attached hereto) shall have the following meanings:

- (a) **"Accounting Principles"** means accounting principles generally accepted in Canada as contemplated by the handbook of the Canadian Institute of Chartered

---

Accounts (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 to the Licensee or Sears, as the case may be.

- (b) "Agreement" means this agreement and all schedules attached to this agreement, in each case as they may be amended or supplemented from time to time, and the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this agreement and unless otherwise indicated, references to articles and sections are to articles and sections in this agreement.
- (c) "Affiliate" has 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.
- (d) "Annual Performance Guarantees" means, for each Fiscal Year, the Guaranteed Gross Revenue for such Fiscal Year and the Card Share Guarantee for such Fiscal Year.
- (e) "Annual Reconciliation Report" has the meaning given to it in section 12.4.
- (f) "Annual Service Level Guarantees" has the meaning given to it in Schedule "J".
- (g) "Annual Service Level Credit" means a Service Level Credit payable as a result of a Service Level determined on an annual basis.
- (h) "Applicable Law" means, with respect to any Person, property, transaction, event or course of conduct, all applicable laws, statutes, rules, by-laws and regulations, regulatory policies and all applicable official directives, orders, judgments and decrees of Governmental Authorities.
- (i) "Asset Transfer Agreement" means the Asset Transfer Agreement between Sears and Licensee dated of even date herewith.
- (j) "Bankruptcy Event" has the meaning given to it in section 23.4.
- (k) "Brand Name" means Sears Home Services / Services résidentiels Sears, under which the Concession will be operated.
- (l) "Building" means that part of any building in which a Designated Store is located.
- (m) "Business Day" means a day other than a Saturday or Sunday or any other day that is not a business day for Sears headquarters staff.
- (n) "CAM Contribution" has the meaning given to it in section 5.31.

- (o) **"Card Share"** means the percentage of Gross Revenue and applicable Sales Tax transacted on a Sears Card.
- (p) **"Card Share Guarantee"** means the Card Share Guarantee set out in Schedule "K".
- (q) **"Card Share Guarantee Credit"** has the meaning given to it in Schedule "K".
- (r) **"Card Share Incentive Bonus"** has the meaning given to it in Schedule "K".
- (s) **"Change of Control"** means, with respect to Licensee,
  - (i) a Person or group becomes the beneficial owner, directly or indirectly, of more than fifty percent (50%) of the total voting power of the Licensee;
  - (ii) the Licensee merges, amalgamates, consolidates, acquires, is acquired by, or otherwise combines with any other Person other than an Affiliate; or
  - (iii) the Licensee sells all or substantially all of its assets to a Person that is not an Affiliate of the Licensee.
- (t) **"Claim"** means claim, action, lawsuit, demand, cause of action, judgment, fine, penalty, Loss, or proceeding, whether actual or alleged.
- (u) **"Commission"** has the meaning given to it in section 12.1.
- (v) **"Commission Guarantee Adjustment"** has the meaning given to it in section 12.1
- (w) **"Commission Rebate"** has the meaning given to it in section 12.1.
- (x) **"Competitor"** means a business operating in Canada that sells products and services any of which are substantially the same as any of the Products and Services to retail customers and that has any of the following characteristics: (i) is present in three or more provinces; (ii) has annual sales of Products and Services of more than \$100 million; (iii) has securities listed on a recognized securities exchange; or (iv) is an Affiliate of a Person listed on a recognized securities exchange. For greater certainty and without limitation, "Competitor" includes retailers operating under the following banners: Best Buy, Brault & Martineau, Canadian Tire, Costco, Future Shop, Home Depot, Home Hardware, Target, Leon's, Lowes, Rona, The Bay, Wal-Mart.
- (y) **"Concession"** means the business operated by the Licensee selling the Products and Services through the Designated Channels and at the Licensed Areas, under the Brand Name, in accordance with the terms and conditions of this Agreement.
- (z) **"Concession Employees"** means the employees of the Licensee who are involved in the operation of the Concession

- 
- (aa) "Concession Website" has the meaning given to it in section 6.9.
  - (bb) "Customer Deposits" has the meaning given in section 25.6.
  - (cc) "Customers" means any Person or Persons who avail themselves of any product and/or service offered by the Licensee pursuant to this Agreement.
  - (dd) "Designated Channels" means the channels, as set forth in the attached Schedule "A", within which the Licensee is permitted to operate the Concession or such other channels as may be mutually agreed by the Parties.
  - (ee) "Designated Market" means the geographical location of a retail market designated by Sears, as set forth in the attached Schedule "A", in which the Licensee is permitted to operate the Concession or such other markets as may be mutually agreed by the Parties.
  - (ff) "Designated Stores" means the retail stores designated by Sears, as set forth in the attached Schedule "A", in which the Licensee is permitted to operate the Concession.
  - (gg) "Effective Date" means 11:59 pm (Toronto time) on the later of the date indicated as the "Effective Date" on the first page of this Agreement, or the date on which the conditions precedent set out in section 27.1 have occurred or, where applicable, have been waived.
  - (hh) "Event of Default" has the meaning given to it in section 23.3.
  - (ii) "Executive Committee" has the meaning given to it in section 14.1.
  - (jj) "Financial Covenants" means the financial covenants referenced in section 13.5.
  - (kk) "Fiscal Month" means a period of time, being a month of either four weeks or five weeks as determined in accordance with the "4-5-4 Calendar" guidelines established by the National Retail Federation of the United States. The first Fiscal Month of the Term shall commence on the Effective Date and end on the last day of the month established according to such 4-5-4 Calendar, and the last Fiscal Month of the Term shall end on the last day of the Term.
  - (ll) "Fiscal Quarter" means a period of time, the first Fiscal Quarter commencing on the first day of the Term, and ending at the end of the next third, sixth, ninth or twelfth Fiscal Month of Sears in such Fiscal Year. The last Fiscal Quarter shall end on the last day of the Term.
  - (mm) "Fiscal Year" means a period of time, the first Fiscal Year commencing on the first day of the Term, and ending on the Saturday falling closest to January 31 in each year immediately following the first day of the Term. Each Fiscal Year thereafter shall consist of consecutive periods of twelve (12) Fiscal Months, but the last Fiscal Year of the Term, whether or not it is twelve (12) Fiscal Months, shall terminate on the expiry or earlier termination of this Agreement. If, however, Sears considers it necessary or convenient for Sears purposes, Sears may at

any time and from time to time, by written notice to the Licensee, specify a date from which each subsequent Fiscal Year is to commence, and in such event, the then current Fiscal Year shall terminate on the day immediately preceding the commencement of such new Fiscal Year, and the appropriate adjustments shall be made between the Parties.

- (nn) **"Force Majeure"** means any occurrence which delays, hinders or prevents either Party hereto from the performance of any term, covenant or act required hereunder which is not the fault of the Party delayed in performing work or doing acts required under the terms of this Agreement, including: strikes or walkouts not caused by Sears or Licensee's intentional act; labour troubles; industrial disturbances; inability to procure materials or services; failures, fluctuations or non-availability of electric power, heat, light, ventilation or air-conditioning; governmental laws, regulations or controls; riots; civil commotions; insurrections; anarchy; acts of a foreign enemy; revolution; acts of sabotage; acts of terrorism, bioterrorism, or cyber-terrorism; invasion; rebellion; military or usurped power; war (whether declared or not) or warlike operations; blockades; epidemics; washouts; nuclear and radiation activity or fallout; explosions; fires; acts of God (including without limitation, earthquakes, blizzards, floods, hurricanes, lightning, storms and other natural disasters); and damage caused by any aircraft.
- (oo) **"Furnishings"** means, without limiting the generality of the foregoing, moveable trade fixtures, counters, shelves, furniture and equipment, but shall not include leasehold improvements which are affixed in or about a Licensed Area.
- (pp) **"Furniture and Equipment"** has the meaning given to it in section 25.6.
- (qq) **"Governing Principles"** has the meaning given to it in section 14.1.
- (rr) **"Governmental Authority"** means any government, parliament, legislature, or any regulatory authority, agency, commission, board or rulemaking entity of any government, parliament or legislature, or any court of law, regulatory or rulemaking entity having or purporting to have jurisdiction in the relevant circumstances, or any Person acting or purporting to act under the authority of any of the foregoing.
- (ss) **"Gross Revenue"** means the total revenue (not including Sales Tax) generated from all sales, services and other business conducted by any means in, on, at, from or through the Designated Channels by the Licensee. Without limiting the generality of the foregoing, Gross Revenue includes:
  - (i) all amounts received or receivable for the sale or barter of the Products and Services, goods, wares, merchandise and other items;
  - (ii) sales of all merchandise sold to other retailers or to wholesalers;
  - (iii) all amounts received or receivable for services performed or rendered;
  - (iv) the amount of all orders taken or received in a Licensed Area, whether such orders are filled elsewhere, and whether through a catalogue, internet or otherwise, and whether in person, or by mail, e-mail or by

facsimile transmission, or by means of any electronic, magnetic, digital, telecommunication, telephone, video, computer, optical, internet, wireless or other technology-based system or any other system, whether existing now or developed in the future, or by any other means of communication or telecommunication;

- (v) all deposits given on services or goods purchased and not refunded to Customers;
- (vi) the amounts received from the sale of all gift certificates and gift cards at the time they are redeemed;

in each case whether such sales or other receipts or receivables are evidenced by cheque, cash, credit, credit card, debit card, automated teller machine, charge account, gift cards, merchandise certificates, rewards program redemption, exchange or otherwise and whether such sales are made by means of mechanical or other vending devices within a Licensed Area. There shall be no deduction made for bank charges or uncollected or uncollectible credit accounts or charges made by collection agencies and no allowances shall be made for bad debts]. In addition, each charge or sale made on instalment or credit shall be treated as a sale for the full selling or rental price in the month during which such charge or sale is made, irrespective of the time when the Licensee receives payment (whether full or partial) therefor. All monies or other things of value accepted or received by or on behalf of the Licensee not herein specifically excluded or deducted from Gross Revenue shall be deemed to be included in Gross Revenue. For the avoidance of doubt, Gross Revenue does not include revenue generated on the sale or provision of financing.

- (tt) **"Guaranteed Gross Revenue"** has the meaning given to it in Schedule "K".
- (uu) **"Guidelines For Licensed Business on the Internet"** has the meaning given to it in Schedule "I".
- (vv) **"Hazardous Substance"** has the meaning given to it in section 5.22.
- (ww) **"Information"** means material, information or data in any form or notation and however stored, fixed, expressed or embodied, if embodied in a material, tangible or electronic form, including all material, information and data of a scientific, technical or business nature including all trade secrets and other proprietary or confidential information; non-proprietary know-how; standards and specifications; techniques, methods, process and know-how technical and statistical data; compilations of information and data and computer databases; computer software; trade-marks; research, developmental, demonstration and engineering work; designs, formulas, procedures, innovations, discoveries, inventions, processes, technological developments, methods, techniques and systems; information relating to computer hardware, information technology, infrastructure and requirements and unpublished patent information; systems management and performance data; and all information and data of a business nature including information and data related to past, present and prospective: businesses, products and services, internal management and finances, marketing plans and techniques, price lists, customers, employees, operations,

facilities, assets and programs; and all confidential information. Information will be considered as such whether or not it is protected by or embodies any Intellectual Property Right and whether or not it is in human or machine readable form.

(xx) "Initial Term" has the meaning given to it in section 2.1.

(yy) "Intellectual Property Rights" means:

- (i) any and all proprietary rights anywhere in the world provided under: (i) patent law; (ii) copyright law (including moral rights); (iii) trade-mark law; (iv) design patent or industrial design law; (v) semi-conductor chip or mask work or integrated circuit topography law; or (vi) any other statutory provision or common law principle applicable to this Agreement, including trade secret law, which may provide a right in either hardware, proprietary software, content, documentation, confidential information, trade-marks, ideas, formulae, algorithms, concepts, inventions, processes or know-how generally, or the expression or use of such hardware, proprietary software, content, documentation, confidential information, trade-marks, ideas, formulae, algorithms, concepts, inventions, processes or know-how;
- (ii) any and all applications, registrations, licenses, sub-licenses, franchises, agreements or any other evidence of a right in any of the foregoing; and
- (iii) all the licenses and waivers and benefits of waivers of the intellectual property rights set out in (i) and (ii) above, all future income and proceeds from the intellectual property rights set out in (i) and (ii) above, and all rights to damages and profits by reason of the infringement or violation of any of the intellectual property rights set out in (i) and (ii) above.

(zz) "Initial Remodelling Commitment" has the meaning given to it in Schedule "D".

(aaa) "Licensed Area" means the physical space in Designated Stores occupied by the Licensee in which the Licensee shall operate the Concession.

(bbb) "Licensee Intellectual Property" has the meaning given to it in section 17.3.

(ccc) "Licensee Obligations" has the meaning given to it in section 10.6.

(ddd) "Licensee's Confidential Information" has the meaning given to it in section 18.3.

(eee) "Licensee's Financial Obligations" as the meaning given to it in section 15.5.

(fff) "Licensee's Representatives" means Licensee's agents, assigns, contractors, designees, representatives, servants and sub-contractors.

(ggg) "Licensee Software" means the software used by Licensee for purposes of operation of the Concession, including specifically the software used to store

data regarding customers, contractors, suppliers, project management and work-in-progress.

- (hhh) **"Losses"** means all out-of-pocket costs, damages, judgments, penalties, fines, losses and expenses, including reasonable legal fees, disbursements and court costs.
- (iii) **"Maintenance and Administration Fee"** has the meaning given to it in section 12.2;
- (jjj) **"Marketing Liaison"** has the meaning given to it in section 14.3.
- (kkk) **"Marketing Plan"** means a plan for marketing by Licensee of the Products and Services in a Fiscal Year, and the budgeting of associated costs, as approved by Sears in accordance with section 6.10.
- (lll) **"Merchant Fee"** has the meaning given to it in section 7.7.
- (mmm) **"Minimum Marketing Commitment"** has the meaning given to it in section 6.1
- (nnn) **"Net Sales"** means Gross Revenue less returns, refunds, credits and allowances paid or allowed by Licensee in accordance with this Agreement including, for greater certainty, compensation paid to Customers to settle complaints and refunds paid to Customers.
- (ooo) **"New Intellectual Property"** has the meaning attributed to that term in section 17.4.
- (ppp) **"Normal Business Hours"** has the meaning attributed to that term in section 9.1.
- (qqq) **"Notices"** has the meaning attributed to that term in section 28.2.
- (rrr) **"Parties"** means Sears and Licensee and **"Party"** means one of Sears or Licensee.
- (sss) **"Payment Default"** has the meaning attributed to that term in paragraph 23.3(d).
- (ttt) **"Person"** means an individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, regulatory body or agency, government or governmental agency, authority or entity however designated or constituted.
- (uuu) **"Personal Information"** has the meaning attributed to that term in section 9.7.
- (vvv) **"POS"** means the point of sale register system in the Licensed Area to record the sales generated by the Products and Services in Designated Stores.
- (www) **"Post-Termination Transfer"** has the meaning given to it in section 25.9.
- (xxx) **"Privacy Acknowledgment"** means the form attached as Schedule "G".



- (yyy) **"Products and Services"** means the products and services that are set out in Schedule "B" and such related products and services that may be reasonably inferred by the Brand Name.
- (zzz) **"Property Tax Contribution"** has the meaning given to it in section 5.30.
- (aaaa) **"Quarterly Service Level Credit"** means a Service Level Credit payable as a result of a Service Level determined on a quarterly basis..
- (bbbb) **"Renewal Term"** has the meaning given to it in section 2.2.
- (cccc) **"Sales Tax"** means any goods and services taxes, harmonized sales taxes, business transfer taxes, value-added taxes, multi-stage sales taxes, sales, use or consumption taxes and any like taxes on goods or services provided by or on behalf of Sears, including, without limitation, any goods and services tax and harmonized sales tax exigible under Part IX of the *Excise Tax Act* (Canada).
- (dddd) **"Sears Advertising Expenses"** has the meaning given to it in section 6.5;
- (eeee) **"Sears Auditor"** has the meaning given to it in section 15.5.
- (ffff) **"Sears Card"** means any credit card issued to Sears Customers which is branded with a trade-mark owned by or licensed to Sears.
- (gggg) **"Sears Confidential Information"** has the meaning given to it in section 18.2.
- (hhhh) **"Sears Intellectual Property"** has the meaning given to it in section 17.2.
- (lll) **"Sears Rewards Program"** means the customer loyalty and other related programs provided to Sears customers, including for purchases using the Sears Card, as the same may be amended or revised from time to time by Sears.
- (jjj) **"Sears Serviced Products"** has the meaning given in Schedule "M".
- (kkkk) **"Sears Trademark"** means the trademark SEARS and any other or additional trademarks as set forth in the attached Schedule "C", or any other trademark or name of Sears which may be authorized, in writing, for use from time to time, together with such type styles, colour schemes and design matter as Sears may designate in writing from time to time, including the Brand Name.
- (lll) **"Secured Assets"** has the meaning given to it in section 13.2.
- (mmmm) **"Service Level Standards"** has the meaning given to it in Schedule "J".
- (nnnn) **"Store Lead"** means (i) a transaction made at a Designated Store to purchase any Product or Service; (ii) an appointment made at a Designated Store to enter into a transaction at a later time to purchase any Product or Service; (iii) an appointment made at a Designated Store for Licensee to discuss Products and Services with a potential Customer; or (iv) an invitation made at a Designated Store to the Licensee to contact a potential Customer for the purposes of making an appointment to discuss Products and Services.

(oooo) "Store Reduction Commission Adjustment" has the meaning given to it in section 12.1.

(pppp) "Telephone Costs" has the meaning given to it in section 5.19.

(qqqq) "Term" means the Initial Term together with all Renewal Terms.

(rrrr) "Third-Party Claim" has the meaning given to it in section 19.3.

(ssss) "Trademark Owner" means the owner of a Sears Trademark.

(tttt) "Transferable Assets" has the meaning given to it in section 25.6.

(uuuu) "Transferable Contacts" has the meaning given to it in section 25.7.

(vvvv) "Utilities" has the meaning given to it in section 5.16.

(www) "Working Inventory" has the meaning given in section 25.6.

(xxxx) "Work-in-Progress" has the meaning given in section 25.6.

## 1.2 Schedules

The following are the schedules attached to and form part of this Agreement:

Schedule "A"	-	Designated Channels, Markets and Stores
Schedule "B"	-	Products and Services
Schedule "C"	-	Sears Trademarks
Schedule "D"	-	Financial Commitments
Schedule "E"	-	Understanding of Employment/Engagement
Schedule "F"	-	Licensee Reporting
Schedule "G"	-	Privacy Acknowledgment
Schedule "H"	-	Governing Principles
Schedule "I"	-	Guidelines For Licensed Business on the Internet
Schedule "J"	-	Service Level Standards
Schedule "K"	-	Performance Guarantees
Schedule "L"	-	Protected Asset Values
Schedule "M"	-	Product Servicing and Repair
Schedule "N"	-	Financial Covenants Certificate

## 1.3 Interpretation

- (a) **Headings.** The division of this Agreement into articles, sections, and schedules and the insertion of headings are for convenience of reference only and shall not in any way affect the meaning or interpretation of this Agreement.
- (b) **Section References.** Unless the context otherwise requires, references in this Agreement to an article, section or schedule, by number or letter, refer to the article, section or schedule, respectively, bearing that designation in this Agreement.

- (c) **Inclusive Terms.** Wherever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation" and the words following "include", "includes" or "including" shall not be considered to set forth an exhaustive list. The words "hereof", "herein", "hereto", "hereinafter", "hereunder", "hereby" and similar expressions shall be construed as referring to this Agreement in its entirety and not to any particular section or other portion of it.
- (d) **Singular, Plural, Gender and Derivations.** In this Agreement words importing the singular number include the plural and vice versa and words importing gender include the masculine and feminine genders and the neuter. If a term is defined in this Agreement, a derivative of that term shall have the corresponding meaning.
- (e) **Date for any Action.** In the event that any date on which any action is required to be taken under this Agreement by any of the Parties hereto is not a Business Day in the place where the action is to be taken, such action shall be required to be taken on the next succeeding day which is a Business Day in such place.
- (f) **Deemed Currency.** In the absence of an express designation of any currency or dollar amount in any provision hereof, any undescribed currency or dollar amount herein shall be deemed to refer to Canadian dollars.
- (g) **Statute References.** Any reference in this Agreement to a statute or any provision thereof shall include any and all rules, regulations and published policies promulgated thereunder affecting or relating to such statute or provision and any and all amendments or substitutions made to such statute, rule, regulation or published policy prior to the date hereof and hereafter from time to time.
- (h) **Interpretation Not Affected by Party Drafting.** The Parties hereto acknowledge that their respective legal counsel have participated in settling or have reviewed the terms of this Agreement, and the Parties hereby agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party will not be applicable in the interpretation of this Agreement.
- (i) **Accounting References.** All accounting definitions, provisions and procedures shall, for all purposes of this Agreement, have the meanings ascribed to them by and shall be consistent with Accounting Principles.
- (j) **Rules of Construction.** In the event of any conflict between provisions in this Agreement, the more specific provisions shall prevail and govern over more general provisions.

---

**ARTICLE 2.**  
**TERM**

**2.1 Initial Term**

Subject to the terms and conditions of this Agreement, the term of this Agreement shall begin on the Effective Date and shall end on the day scheduled to be the last day of the 2022 Fiscal Year (the "Initial Term").

**2.2 Renewal Terms**

The term of this Agreement shall be automatically renewed for additional terms of three Fiscal Years each (each, a "Renewal Term") unless, no earlier than 18 months prior to the end of the then-current term, and no later than 11 months prior to the end of the then-current term, Sears provides notice to Licensee that it desires for the term not to be so renewed, provided that Sears shall not provide such notice to Licensee during a Fiscal Year following a Fiscal Year in which the Guaranteed Gross Revenue was achieved.

**2.3 Overholding**

If the Agreement has not been renewed in accordance with section 2.2 and neither Party has acknowledged to the other that the Agreement has terminated, then the Agreement will be deemed to operate on a month-to-month basis and no deemed renewal may be imputed from the conduct of the Parties in support of the month-to-month operations of the Concession.

**ARTICLE 3.**  
**GRANT OF CONCESSION**

**3.1 Grant of Concession**

Sears hereby grants to Licensee the non-transferable right to operate the Concession through the Designated Channels, in the Designated Markets, on the terms and conditions set out in this Agreement.

**3.2 Use of Brand Name**

In connection with the presentation and marketing of the Concession to Customers, the Licensee shall use the Brand Name and only the Brand Name and shall not change, alter or in any way modify the Brand Name without the prior written consent of Sears, which consent may be withheld in the sole discretion of Sears.

**3.3 Exclusivity**

Unless Licensee and Sears agree otherwise, Sears will not grant the right to any third party to operate a concession similar to the Concession selling the same or similar products and services under the Brand Name as those Products and Services identified as exclusive to the Concession in Schedule "B".

---

**ARTICLE 4.**  
**PRODUCTS AND SERVICES**

**4.1 Assortment of Products and Services**

The assortment of Products and Services offered for sale by Licensee through the Concession shall be similar in breadth and depth to those offered by other businesses of a similar nature to the Concession, and shall reflect the needs of the Customers in accordance with the Governing Principles.

**4.2 Quantity of Products**

The quantity of inventory of the products offered for sale by Licensee through the Concession shall be sufficient to ensure that the Products and Services are presented in each Licensed Area in a professional and competitive manner and to attempt to achieve maximum sales in each individual Designated Channel and in each individual Licensed Area, all in accordance with the Governing Principles.

**4.3 Quality of Products and Services**

The Products and Services offered for sale by Licensee through the Concession shall be in compliance with Applicable Law, shall be of a high quality consistent with the Governing Principles, and shall be in compliance with the Service Level Standards.

**4.4 Pricing of Products and Services**

The pricing of Products and Services offered for sale by the Licensee through the Concession shall be established by Licensee (i) in compliance with Applicable Law; (ii) so that Products and Services are priced competitively to other businesses of a similar nature to the Concession; and (iii) in a manner that supports Sears's position in the marketplace as a retailer offering customer recognized superior value.

**4.5 Prohibited Products and Services**

Licensee shall not permit within all or any part of the Licensed Area the display of (A) any illegal substances; (B) paraphernalia commonly used in the use or ingestion of illicit drugs, such as any roach clip, water pipe, bong, toke, coke spoon, cigarette papers, hypodermic syringe or other; or (C) any goods, services, items or things which, in Sears's sole opinion, are (1) inconsistent with the image of a first class, family-oriented department store, or (2) pornographic, lewd, vulgar, obscene, graphically violent, offensive or immoral (including, without limitation, any suggestive, "adult" newspaper, book, magazine, picture, representation or merchandise of any kind, nude photographs, sexual devices, objects depicting genitalia and any similar items).

**4.6 Product Servicing and Repair**

In accordance with Schedule "M", Licensee shall exclusively use the services of Sears for servicing and repair of the Products identified in Schedule "M", all in accordance with the terms and conditions of Schedule "M". Unless otherwise agreed, the prices in the price list for servicing referred to in Schedule "M" will be no higher than the cost to Sears to service the Sears Serviced Products, plus 10%.

---

**ARTICLE 5.**  
**LICENSED AREAS**

**5.1 Right to Occupy Licensed Areas**

Sears hereby grants to Licensee the right to occupy the Licensed Area in each Designated Store identified in Schedule "A", as such Licensed Areas and Designated Stores may be changed from time to time in accordance with this Agreement, for the sole purpose of operating the Concession, all subject to the terms and conditions set out in this Agreement.

**5.2 Use of the Licensed Area**

The Licensee shall, throughout the Term, use the whole of the Licensed Area in each Designated Store and shall therein, in good faith, continuously, actively and diligently conduct the business of the Concession. The Licensee will not use or permit or suffer the use of the Licensed Area or any part thereof for any business or purpose other than solely for the purpose of operating the Concession.

**5.3 Remodelling, Reconfiguration and Relocation of Licensed Areas by Sears**

The Licensee hereby acknowledges that Sears regularly reviews its marketing, merchandising, retailing and development plans, that plans for such marketing, merchandising, retailing and development may change from time to time and that such changes may necessitate a change of decor, location, dimensions and/or amount of space of the Licensed Areas. Accordingly, Sears has the right, subject to the terms and conditions of this Agreement, to (i) require remodelling of a Licensed Area at Licensee's cost, except where otherwise agreed by Sears; (ii) change the location of a Licensed Area in a Designated Store; (iii) change the dimensions of a Licensed Area; and/or (iv) change the amount of space designated to a Licensed Area.

**5.4 Initial Construction**

Sears shall, at its expense, except as set out hereunder, provide, construct and install the following with respect to Licensed Areas in Designated Stores only:

- (a) erect, finish, prime and paint all perimeter and interior standard walls and doors as requested on Licensee supplied plans.
- (b) standard heating/air conditioning ducts and sprinklers required by local building code and as approved by Sears;
- (c) suspended ceiling at the height of, and in keeping with, the ceiling generally installed throughout the Designated Store;
- (d) standard floor coverings appropriate to, and in keeping with, the general standards of decor for the Designated Store;
- (e) the boxing, finishing and painting of columns within the Licensed Areas;
- (f) standard in-ceiling lighting as per the general standard of lighting for the Designated Store;

- (g) standard electrical wiring to and within the Licensed Areas, including only Designated Store standard switches, receptacles and covers; and,
- (h) water lines and drain lines for sinks up to the exterior wall of the Licensed Areas.

#### **5.5 Licensee Furnishings and Leasehold Improvements**

Licensee shall, at its sole expense, furnish and install such Furnishings and leasehold improvements as are suitable, desirable and necessary for the professional operation of the Concession in all Licensed Areas. Such Furnishings and leasehold improvements located in Designated Stores shall be in keeping with the Designated Stores' appearance. All such Furnishings, leasehold improvements, operating supplies, materials, products and merchandise shall be subject to the written approval of Sears. Except only for those specific leasehold improvements and Furnishings which Sears has agreed to provide at Sears's cost, Licensee shall, at its expense, be responsible for the cost of the supply, construction and installation of all Furnishings and leasehold improvements to the Licensed Areas in Designated Stores as requested by Licensee and approved in writing by Sears, including:

- (a) the cost to raise, lower or change the construction of the ceiling above or below Sears store standard height;
- (b) the cost to extend, shorten, replace or move existing sprinkler systems and heating/air conditioning ducts required to accommodate Licensee's request to raise, lower or change the construction of Sears store standard selling floor ceilings;
- (c) the additional cost of, and any additional installation costs of the requested and approved non-Sears standard floor coverings;
- (d) the cost of, and installation cost of, any lighting, including track lighting, spot lighting, pot lighting and flood lighting which is in addition to the Sears store standard ceiling lighting;
- (e) the cost of, and installation cost of, any additional leasehold improvements that are particular to, and are required for the operation of the Concession;
- (f) the cost of, construction cost of, and installation cost of, specific trims or decorative treatments to enhance the overall presentation of the Licensed Areas;
- (g) the cost to install the Licensed Area identification lettering / bulkhead signing identifying the Concession to such standard and in such form as Sears shall determine from time to time;
- (h) the cost of, construction cost of, and installation cost of, all plumbing and plumbing fixtures, electrical wiring and computer wiring, data lines and fixtures, that are specifically required for the operation of the Concession; and
- (i) the cost of, construction cost of, and the installation cost of any heating, air conditioning and or air movement fixtures and equipment specifically required for the operation of the Concession including those required by any building code or regulation.

## **5.6 Plans and Drawings**

Licensee shall, at its sole expense, provide all construction, electrical, plumbing and elevation plans and drawings as required by municipalities for all municipal approvals and as required by Sears, in a manner and quantity specified by Sears, for the construction of the Licensed Areas in Designated Stores and the construction, electrical, plumbing and elevation plans and drawings as required by Governmental Authorities for all governmental approvals and permits and by landlords for the construction of the Licensed Areas and the operation of the Concession in free standing retail stores in Designated Markets.

## **5.7 Sears Furnishings and Leasehold Improvements**

Sears, at its sole option, may provide and install certain Furnishings and leasehold improvements for certain individual Licensed Areas in Designated Stores that are, pursuant to this Agreement, the responsibility of the Licensee to provide. Licensee shall upon Sears's written request, supported by copies of the original invoices, pay to Sears, prior to Licensee's operation of the Concession by the Licensee, the actual cost incurred by Sears for the provision and installation of such fixtures in the Licensed Areas. Upon full payment of such invoices by Licensee to Sears the fixtures shall become the property of the Licensee.

## **5.8 Licensed Area Remodelling**

Sears may from time to time require Licensee to, and Licensee shall at its expense, remodel the Licensed Areas with new and/or updated Furnishings and/or leasehold improvements in order to maintain an appropriate overall presentation in keeping with the Designated Stores' presentation either in conjunction with a remodelling of the Designated Stores, the Licensed Areas or at any other time as may be required. Licensee will, within ninety (90) days from the date of receipt of a written notice from Sears, complete such remodelling as required by Sears.

In addition to any expenditures made by Licensee pursuant to the previous paragraph, during the first three Fiscal Years of the Term, Licensee shall spend no less than the Initial Remodelling Commitment set out in Schedule "D" on remodelling Licensed Areas. Such expenditures shall be made in accordance with a plan presented by Licensee and approved by Sears. Licensee shall submit such plan to Sears no later than five months after the Effective Date. If such plan has not been submitted to Sears within such deadline, or the submitted plan has not been approved by Sears by the end of the six-month period after the Effective Date, then Sears shall have the right to produce such a plan and the Initial Remodelling Commitment shall be spent by Licensee in accordance with such plan.

The Licensee shall not make any alterations, improvements, replacements or other modifications to any Licensed Area without the consent of Sears which may be withheld in Sears's sole and absolute discretion.

## **5.9 Relocation and Reconfiguration of Licensed Areas by Sears**

Sears may, upon notice of not less than 60 days, (i) change the location of a Licensed Area in a Designated Store; (ii) change the dimensions of a Licensed Area; and/or (iii) change the amount of space designated to a Licensed Area, provided however that if Sears proposes to reduce the size of a Licensed Area by more than 25% then Licensee will have the option to vacate the Designated Store entirely provided Licensee has provided notice to that effect to Sears no later than 15 days after Licensee's receipt of notice of the space reduction.



If Sears changes the location of a Licensed Area in a Designated Store:

- (a) Sears will endeavour to provide the new Licensed Area location with dimensions, amount of space and location with similar prominence and Customer exposure.
- (b) Provided Licensee's current Furnishings are not shopworn and complement the presentation in the Designated Store and are of the current generation of the Sears-approved presentation for the Licensed Area:
  - (i) Sears shall, at Sears's expense, provide the décor presentation and leasehold improvements in the new location, at the presentation level in keeping with of the Designated Store and the previous Licensed Area; and
  - (ii) Licensee shall, at the Licensee's expense, move and install its existing Furnishings into the new location and shall provide and install any new Furnishings required, in Sears's reasonable opinion, to professionally operate the Concession and professionally present the Products and Services in the new location to the presentation level in keeping with the Designated Store.
- (c) If the Licensee's Furnishings and/or leasehold improvements are shopworn or do not, in Sears's reasonable opinion, complement the Designated Store or are not the current Sears-approved generation of Furnishings required for the presentation of the Concession in the Licensed Area, then the re-location shall be deemed to be a closure of the old location and the opening of a new location for the purposes of the responsibilities and the obligation for the payment of the costs of the re-location for both Parties.

#### **5.10 Relocation and Reconfiguration of Licensed Areas by Licensee**

If a change of location or space is requested or initiated by the Licensee and is approved by Sears, then the Licensee shall be solely responsible for all of the Licensee's and Sears's costs and expenses involved in the expansion or re-location including, moving and/or installing Furnishings and leasehold improvements, and other costs relating to the construction and preparation of the new location.

#### **5.11 Sears Maintenance and Repairs**

Sears will keep and maintain the Designated Stores, including, without limitation, the Licensed Areas, in good order, condition and repair (which shall include, without limitation, decoration and preventative maintenance). For the avoidance of doubt, the Licensed Areas as they are on the Effective Date are deemed to be in good order, condition and repair and in compliance with this provision.

#### **5.12 Licensee Maintenance and Repairs**

The Licensee will keep and maintain the Licensed Area in a neat, tidy and clean condition. Licensee shall maintain, repair, update or replace all Furnishings, leasehold improvements and computer hardware and software to ensure they are in good working order, good repair, to

operate the Concession in a professional and competitive manner. The Licensed Areas as they are on the Effective Date are deemed to be in good order, condition and repair and in compliance with this provision.

#### **5.13 Notice of Incident or Damage**

The Licensee shall notify Sears of any accident, defect, damage or deficiency in any part of any Designated Store, immediately adjacent to a Licensed Area, which comes to the attention of the Licensee, its employees or contractors notwithstanding that Sears may have no obligation in respect thereof.

#### **5.14 Examination of Licensed Areas**

Licensee shall permit Sears or its designate, on such dates and at such times as shall be agreed upon by the Parties, acting reasonably, to examine the Furnishings and leasehold improvements located in any Licensed Area and the Products and Services offered for sale through any Designated Channels in order for Sears to satisfy itself that Licensee is in compliance with its obligations under this Agreement. Licensee shall be entitled to have one or more representatives present during any such examination.

#### **5.15 Control of Building**

Sears will maintain each Designated Store, subject to its exclusive control and management, in such manner as it reasonably determines from time to time. Without limitation, Sears has the right, in its control, management and operation of the Building and by the establishment of rules and regulations and general policies, at all times during the Term with respect to any Designated Store, to:

- (a) obstruct or close off all or any portion of the Designated Store for the purpose of maintenance, repair or construction;
- (b) alter, add to, subtract from, construct improvements to, rearrange, build additional storeys on and construct additional facilities in, on, adjoining or near the Designated Store;
- (c) relocate, rearrange, add to or diminish the facilities and improvements comprising the Designated Store;
- (d) do such things on, or in the Designated Store as required to comply with any Applicable Law with respect to the Designated Store or any part thereof; and
- (e) do such other things on or in the Designated Store as Sears, in the use of good business judgment, determines to be advisable.

The Licensee acknowledges and agrees that if as a result of the exercise by Sears of its rights set out in this section 5.15, but subject to section 5.9, any Designated Store is diminished or altered in any manner whatsoever, Sears is not subject to any liability, nor is the Licensee entitled to any compensation or diminution or abatement of Commission nor is any alteration or diminution of any Designated Store deemed constructive or actual termination of this Agreement, or a breach of any covenant contained in this Agreement.

#### **5.16 Utilities**

Sears shall make available to the Licensed Area in each Designated Store, electricity for normal lighting and miscellaneous power requirements and, in normal quantities, water and other public utilities generally made available to other licensees of concessions in the Designated Store by Sears (the "Utilities"). Sears shall not be responsible for any indirect or consequential damages sustained by the Licensee or others as a result of the failure to provide such services or any act of omission or commission on the part of the persons employed to provide such service. Sears will carry out periodic replacement of Building standard tubes, bulbs and ballasts. With Sears's consent, Licensee may obtain additional utilities in addition to the Utilities. Licensee shall assume the total cost of, and installation cost of, all additional utilities which are required in addition to the Utilities specifically for the operation of the Concession in the Licensed Areas in Designated Stores. Subject to section 5.18, the provision and cost of all additional utilities as required for the operation of the Concession (including heat, light, water, electric current and air conditioning required for the operation of the Concession) shall be at the sole responsibility and expense of the Licensee.

#### **5.17 Energy Conservation**

Licensee shall co-operate with Sears in the conservation of all forms of energy in the Designated Stores, including in the Licensed Areas. Licensee shall comply with all Applicable Laws relating to the conservation of energy affecting the Designated Stores or any part thereof; and promptly comply, at the Licensee's expense, with all reasonable requests and demands of Sears made with a view to such energy conservation. Licensee acknowledges and agrees that Sears shall not be liable or responsible to the Licensee in any way for any Losses, whether direct or consequential, made, suffered or incurred by the Licensee due to any reduction in the services provided by Sears to the Designated Stores or any part thereof as a result of Sears's compliance with such Applicable Laws.

#### **5.18 HVAC**

Sears shall provide climate control to the Licensed Areas during Normal Business Hours to maintain a temperature adequate for occupancy, except during the making of repairs, alterations or improvements, and Sears shall have no responsibility or liability for failure to supply climate control service when stopped as aforesaid or when prevented from so doing by Force Majeure.

#### **5.19 Telephone**

Sears will provide to the Licensee basic telephone service to the Licensed Areas in the Designated Stores provided that the Licensee shall pay to Sears for the cost of such telephone service, including a prorated share of central switchboard expenses, such amount deemed to be as indicated in Schedule "D" ("Telephone Costs"). This cost may be adjusted by Sears, at Sears's sole discretion, acting reasonably, upon thirty (30) days written notice to Licensee. The Licensee may, after requesting and receiving Sears's approval in writing, and at Licensee's sole cost and expense, arrange for the installation of additional direct telephone or information service lines as required for the operation of the Concession.

## **5.20 Elevators & Escalators**

Sears shall furnish, except when repairs, maintenance or replacements are being made, elevator and escalator service during Normal Business Hours, provided that the Licensee and its employees and all other Persons using the same shall do so at their own risk.

## **5.21 Janitorial Services**

Sears will provide janitorial services to the Licensed Area in each Designated Store consistent with the janitorial services generally provided to such Designated Store. Sears shall provide the emptying of wastebaskets, floor cleaning including the vacuuming of carpets, the dry and/or damp mopping of hard surface floors, replacement of store standard equipment light bulbs and the touch-up of and/or periodic re-painting of walls, all to the same level of maintenance as provided to Sears's own selling departments. Sears shall not be responsible for any indirect or consequential damages sustained by the Licensee or others as a result of the failure to provide such services or any act or omission or commission on the part of the persons employed to perform such services. Such work shall be done at Sears's direction without interference by the Licensee or its employees. The Licensee shall be responsible for providing, at the Licensee's sole cost and expense, any additional levels of janitorial or maintenance services that Licensee requires for the professional operation of the Concession or the upkeep of the presentation of the Licensed Areas in the Designated Stores.

## **5.22 Garbage Removal**

Licensee may use the garbage disposal facilities of the Designated Stores in which Licensed Areas are located, to dispose of cardboard and paper trash. The Licensee shall not use the garbage disposal facilities of any Designated Store to dispose of any Hazardous Substance, all of which shall be disposed of by the Licensee in compliance with all Applicable Law at the sole cost and expense of the Licensee.

"Hazardous Substance" means any substance which is hazardous to Persons or property and includes, without limiting the generality of the foregoing: radioactive materials; explosives; substances that, if added to any water, land and/or air, would degrade or alter or form part of a process of degradation or alteration of the quality of that water, land and/or air, to the extent that it is detrimental to its use by human or by any animal, fish or plant; any solid, liquid, gas, micro organism, sound, vibration, ray, heat, radiation, odour or combinations of any of them that, is likely to cause an adverse effect on the natural environment (including air, land and water) and that is present in the environment in a quantity or concentration in excess of regulatory standards, or the presence of which in the environment is prohibited by regulation or is likely to affect the life, health, safety, welfare or comfort of human beings or animals or to cause damage to or otherwise impair the quality of the soil, vegetation, wild life or property; toxic substances; substances declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any Governmental Authority having jurisdiction; any substance the use or transportation of which or the release of which into the environment is prohibited, regulated, controlled or licensed under environmental legislation.

Licensee shall be responsible, at Licensee's sole cost, for the funding of recycling programs (solely with respect to recyclable waste generated by the operation of the Concession) as established under any and all Applicable Law. Licensee shall also register under any and all applicable Canadian federal and/or provincial recycling, environmental or product stewardship

programs and shall be solely responsible for its own costs and compliance with any such programs.

#### **5.23 Sears Product Bags and Boxes**

Sears shall provide, at Sears's expense, Sears standard customer product bags and boxes for use at any Licensed Area point of purchase location, as and when requested by Licensee. Licensee shall be responsible, at Licensee's sole cost, to order all Sears approved customer bags and boxes as required for use by the Concession in any other area or Designated Channel.

#### **5.24 Licensee Operational Supplies**

Licensee shall, at its sole expense, provide all vehicles, tools, equipment, computer hardware and software, supplies and all items as may be necessary for the establishment and ongoing professional operation of the Concession.

#### **5.25 Shipping and Receiving**

Licensee shall follow all rules and regulations formulated by Sears from time to time relating to the delivery of goods and merchandise between the general shipping and receiving areas in the Designated Stores and the Licensed Areas. The Licensee shall inform its suppliers of the times and rules and regulations respecting delivery so as to accommodate the ease of delivery to and from the Designated Stores.

#### **5.26 Prohibited Activities**

Licensee will not use or permit or suffer the use of the Licensed Area, or any part thereof, for any of the following:

- (a) the sale of any good or service other than in furtherance of the Concession;
- (b) the sale or the supply of any goods or services which would, in Sears's opinion:
  - (i) tend to lower the reputation of Sears;
  - (ii) constitute unethical, deceptive or fraudulent advertising or selling procedures or practices;
  - (iii) be objectionable; or
  - (iv) be a nuisance;
- (c) any business which results in a breach of or contravenes the provisions of any leases or agreements by which Sears is bound and the details of which Licensee has been notified of; or
- (d) the use of Licensed Areas for storage or warehousing.

#### **5.27 Damage and Disturbance**

Licensee shall not commit, nor permit to be committed, any waste upon, or damage to, the Licensed Area or the Designated Store or any parts thereof. The Licensee shall not commit, nor permit to be committed, any nuisance or other act or thing which in Sears's opinion disturbs or interferes with or annoys any Person.

#### **5.28 Sound and Lights**

Licensee shall not use any traveling or flashing lights, or displays, or any signs, television or other audio-visual or mechanical devices, and not use any loudspeakers, sound system, television, phonographs, radio or other audio-visual or mechanical devices without in each case obtaining the prior written consent of Sears, which consent may be withheld in the sole discretion of Sears. If the Licensee uses any such equipment without receiving the prior written consent of Sears, Sears, without liability on its part, shall be entitled to remove such equipment without notice at any time and such removal shall be done, and all damage as a result thereof shall be made good, in each case, at the cost of the Licensee.

#### **5.29 Signage**

Licensee shall not paint, affix, display or cause to be painted, affixed or displayed, any sign, picture, advertisement, notice, lettering or decoration on any part of the outside of the Designated Store or in the Licensed Area without first obtaining the approval of Sears. If the Licensee elects, with the prior written approval of Sears, to provide at the Licensee's sole cost and expense, other interior signage, Sears will install same at the Licensee's sole cost and expense. Any such signs shall remain the property of the Licensee and shall be maintained at the Licensee's sole cost and expense. Should Sears, in its sole discretion, determine that any signage must be removed, relocated, modified, revised or updated to reflect new information or to better fit with Sears décor or for any other reason at Sears's sole discretion, Licensee will be responsible for the costs associated with the production, modification and installation of the new signage, as well as the removal of the original signage. At the expiry of the Term or earlier termination of this Agreement, the Licensee shall remove any such sign, picture, advertisement, notice, lettering or decoration added by Licensee to the Licensed Area at the Licensee's expense and shall promptly repair all damage caused by any such removal. The Licensee's obligation to observe and perform this covenant shall survive the expiration of the Term or earlier termination of this Agreement.

#### **5.30 Property Taxes**

If Licensee is not separately assessed by the taxing authorities, Licensee shall reimburse Sears for Licensee's proportionate share of the Designated Store's assessed taxes, which proportionate share shall be calculated based on the percentage of the area occupied by the Licensed Area in such Designated Stores ("Property Tax Contribution"). Should the period of occupancy of the Licensed Area be less than a full taxation year, such taxes shall be prorated accordingly.

#### **5.31 Landlord Common Area Maintenance Charges**

Licensee shall reimburse Sears for Licensee's proportionate share of common area charges, if any, in the event such charges are made against Sears by the operator of a shopping centre of which a Designated Store forms a part ("CAM Contribution"). Licensee's proportionate share of the common area charges shall be calculated based on the percentage of the area occupied by the Licensed Area and the period of occupancy in such Designated Store.

---

**ARTICLE 6.**  
**ADVERTISING, MARKETING AND PROMOTIONS**

**6.1 Licensee's Marketing Commitment**

Licensee shall, subject to the terms and conditions of this Agreement, actively advertise and promote the sale of the Products and Services authorized by this Agreement to attempt to maximize the full sales potential of the Concession through each Designated Channel.

Licensee shall pay all marketing and advertising expenses incurred to promote the Products and Services in accordance with the provisions of this Agreement.

Licensee agrees to spend, on an annual basis, not less than the minimum marketing commitment set out in Schedule "D" ("Minimum Marketing Commitment") on advertising and marketing the Products and Services.

If Licensee fails to spend the Minimum Marketing Commitment, Sears may spend the amount by which the actual amount spent by Licensee on advertising and marketing is less than the Minimum Marketing Commitment, and Licensee shall reimburse Sears for same.

For greater certainty, advertising and marketing expenses that may be included under the Minimum Marketing Commitment include, but are not limited to, the cost of:

- (a) advertising in Sears advertising vehicles, such as preprints, onserts/inserts, and co-op vehicles, such as coupon booklets and flyers; external advertising vehicles and in-store promotional point-of-purchase material and in-store signage;
- (b) television and radio advertising;
- (c) online marketing, including costs of search engine optimization to improve ranking given by Google and other search engines;
- (d) sponsoring events, activities, persons and organizations; and
- (e) setting up and operating kiosks, where such kiosks do not constitute leasehold improvements or Furnishings.

For greater certainty, and without limiting the generality of the foregoing, advertising and marketing expenses that may be included under the Minimum Marketing Commitment do not include:

- (a) the cost of in-store signage affixed to walls or hanging from ceilings;
- (b) the cost of any Furnishings or leasehold improvements; and
- (c) the cost incurred in conjunction with the offering and redemption of Sears Rewards Program offers and points.

## **6.2 Promotion of Brand Name and Sears Credit Services**

The Brand Name shall be used in all advertisements for the Products and Services available through the Designated Channels. Except where impractical on signage, Licensee shall make reference in any advertising of the Products and Services available through the Designated Channels, that Sears Card credit services are available for purchases through the Concession.

## **6.3 Joint Marketing**

The Parties shall cooperate in good faith to develop joint marketing opportunities to market the Products and Services.

## **~~6.4 Sears Rewards Program~~**

Sears shall be responsible for and control the Sears Rewards Program, including paying all base point related costs for the base standard offer (that is, the offer generally made to all Sears customers in Designated Stores generally) incurred related specifically to the sales through the Concession. Licensee shall not operate or participate in any loyalty or similar program to the Sears Rewards Program. Licensee may from time to time request additional specific Sears Rewards Program offers to be made to sell Products and Services in the Concession. If Sears so agrees, Licensee shall fund the cost of such points, which shall be charged to Licensee at the rate provided by Sears, which rate shall not be more than the redeemable value of the points (for greater clarity, where a point has a redeemable value of \$0.01, Licensee shall not pay to Sears more than \$0.01 for such points). Sears shall invoice Licensee for the costs of Sears Rewards Program promotions (in excess of the base standard offer) and Licensee shall pay such invoices no later than 30 days after the dates of such invoices.

## **6.5 Participation in Sears Advertising Vehicles**

Sears may, at its sole option, offer to Licensee the opportunity, at its sole option and expense, to participate in Sears regularly scheduled advertising media to promote the Products and Services, on an "if and as available basis". Licensee shall reimburse Sears, within thirty (30) days of receiving an invoice, for all reasonable expenses related thereto incurred by Sears at the request of Licensee (the "Sears Advertising Expenses"). Sears will offer the Licensee prices for the Sears Advertising Expenses on par with prices offered to other licensees with concession agreements.

## **6.6 Designated Store Promotional Events**

At its discretion, Licensee may participate in Sears Designated Stores store-wide promotional events offering Customers special discounts on purchases which may include but not be limited to events such as special discounts for seniors, and special coupon events. Such discounts shall be absorbed by Licensee as a mark down at its sole cost and Sears shall be entitled to its full Commission on the discounted sale price. Licensee shall not be charged for any share of the advertising space devoted by Sears to such Designated Stores store-wide events. Licensee will be charged for any promotional advertising by Sears which is agreed to by Licensee and which advertising is specifically focused on the Licensee, Concession or Products and Services, and which advertising does not fall under the store-wide events advertising.



#### **6.7 Telemarketing Solicitation**

Licensee shall not utilize any unsolicited telemarketing solicitation for the sale of the Products and Services without obtaining prior written approval from Sears. Such approval may be withheld in Sears's entire discretion. If approved, telemarketing solicitation shall be conducted only in accordance with Applicable Law and Sears policies and procedures in effect from time to time (including, without limitation, with respect to non-solicitation lists and contact management policies).

#### **6.8 Internet Solicitation**

Licensee shall not utilize or participate in any unsolicited Internet solicitation advertising the Products and Services without obtaining prior written approval from Sears. Such approval may be withheld in Sears's entire discretion. Internet solicitation activity, if approved, shall be conducted only in accordance with Applicable Law and Sears policies and procedures and all Customer solicitation and communication presentations for the Products and Services utilizing the Internet shall become part of or be linked to the Sears corporate website or, with the prior written approval of Sears, to a Licensee's authorized website with no facility for the Customer to exit from either of these websites into any other website.

#### **6.9 Concession Website**

Licensee shall not establish an internet website using the Sears Trademark as part of its domain name, marketing, advertising, promotional programs or to conduct sales or any other business transaction. A website to support the Licensee's Concession ("Concession Website") can be obtained and linked to [www.sears.ca](http://www.sears.ca) only after obtaining written approval from Sears. Such approval may be withheld by Sears in its entire discretion. If approved, Licensee may establish the Concession Website using the Sears Trademark for communication with Customers only. The Concession Website shall not be used to communicate with suppliers or any other business partners of Licensee. The Concession Website shall only be used for communication with Customers regarding the operation of the Concession and must reside on the Sears website infrastructure or on a third party hosted infrastructure with the prior written approval of Sears Information, Technology, Security and Audit Departments. The design of the website and its security architecture shall conform to the internet requirements for licensed business and shall comply with all Sears guidelines respecting licensed business internet websites, including the Guidelines For Licensed Business on the Internet attached hereto as Schedule "I". The implementation, content and maintenance of the Concession Website shall be the responsibility of the Licensee and all changes implemented by the Licensee must have the prior approval of Sears, which approval may be withheld in its entire discretion.

#### **6.10 Marketing Plan**

No later than September 1 of each year, Licensee shall prepare and submit to the Marketing Liaison (or such other Person as designated by Sears) a plan to market and promote the Products and Services during the next Fiscal Year. Such plan shall contain a strategy for marketing initiatives, including projected costs, in such total amount for the Fiscal Year no less than the Minimum Marketing Commitment. Sears shall provide feedback and the proposed plan shall be discussed until such time as Sears approves the plan. If Sears has not responded to the proposed plan before November 1 following submission of the proposed plan, the plan as proposed shall be deemed approved, provided the proposed plan meets the Minimum Marketing Commitment.

#### **6.11 Marketing Agencies**

Sears shall have the right to appoint one or more advertising agencies for any work related to advertising and marketing in which the Concession is participating, at Licensee's cost. Such advertising agency work shall be competitively priced, and any related discounts or other rebates obtained from such agency shall accrue to the benefit of Licensee. Upon Sears' consent, Licensee may use other advertising agencies.

#### **6.12 Advertising Approval**

Licensee shall submit to the Marketing Liaison (or such other Person as designated by Sears) via facsimile or electronic mail for Sears's prior approval, all signs and advertising copy and plans, including sales brochures, newspaper and telephone directory advertisements, radio and television commercials, sales promotional plans and devices (including coupons and contests) intended for any promotion of the Products and Services. Sears shall have the right, without limiting the generality of the foregoing, to withhold its approval of such activity based on:

- (a) improper use of Sears Trademark;
- (b) failure to comply with Sears's branding guidelines for the Brand Name;
- (c) concerns surrounding liability, loss of goodwill and damage to Sears reputation or Customer or government relations;
- (d) failure to comply with Applicable Law;
- (e) failure to conform to community or Sears reasonable standards of good taste and honest dealing; or,
- (f) failure to comply with Sears advertising and pricing policies.

### **ARTICLE 7. CUSTOMER PAYMENTS AND CREDIT**

#### **7.1 Tender**

All sales generated from the operation of the Concession shall be made only on Sears Cards, Sears-approved third-party credit cards, debit cards, personal cheques, Sears gift cards and Sears merchandise certificates, Sears Rewards Program redemptions, and third-party direct deposits.

#### **7.2 Promotion of Sears Card**

Licensee shall always make an initial suggestion to Customers that they pay for their purchases of Products and Services using the Sears Card. Licensee's sales associates, at the beginning of every transaction, shall always ask the Customer if they would like to make the purchase on their Sears Card and for such Customers that respond that they do not have one, Licensee shall offer to such Customers to apply for one instantly and shall so help such Customers that agree.

The Card Share Guarantee shall be met. Sears shall pay to Licensee a Card Share Incentive Bonus in accordance with the conditions set out in Schedule "K". In the event the Card Share

Guarantee has not been met, Licensee shall pay to Sears a Card Share Guarantee Credit in accordance with the conditions set out in Schedule "K".

### **7.3 Cash**

Licensee shall not accept cash as payment for Products and Services.

### **7.4 Gift Cards and Merchandise Certificates**

Licensee shall accept all Sears gift cards and merchandise certificates as accepted by all other Sears merchandise departments as payment for Products and Services. Sears shall reimburse Licensee for all such cards and certificates.

### **~~7.5 Sears Rewards Program Redemption~~**

~~Licensee shall accept redemption of Sears Rewards Program points as payment for Products and Services. Sears shall pay Licensee the redemption value of the points redeemed by Customers who use their points to pay for Products and Services.~~

### **7.6 Credit Sales**

Licensee shall do all that is necessary to become a merchant capable of accepting such credit cards and offer such credit plans as requested by Sears from time to time and shall comply with all requirements established by the Issuers of such credit cards and credit plans and by Sears with respect to the Sears Card.

Without limiting the generality of the foregoing, when accepting payments from Customers on credit cards, Sears regularly established credit plans or on Sears-approved third-party credit plans, Licensee shall:

- (a) obtain authorization for each individual credit sale on a Sears regularly-established credit plan, such approval to be granted at the sole discretion of the appropriate authorization location;
- (b) obtain authorization for each individual credit sale on a Sears-approved third-party credit plan and the authorization number, Customer's full account number, expiry date and Customer's name shall be shown.

No part of the carrying or interest charge which may be levied by Sears or the issuer of the Sears Card in connection with any credit sale on a Sears regularly-established credit plan, or by any third party on any Sears-approved third-party credit plan, shall be payable to or credited in any way to Licensee.

Licensee acknowledges and agrees that it shall be responsible for and charged with any Losses on any credit sale using a credit card for which the proper approval procedures have not been followed.

Licensee shall comply with all Applicable Laws governing credit sales and their solicitation, including provisions dealing with disclosure to Customers, finance charges and privacy.

## **7.7 Merchant Fee**

As consideration for the role of Sears in settlement of Sears Card transactions and for the benefit derived to Licensee from participating in the Sears Rewards Program available to holders of the Sears Card, Licensee shall pay to Sears a fee based on a percentage of Gross Revenue and Sales Tax processed through the Sears Card (the "Merchant Fee"). The Merchant Fee charged shall be as set out in Schedule "D". The Merchant Fee shall be subject to increase or decrease on notice of no less than 30 days, in response to changes in the marketplace. Any such increase or decrease must be supported by industry evidence. The Merchant Fee shall apply only to the portion of the Gross Revenue and Sales Tax that is directly charged to a Sears Card.

## **7.8 Sears Card Revenues**

Licensee acknowledges and agrees that any revenue generated by the use of the Sears Card or financing programs, including the Merchant Fee, will be for the benefit of Sears and shall not be included in the calculation of Gross Revenue.

## **7.9 Licensee to Collect Sales Tax**

Licensee shall collect from Customers all taxes applicable to the sale of the Products and Services, including Sales Tax and other equivalent or similar taxes. Licensee represents and warrants that it is a registrant under the Excise Tax Act (Canada) for federal Goods and Services Tax and Harmonized Sales Tax ("GST/HST") purposes and, as applicable, is a registrant under Title I of the Quebec Sales Tax Act for Quebec Sales Tax purposes. As applicable, Licensee represents and warrants that it is a registrant for the provincial sales tax in the provinces comprising the Designated Market.

# **ARTICLE 8. CUSTOMER RELATIONS AND ADJUSTMENTS**

## **8.1 Customer Satisfaction Policy**

Licensee shall at all times treat all Customers fairly and courteously and shall adhere to any applicable Sears policies regarding customer service and/or customer satisfaction as such policies may be amended by Sears in its sole discretion from time to time.

## **8.2 Customer Complaints**

Licensee shall resolve all complaints and controversies with Customers in accordance with the Governing Principles, meeting the Service Level Standards and in a manner consistent with Sears customer relations policies and practices. The first level of escalation of a customer complaint shall be to a higher level of management within the Licensee's organization. Licensee shall not escalate a customer complaint to Sears, nor shall Licensee tell a customer to escalate a complaint to Sears. Licensee shall only escalate a complaint to Sears upon request of the Customer.

In any case in which the resolution of any complaint or controversy is unsatisfactory to Customers, Sears shall have the right, after discussing the complaint or controversy with Licensee, to make such adjustment or compensation as Sears may deem desirable in the circumstances, acting reasonably, in each case at Licensee's expense.

Any settlement made by Sears with a value in excess of \$1500 and in respect of which Licensee did not consent may be brought by Licensee to the Executive Committee for discussion regarding whether Sears should be responsible for all or some of the settlement amount.

### **8.3 Customer Contact Centre**

Licensee shall maintain a contact centre with recording capability and shall record all calls from Customers. Such recordings shall be maintained for 24 months. Sears shall at any time have unfettered access to such recordings.

## **ARTICLE 9. OPERATIONS AND STAFFING**

### **9.1 Normal Business Hours**

The Concession in each of the Designated Stores shall be open for business and the Products and Services shall be offered for sale to Customers during such hours as set out in Schedule "A" ("Normal Business Hours"), except for an event of Force Majeure or to the extent prevented by circumstances beyond the control of Sears or Licensee, or as Sears and Licensee may otherwise agree upon in advance in writing. The Parties agree that Normal Business Hours may vary between Designated Stores.

### **9.2 Operational Supervision**

Licensee shall supervise the performance of its employees, agents, assigns, contractors, designees, representatives, servants and sub-contractors to ensure that the operation of the Concession, including the provision of customer service meets or exceeds the requirements of this Agreement.

### **9.3 Policies and Practices**

Licensee shall develop and implement policies and practices to be used in the operation of the Concession that serve to promote the performance of the Licensee's obligations under this Agreement and that serve to assist the Licensee to meet its obligations set out in this Agreement, all in accordance with the Governing Principles.

### **9.4 Conduct of Business**

Licensee shall not conduct any business, conduct or practice which in Sears's reasonable opinion is likely to have an adverse effect on the positioning of the Sears brand. Any such business, conduct or practice shall be immediately discontinued by the Licensee at the request of Sears, and the Licensee shall thereafter refrain from any such business, conduct or practice.

### **9.5 Compliance With Applicable Law**

Licensee shall comply with any and all Applicable Law and industry standards applicable to operation of the Concession including those relevant to protection of privacy and personal information, consumer protection, use of the French language in Quebec, environmental matters, rules governing credit sales and their solicitation (including disclosure to Customers

and application of finance charges), employment and labour standards matters (including compensation, hours of work, overtime and equal opportunities for employment) and accessibility for persons with disabilities.

#### **9.6 Compliance With Sears Guidelines and Service Levels**

Licensee shall comply with any and all Sears general rules and regulations which are in effect from time to time in the Designated Stores relating to the conduct of employees (including appearance and dress code) and have been disclosed to Licensee. Licensee shall meet or exceed the Service Level Standards set out at Schedule "J".

#### **9.7 Protection of Personal Information**

Licensee shall collect, use, store, disclose, dispose of and otherwise handle information about identifiable individuals ("**Personal Information**") solely for the purposes permitted by this Agreement and in accordance with (i) the Sears privacy policy as such policy is amended from time to time and provided to Licensee; (ii) the Payment Card Industry Standards Council; and (iii) Applicable Laws relating to the collection, use, storage and/or disclosure of Personal Information.

Licensee shall store Personal Information and protect Personal Information from loss, theft, unauthorized access, copying, modification, use or disclosure during utilization, transmission and storage using technology, physical protection measures, processes and standards of practise that meet or exceed industry standard commercially reasonable practices. In the event any loss, theft or unauthorized access, copying, modification, use or disclosure occurs, Licensee shall notify Sears in writing and the Parties shall act reasonably to develop appropriate remedial processes.

Licensee shall execute the Privacy Acknowledgment in substantially the form attached hereto at Schedule "G" on the Effective Date and shall thereafter execute an acknowledgment substantially similar to such Privacy Acknowledgment whenever requested to do so by Sears.

Sears shall collect, use, store, disclose, dispose of and otherwise handle Personal Information provided to it by Licensee in accordance with (i) the Sears privacy policy as such policy is amended from time to time; (ii) the Payment Card Industry Standards Council; and (iii) Applicable Laws relating to the collection, use, storage and/or disclosure of such Personal Information.

Sears shall store Personal Information provided to it by Licensee and protect such Personal Information from loss, theft, unauthorized access, copying, modification, use or disclosure during utilization, transmission and storage using technology, physical protection measures, processes and standards of practise that meet or exceed industry standard commercially reasonable practices. In the event any loss, theft or unauthorized access, copying, modification, use or disclosure occurs, Sears shall notify Licensee in writing and the Parties shall act reasonably to develop appropriate remedial processes.

#### **9.8 Permits and Licenses**

Licensee shall, at its sole expense, obtain all permits and licenses that may be required under any Applicable Law in connection with the operation of the Concession.

Licensee hereby represents and warrants that it has all required permits and authorizations required of any governmental entity that may be required in order to conduct the business of the Concession.

#### **9.9 Business License**

Licensee shall prominently display its business license and, upon the request of Sears, shall prominently display and do all things as Sears in its sole discretion may deem necessary to inform Customers that the Concession is operated by the Licensee in association with the Sears Trademark under a license from Sears.

#### **9.10 Staffing**

Licensee shall at all times staff the Concession with sufficient, fully qualified, competent, well trained, professional personnel, who shall demonstrate the morals, safe work habits and attitudes necessary to produce and maintain good relations with Customers.

Licensee shall conduct, at its own cost and expense and using the services of Sears approved service providers, the necessary reference checks, including comprehensive criminal background checks, for all employees as of the Effective Date (other than Hired Employees as defined in the Asset Transfer Agreement) and for all potential employees during the Term.

Licensee must, upon Sears's request, conduct and produce background checks on any current employees of the Concession, but Licensee shall not be obligated to conduct and produce such checks on Hired Employees (as defined in the Asset Transfer Agreement) during the first year of the Term.

In the event that a negative criminal background check is obtained on a potential or current employee and Licensee wishes to, as the case may be, engage or continue with the employment of the individual in question, Licensee must promptly notify Sears of the results of the background check and obtain Sears's approval for such engagement or continued employment, which approval may be withheld at Sears's sole discretion.

If at any time during the Term of this Agreement, the Licensee's employee voluntarily terminates his or her position at the Concession and subsequently returns for employment at the Concession, a reference check, including a comprehensive criminal background check, must be conducted prior to the re-employment of that individual.

Prior to engaging any new employee to work in a Designated Store, Licensee must inquire with Sears, through the store manager of the Designated Store, whether an applicant previously applied to or worked at Sears, or whether the applicant's employment with Sears was previously terminated. Licensee shall not, without Sears's consent, employ in or about any Licensed Area, any individual who had previously been employed by Sears and whose employment with Sears was terminated.

Licensee shall not, without prior approval of Sears, which approval shall not be unreasonably withheld or delayed, (i) cause a reduction in workforce of more than 5% in any three month period; or (ii) cause a mass termination as recognized in Applicable Law.

#### **9.11 Sub-Contracting**

Except in accordance with this Agreement, Licensee shall not authorize any Person other than its own employees to perform any of Licensee's obligations under this Agreement on Licensee's behalf without the prior written consent of Sears, which consent may be withheld in its entire discretion. Licensee may use sub-contractors to perform sales and installation services provided such sub-contractors are under written agreement with Licensee and are not themselves Competitors.

#### **9.12 Supervision of Employees**

Licensee shall diligently supervise its employees and Licensee's Representatives in order to operate the Concession in accordance with this Agreement. Licensee shall be solely responsible for the acts of its employees and Licensee's Representatives in the performance and operation of the Concession during the Term.

#### **9.13 Labour and Employment Standards**

Licensee shall have the sole and exclusive control over all its employees' and Licensee's Representative's labour relations and policies relating to wages, compensation, hours of work and working conditions. Licensee shall have the sole and exclusive right to hire, transfer, suspend, lay off, recall, promote, assign, discipline, adjust grievances and discharge said employees and/or Licensee's Representatives, provided, however, that at any time, if Sears so requests, Licensee shall remove from the operation of the Concession in any Designated Channels, any of its employees and/or any Licensee's Representatives as contemplated in this Agreement.

#### **9.14 Compensation & Benefits**

Licensee shall have complete responsibility for all salaries, wages, compensation and benefits for all of its employees and Licensee's Representatives and shall make all necessary payroll deductions and withholdings from said employees and Licensee's Representatives' salaries, wages and any other compensation. Licensee shall have full responsibility for the payment of any and all contributions, taxes and assessments including any applicable workers' compensation or workplace safety and insurance legislation and shall meet all requirements of the employment insurance and federal and provincial or territorial income tax and pension plan laws. Licensee shall, at Sears's reasonable request, provide evidence to Sears that all payroll and/or compensation obligations to its employees and Licensee's Representatives have been met in a timely and appropriate manner and that all deductions, withholdings and payments of taxes, contributions and assessments have been duly made by Licensee as required by Applicable Law.

#### **9.15 No Connection to Sears**

No employees of Licensee or Licensee's Representatives shall be considered to be employees or agents, assigns, designees, representatives, contractors, sub-contractors or sub-licensees of Sears. None of Licensee's employees, Licensee's Representatives, directors, officers or shareholders are entitled to any of the benefits that Sears provides for Sears employees, including disability insurance, group insurance, pension plan, holiday pay, paid vacation, or other benefit plans. Licensee shall have all its employees and Licensee's Representatives, engaged in the operation of the Concession under this Agreement, sign an Understanding of



Employment/Engagement Form in a form substantially in the form attached as Schedule "E" hereto, and shall provide a copy of all such completed forms to the Sears Human Resources Department in the Designated Stores prior to the employee's or Licensee's Representative's engagement in the operation of the Concession in the Designated Stores.

#### **9.16 Sears Discount for Licensee Employees**

Sears agrees to grant a discount on personal purchases made from the Designated Stores, by any Licensee's employees working on a regular schedule for the Concession. Such discount shall be allowed under the terms and conditions and at such amounts as specified by current Sears policies regarding such discounts, as updated and revised from time to time.

#### **9.17 Licensee Discount for Sears Employees**

Licensee shall grant a discount of ten percent (10%) or greater to all Sears employees and retirees, in addition to all price reductions, promotions and/or discounts offered to Customers who are not Sears employees, on all the Products and Services purchased by Sears employees and retirees from the Concession.

#### **9.18 Sears Identification Cards**

When present on Sears premises, including Designated Stores, Licensee's employees and Licensee's Representatives shall have available on their person, an identification and security card issued by Sears. Such identification and security cards will be issued by Sears as necessary to Licensee's employees and Licensee's Representatives, at no cost to Licensee or its employees.

Licensee shall have and hereby accepts responsibility for the control and distribution of such identification cards to ensure they are only held by current employees of Licensee and Licensee's Representatives active in the operation of the Concession. Such control shall include commercially reasonable efforts to repossess and return to Sears the identification cards of persons who are no longer active in the operation of the Concession including those who are no longer engaged by Licensee.

Upon termination or expiration for any reason of this Agreement, Licensee shall repossess and return to Sears all identification cards issued by Sears to the Licensee's employees and/or Licensee's Representatives. In the event the identification cards not repossessed by the Licensee are used to obtain a discount from Sears, Licensee shall be responsible for the amount of any such discount granted by Sears in the course of honouring such un-repossessed identification cards.

#### **9.19 Licensee Identification Cards**

When dealing with Customers, in Designated Stores and elsewhere, Licensee's employees and Licensee's Representatives shall have available on their person, and offer as identification when requested by Customers, an identification card issued by Licensee identifying the holder thereof as being authorized to provide services on behalf of Licensee under the Brand Name. Such identification cards shall provide such information as is required by, and shall otherwise comply with, Applicable Law. Such identification cards will be issued to all Licensee's employees and Licensee's Representatives, operating both inside and outside a Designated Store, at no cost to Sears.

Licensee shall have and hereby accepts responsibility for the control and distribution of such identification cards to ensure they are only held by current employees of Licensee and Licensee's Representatives active in the operation of the Concession. Such control shall include the repossession and destruction of identification cards from persons who are no longer active in the operation of the Concession including those who are no longer engaged by Licensee.

Upon termination or expiration of this Agreement for any reason Licensee shall repossess and destroy all identification cards issued by Licensee pursuant to this provision.

#### **9.20 Removal of Employees**

Sears, acting reasonably and in accordance with its own employment practices and Applicable Law, may require Licensee to remove from the operation of the Concession any Licensee's employee or Licensee's Representatives who is objectionable to Sears for reasons of safety or security of Customers, employees or merchandise, or whose manner, in Sears's sole judgement, impairs Sears goodwill or Customer relations.

Subject to the foregoing, where Licensee is required by Applicable Law to provide said Licensee's employees and/or Licensee's Representative an opportunity to remedy his or her conduct through a process and over a specified reasonable period of time, Licensee shall do so and monitor the situation and in the event the situation which caused Sears to request the removal of the Licensee's employee and/or Licensee's Representative from the operation of the Concession is not remedied to Sears sole satisfaction, acting reasonably, within the specified period of time and Licensee refuses to remove such Licensee's employee and/or Licensee's Representative, such a case is an Event of Default.

### **ARTICLE 10. LICENSEE'S SUPPLIERS, PURCHASES AND PAYMENTS**

#### **10.1 Purchase in the Name of Licensee**

Except to the extent of Licensee's rights to use the Sears Trademark on documents evidencing contracts for the sale of Products and Services, Licensee agrees that all purchases, contracts and obligations made or incurred by Licensee in connection with the operation of the Concession shall be made solely in the name of Licensee and under no circumstances shall any legal document, purchase order, letterhead, invoice or any other document, expense or obligation of any kind whatsoever be identified with Sears, the Brand Name or a Sears Trademark. For greater certainty, under no circumstances will Licensee make any purchase or incur any obligation or expense of any kind whatsoever in the name of Sears or on its behalf.

#### **10.2 Notification to Supplier**

Prior to making any initial purchase involving the operation of the Concession, Licensee shall inform the supplier, in writing, that Sears is not obligated in any way for, or as a result of, said purchase.

#### **10.3 Invoices Issued in Error**

Upon receipt by Licensee of an invoice from a supplier identified as an invoice to Sears, the Brand Name, or identified in any manner with the Sears Trademark, Licensee shall immediately

advise the supplier in writing, with a copy to Sears, that the supplier has not invoiced correctly and advise the supplier to reissue the invoice to Licensee exclusively in Licensee's own name.

#### **10.4 Prompt Payment of Invoices**

Licensee shall promptly pay all obligations incurred in connection with the operation of the Concession and shall hold Sears free and harmless from any and all claims, costs or liabilities incurred in connection with purchases or other monetary obligations incurred in relation to the operation of the Concession.

#### **10.5 Accounts Payable Report**

In the event Licensee fails to comply, in whole or in part, with any or all of this Article 10, Sears, in addition to any other remedies afforded it under this Agreement, may request in writing and Licensee shall furnish a detailed accounts payable report to Sears including the individual amounts owing and the names and addresses of all suppliers and creditors from whom it purchased merchandise and/or services for sale or use under this Agreement, as well as the names and addresses of all other Parties with whom it has any business or contractual relations and/or obligations in connection with the operation of the Concession.

#### **10.6 Withholding and Payment**

Licensee agrees that in the event a supplier and/or creditor of Licensee makes representation, and/or provides copies of invoices and shipping and receiving documentation to Sears, as to amounts owing to the said supplier and/or creditor by Licensee which was incurred by Licensee in connection with the operation of the Concession (the "Licensee Obligations"), and Licensee has not met the terms of the payment agreed, Sears, after discussion with Licensee, may withhold the amount of such Licensee Obligations from any settlement of monies due to Licensee until such time as Licensee provides to Sears proof of payment, or Licensee provides documentation from the supplier and/or creditor that verifies that the supplier and/or creditor waives any claim against Sears for payment of such unpaid invoices, or until such time as Sears is legally absolved of any responsibility for payment of such Licensee Obligations.

In the event Licensee or Sears is found legally responsible for the payment of the Licensee Obligations, and Licensee is unwilling or unable to pay the Licensee Obligations, Licensee agrees that Sears may make such payments on Licensee's behalf and deduct the entire amount of such payments from monies due to Licensee by Sears and/or from any monies withheld by Sears from Licensee's settlement.

#### **10.7 Business Fees and Taxes**

Licensee shall be responsible for bearing the cost of and paying any and all license fees and taxes, whether presently existing or created during the Term, including, without limiting the generality of the foregoing, business and corporate, use, sales, goods and services, gross receipts, income, separately assessed property, realty or other similar or different taxes including provincial or territorial sales taxes, Goods and Services Tax, and Harmonized Sales Tax or assessments which may be charged, levied or payable in connection with the operation of the Concession, excluding however, all taxes and assessments applicable to Sears income from Commissions payable to Sears hereunder or applicable to Sears property. In the event that any such taxes are billed to Sears, then the Licensee covenants and agrees to pay the same to Sears forthwith following receipt of a written demand therefor from Sears. Sears shall be entitled

to set off any monies owing to it pursuant to this provision which are not paid in accordance with this provision against any monies it may then or in the future owe to the Licensee.

#### **10.8 Supplier Agreements**

Licensee shall use commercially reasonable efforts to ensure that material supplier contracts entered into during the Term by Licensee shall be assignable to Sears and its successors and assigns at the end of the Term, without the requirement for consent from the supplier. Licensee shall not, without prior consent of Sears, enter into any material agreements that result in disproportionate benefits being paid prior to the scheduled end of the Term, or disproportionate liabilities being incurred after the scheduled end of the Term. Licensee shall not execute a material contract without first disclosing same to Sears. Licensee shall make available to Sears any and all supplier agreements upon Sears's request.

### **ARTICLE 11.** **INSURANCE**

#### **11.1 Licensee's Property and Liability Insurance**

Licensee hereby agrees and covenants that it shall, at its sole expense, obtain and maintain, during the Term of this Agreement, the following policies of insurance from a company or companies satisfactory to Sears and adequate to fully protect Sears and Licensee from and against all expenses, claims, actions, liabilities and Losses arising out of subjects covered by said policies of insurance:

- (a) **Workers' Compensation Insurance or Workplace Safety Insurance:** coverage with the applicable provincial or territorial workplace safety & insurance board and/or employer's liability insurance covering all persons employed, engaged or working in connection with the operation of the Concession with the limits of such insurance not less than \$1,000,000 for bodily injury, death, and property damage. The Licensee shall provide to Sears semi-annual proof of paid up coverage for workers' compensation insurance or workplace safety and insurance coverage, or similar coverage under the legislative requirements of the applicable province or territory and any replacement or successor thereof, in the form of a provincial or territorial certificate of good standing, or a provincial or territorial financial statement showing the Licensee has paid amounts owing in full in each province and/or territory in which the Concession is operated. In addition, upon expiry or other termination of this Agreement, the Licensee shall provide to Sears evidence of compliance with workers' compensation insurance or workplace safety and insurance or equivalent or similar coverage under the legislative requirements of the applicable province or territory and any replacement or successor thereof.
- (b) **Comprehensive General Liability Insurance, including Products and Services and completed operations coverage with a twelve (12) month indemnity period which shall include and shall so state on the certificate of insurance:**
  - (i) a contractual liability endorsement specifically covering the Licensee's indemnification of Sears under this Agreement;

- (ii) Cross Liability and Severability of Interests Clauses, which such insurance being considered "primary", and not call into contribution any other insurance available to Sears;
- (iii) must not have any exclusions for work done by Licensee's Representatives, sub-contractors and/or sub-trades;
- (iv) the provision of coverage for Non-Owned Automobile Liability;
- (v) the provision of Tenant's legal liability coverage;

The limits of liability must not be less than five million dollars (\$5,000,000.00) for bodily injury, death and property damage, or such higher amount as Sears shall from time to time require; and such shall be stated on the Certificate of Insurance;

- (c) **Motor Vehicle Liability Insurance** covering all vehicles used by the Licensee in connection with the operation of the Concession with limits of not less than two million dollars (\$2,000,000.00), and with a combined single limit for bodily injury, death and property damage per accident or such higher amount as Sears shall from time to time require and shall so state on the Certificate of Insurance;
- (d) **All Risk Property Insurance**, including coverage for:
  - (i) theft of the Licensee's property, equipment and merchandise utilized in connection with the operation of the Concession and shall so state on the certificate of insurance; and
  - (ii) any and all Sears and/or Customer assets in the care, custody and/or control of the Licensee in an amount not less than the full replacement cost thereof and shall so state on the certificate of insurance;
- (e) **Employee Fidelity Coverage** to include the Licensee and all those under its direction involved in the operation of the Concession in an amount not less than five hundred thousand dollars (\$500,000.00);
- (f) **Bailee's Legal Liability Insurance** to the full replacement value of any and all Customer's goods in the possession of Licensee and shall so state on the certificate of insurance;
- (g) (if applicable) **Professional Errors and Omissions Liability** coverage in an amount not less than two million dollars (\$2,000,000.00).

#### **11.2 Additional Insured**

All policies of insurance required by Article 11.1 (b), (c), (d), (e), (f) and (g) shall:

- (a) be taken out with insurers acceptable to Sears;
- (b) name Sears Canada Inc. as additional insured and shall so state on the certificate of insurance;

- (c) shall not be subject to material change or cancellation except upon at least thirty (30) days prior written notice to Sears; and
- (d) be prepared in such a form that Sears shall not be liable for any premiums and shall so state on the certificate of insurance;

### **11.3 Waiver of Subrogation**

All policies of insurance required by section 11.1(d) and (f) shall contain a waiver of subrogation in favour of Sears and shall so state on the certificate of insurance.

### **11.4 Evidence of Insurance**

The Licensee shall provide to Sears certificates of insurance or copies of policies as evidence of the insurance required by section 11.1 (b), (c), (d), (e), (f), and (g) both: (i) prior to commencement of the Term of this Agreement or the operation of the Concession in any Designated Channels; and (ii) upon each anniversary date of the policy or policies.

### **11.5 Sears Approval**

No approval by Sears of any of the insurance policies obtained by the Licensee, or any insurance or additional insurance obtained by Sears on the Licensee's behalf shall relieve the Licensee of any of its obligations under this Agreement.

### **11.6 Failure to Insure, Cancellation**

- (a) If the Licensee fails to provide evidence of insurance as required by sections 11.1 or 11.4, or if, in Sears's sole discretion, the policies obtained by the Licensee do not afford adequate protection for Sears, the Licensee shall deliver to Sears evidence of insurance or such additional insurance as Sears may require, within fifteen (15) days after notice of same being given by Sears to the Licensee, failing which Sears shall have the right to obtain such insurance or additional insurance at the expense of the Licensee and to invoice the Licensee and offset the same against any monies payable to the Licensee.
- (b) If any insurance policy upon a Designated Store or any part thereof shall be cancelled or shall be threatened by the insurer to be cancelled or the coverage thereunder reduced in any way by the insurer by reason of the use the Licensed Area or any part thereof by the Licensee, the Licensee shall remedy the condition giving rise to cancellation, threatened cancellation or reduction of coverage within twenty-four (24) hours after notification by the insurers or notice thereof by Sears whichever is the earlier.

## **ARTICLE 12.**

### **COMMISSION, FEES AND REMITTANCE**

#### **12.1 Commission**

In consideration of the rights granted to Licensee herein, Sears shall be entitled to receive from Licensee and Licensee shall pay to Sears a monthly Commission as set out in Schedule "D" ("Commission").

If applicable, Licensee may deduct from monthly Commission payments a monthly Commission Rebate in the amount and on the conditions set out in Schedule "D" ("Commission Rebate").

If applicable, Sears shall pay to Licensee an annual Store Reduction Commission Adjustment in the amount and on the conditions set out in Schedule "D" ("Store Reduction Commission Adjustment").

If applicable, Licensee shall pay to Sears an annual Commission Guarantee Adjustment in the amount and on the conditions set out in Schedule "D" ("Commission Guarantee Adjustment").

#### **12.2 Maintenance and Administration Fee**

In consideration for Sears's provision of maintenance, administrative and other functions and services, the Licensee shall pay to Sears the monthly Maintenance and Administration Fee set out in Schedule "D" ("Maintenance and Administration Fee").

#### **12.3 Sales Tax**

The Licensee shall also pay to Sears any applicable Sales Tax related to payments of Commission, Maintenance and Administration Fee, and as otherwise required. The Sears GST number is 104765698RT0001.

#### **12.4 Payment Settlement Process**

##### *Monthly*

No later than the 13th day following the end of each Fiscal Month, Licensee shall pay to Sears by electronic funds transfer, with respect to such Fiscal Month, the applicable Commission, Maintenance and Administration Fee, Telephone Costs, Property Tax Contribution and CAM Contribution, as well as all applicable Sales Tax thereon.

##### *First Year Exception*

Notwithstanding the previous paragraph, for the first Fiscal Year Licensee may pay the Commission according to the following schedule:

<u>Applicable Fiscal Months</u>	<u>Commission due date</u>
First, second and third Fiscal Month	The 13th day following the end of third Fiscal Month
Fourth, fifth, and sixth Fiscal Month	The 13th day following the end of sixth Fiscal Month
Seventh, eighth, and ninth Fiscal Month	The 13th day following the end of ninth Fiscal Month
Tenth, eleventh, and twelfth Fiscal Month	The 13th day following the end of twelfth Fiscal Month

For greater certainty, the first paragraph of this section will continue to apply with respect to applicable Maintenance and Administration Fee, Telephone Costs, Property Tax Contribution and CAM Contribution.

#### *Quarterly*

No later than the 27<sup>th</sup> day following the end of each Fiscal Quarter, Licensee shall pay to Sears the amount, if any, of Quarterly Service Level Credits owing with respect to such Fiscal Quarter.

#### *Annual*

No later than 60 days after the end of each Fiscal Year, Sears shall provide to Licensee a report ("Annual Reconciliation Report") indicating, with respect to such Fiscal Year, the amounts of each of (i) Store Reduction Commission Adjustment; (ii) Card Share Incentive Bonus; (iii) Commission Guarantee Adjustment; (iv) Card Share Guarantee Credit; and (v) Annual Service Level Credits, together with the reconciled amount owing by one Party to the other.

Where such reconciled amount results in an amount owing by Sears to Licensee, Sears shall pay such amount no later than 90 days after the end of the Fiscal Year. Where such reconciled amount results in an amount owing by Licensee to Sears, Licensee shall pay to Sears such amount no later than the later of (i) 30 days after receipt of the Annual Reconciliation Report; or (ii) 90 days after the end of the Fiscal Year.

#### **12.5 Interest on Overdue Amounts**

Any amount due by Licensee to Sears will bear interest from the due date until final payment at the rate of 15% per annum. Interest shall be calculated both before and after default, expiration or termination of this Agreement for any reason, or judgment. The acceptance of any interest payment shall not be construed as a waiver by Sears of its rights in respect of a default giving rise to such payment and shall be without prejudice to any rights Sears has with respect to any such defaults.

### **ARTICLE 13. SECURITY FOR PAYMENT AND FINANCIAL COVENANTS**

#### **13.1 Setoff**

Where Licensee or an Affiliate of Licensee owes money to Sears under this Agreement or any other agreement with Sears, Sears is authorized to apply and offset such amount owing against an amount owing by Sears to Licensee or to an Affiliate of Licensee.

Where Sears is overdue on a payment of money to Licensee under this Agreement, Licensee is authorized to apply and offset such overdue amount owing against an amount owing to Sears by Licensee.

#### **13.2 Lien**

Subject to (i) any liens and encumbrances created in the acquisition of the Licensee's present and after acquired inventory, supplies, leasehold improvements and Furnishings installed or located from time to time in the Licensed Areas and (ii) any liens and encumbrances granted to a senior lender of the Licensee (the "Senior Lender Lien"), Sears shall at all times have a first charge, lien and hypothec upon all of the Licensee's assets, property and undertaking (the "Secured Assets"), without in any manner affecting any other remedies that Sears may have by reason thereof, to take possession of the Licensed Areas and of all Secured Assets, to



exclude the Licensee from the Licensed Area, and at the Licensee's expense, to remove from the Licensed Areas the Secured Assets or to take possession of or to sell such Secured Assets as may be necessary in order to pay Sears all of the amounts due, or to become due, to Sears and to cure all other defaults of the Licensee hereunder. In the disposal and/or sale of such Secured Assets, Sears shall have the right to accept any offer it may choose and shall have no liability or responsibility to the Licensee for payment of any perceived, estimated or actual value of such Secured Assets. Prior to the Effective Date, the Licensee shall enter into a security agreement under which it grants a charge over the Secured Assets in a form satisfactory to Sears.

### **13.3 No Lien on Sears Assets**

The Licensee shall not allow any liens, claims or encumbrances which arise through the Licensee to attach to any Sears property or against any Designated Store. In the event any lien so attaches or is threatened, the Licensee shall promptly take all necessary action to cause such lien to be satisfied and released; provided, however, that the Licensee shall have the right to contest the validity or amount of any such lien upon its prior posting of security with Sears, which security in Sears's reasonable judgment must be adequate to pay and discharge any such lien in full plus Sears's reasonable estimate of its legal fees. The Licensee agrees to pay all legal fees and other costs incurred by Sears as a result of any such liens being placed upon any Sears property or against any Designated Store.

### **13.4 Creditor Non-Interference Agreement**

Notwithstanding section 13.2., the Licensee agrees that it shall require its senior lender to enter into an agreement with Sears, on terms satisfactory to Sears and Licensee, whereby the senior lender agrees not to interfere with Sears's rights under this Agreement including, without limitation, Sears's rights to effect the Post-Termination Transfer.

### **13.5 Financial Covenants**

Licensee covenants that it shall at all times during the Term maintain such financial covenants (i) as are required of Licensee pursuant to an agreement with a bank, lender or other provider of financing to the Licensee; and (ii) such financial covenants as set out in Schedule "N" hereto. No later than the 30th day following the end of every Fiscal Month, Licensee shall provide to Sears a certificate substantially in the form set out at Schedule "N", signed by the Chief Financial Officer of Licensee (or such officer of Licensee with the responsibilities commonly carried out by a chief financial officer) certifying that the Financial Covenants have been maintained during such Fiscal Month.

## **ARTICLE 14. GOVERNANCE, COMMITTEES AND SUPPORT**

### **14.1 Executive Committee and Governing Principles**

An executive committee will be created which will consist of at least one senior officer of each of Licensee and Sears (the "Executive Committee"). Each Party shall have the right to remove or replace its appointees to the Executive Committee for any reason and at any time, and to fill any vacancy with respect to its appointees.

The Concession shall be governed by the principles set out in Schedule "H" (the "Governing Principles"), as they may be amended by the Executive Committee from time to time. The responsibilities of the Executive Committee will be to: promote shared vision and goals in respect of the Concession; review the strategy and direction of the Concession; support and elevate initiatives in order to increase Gross Revenue; eradicate roadblocks; oversee the competitive positioning of the Concession; and to provide oversight over strategic initiatives, online initiatives, marketing (particularly that related to penetrating the Sears Card base), and investment optimization.

The Executive Committee shall follow the following procedures:

- (a) the Executive Committee shall meet (in person or by telephone or video conference) at least twice a year or at such other intervals as may be decided by the Executive Committee;
- (b) irrespective of the number of appointees to the Executive Committee by any Party, each Party shall have one vote in respect of any matter requiring approval of the Executive Committee;
- (c) the Executive Committee shall keep written records of all matters discussed and approved by it, which shall be reviewed and approved by a designated representative of each of the Parties;
- (d) should there be a deadlock in any matter requiring the approval of the Executive Committee, such matter shall be subject to the following escalation procedures:
  - (a) the Parties will attempt to resolve the subject of the escalation promptly by negotiations between the Chief Executive Officer (or his or her designate) of each of Sears and Licensee (such negotiations to be held within 10 days of a request by either Party) and, if such negotiations are unsuccessful, (b) the Parties will attempt to resolve the subject of the escalation by mediation by an independent mediator agreed upon by the Parties, provided that if such mediation does not take place within 30 days of such request, the Parties shall be free to pursue other remedies, including legal action;
- (e) the members of the Executive Committee may adopt such other rules for the conduct of meetings as the Executive Committee shall determine from time to time; and
- (f) the Executive Committee may appoint one or more subcommittees and/or special committees to assume specific responsibilities.

#### 14.2 Operational Committee

An operational committee will be created which will consist of two members from each of Licensee and Sears (the "Operational Committee"). Each Party shall have the right to remove or replace its appointees to the Operational Committee for any reason and at any time, and to fill any vacancy with respect to its appointees.

The responsibilities of the Operational Committee will be to focus and consult on matters that are of mutual concern to the Parties, including growing Gross Revenue, marketing plans, the customer experience (including customer complaint management and service levels), product

and pricing optimization, and matters related to enhancing and/or material changes to the Concession.

The Operational Committee may review the ongoing financial reports and performance scorecards of the Concession.

The Operational Committee will review and provide input into the operation of the Concession, but will have no authority to compel Licensee to undertake any action. For greater certainty, the Operational Committee is not mandated to provide operational support to the Licensee.

The Parties will attempt to resolve the subject of any matter escalated to the Operational Committee promptly by discussions between the senior officers. The senior officers will meet in person or by telephone within 15 days after the notice of the dispute and attempt in good faith to resolve the subject matter of escalation. In the event the senior officers do not resolve the dispute within 30 days from receipt of notice of a dispute (which time period may be extended by written agreement of the senior officers), the subject matter of the escalation may be resolved by the Executive Committee or each Party may seek remedies in whatever manner they wish, including instituting legal action.

#### **14.3 Sears Support**

Sears, at its sole expense, will dedicate employees to provide Licensee with the following support:

- (a) Marketing Liaison – who shall provide Licensee with such assistance as it reasonably requests relating to the development and implementation of marketing and advertising strategies, the monitoring of marketplace trends; Sears Trademark related matters, advertising campaigns (both new and renewed) and solicitation material, sponsorships (both new and renewed), cross marketing and the Sears Rewards Program.
- (b) Product Management Liaison – who shall provide Licensee with such assistance as it reasonably requests relating to strategy regarding the assortment of Products and Services and supplier base, including assistance with monitoring trends and identifying opportunities for the Concession with Sears retail and supply chain operations.
- (c) Operations Liaison – who shall provide Licensee with such assistance as it reasonably requests relating to customer service, customer resolution, the customer experience, suggestions regarding the development and monitoring of operation plans, the support of Sears Rewards Program, and service and performance metrics.

### **ARTICLE 15.**

#### **RECORD KEEPING, REPORTING, MONITORING & AUDITING**

##### **15.1 Point of Sale Register System**

Licensee shall provide a POS to record each sale of the Products and Services in each of the Designated Stores and through each Designated Channel. Licensee shall provide Sears with access to real-time reporting to the POS.

## 15.2 Licensee Reporting

Licensee shall provide to Sears such reports at such frequency as set out in Schedule "F".

## 15.3 Accounting Records

Licensee shall prepare, keep and maintain full, true and accurate books of account, documents and records in accordance with Accounting Principles and all Applicable Laws (including such books and records as are required by Governmental Authorities), which accurately reflect the Gross Revenue, expenses, deductions and taxes resulting from the operation of the Concession including the Sears Advertising Expenses, Initial Remodelling Commitment and other mandatory investments which the Licensee incurs under this Agreement. The Licensee shall maintain such records at the Licensee's principal office for a period ending no sooner than seven (7) years after the end of the Term.

## 15.4 No Waiver or Prejudice

The receipt or use by Sears of any financial statements, statement of Gross Revenue or Net Sales from the Licensee, or any payment of Commission based thereon, or any other information relating to the operation of the Concession and the expenses related thereto, shall not constitute a waiver by Sears of any obligation of the Licensee hereunder and, except where otherwise provided in this Agreement, shall be without prejudice to Sears right to audit the Licensee's books and records as provided for in this Agreement.

## 15.5 Audit

Sears may at any time and from time to time cause a complete audit to be made by Sears auditors or third party auditors appointed by Sears (collectively, "Sears Auditor") of the Licensee's entire business affairs, records and procedures relating to the operation of the Concession and to verify whether Licensee has met or not met its obligations under this Agreement, including whether Licensee has met or not met its financial obligations under this Agreement (including Licensee's obligations in Schedule "D" [*Financial Commitments*] and Licensee's obligations to pay applicable Service Level Credits ("**Licensee's Financial Commitments**") and Licensee's obligations to maintain the Financial Covenants and including whether Service Level Standards and Performance Guarantees were met.

If the Sears Auditor performing such audit reports to Sears that, in its opinion, the Licensee's records and procedures are insufficient to determine whether Licensee is meeting the Licensee's Financial Commitments, Financial Covenants, Service Level Standards, Performance Guarantees, or any other of Licensee's obligations, and Sears or the Sears Auditor so notifies Licensee, Licensee will immediately take such steps as are reasonably necessary to remedy such default.

If an audit reveals that (i) Licensee has understated any amount payable to Sears (including Commissions and Service Level Credits) by 3% or more; or (ii) Licensee has breached an obligation under this Agreement and such breach led Sears to issue a notice of such default to Licensee under section 23.3; then Licensee will pay the reasonable costs of the Sears Auditor for such audit within 30 days of a notice to that effect from Sears.

Notwithstanding anything in this section 15.5, only a third party, independent auditor will have access to and be entitled to audit Licensee's financial records necessary to allow it to determine

if Licensee has met or not met its Financial Covenants or if such records are inadequate to make such determination. The third party auditor must only report on whether or not Licensee has met its Financial Covenants or if Licensee's records are inadequate to make such determination and must keep all information confidential and not disclose or use it for any purpose except to make such report. If requested by Licensee the third party auditor will acknowledge and agree to this obligation of confidence and non-use.

#### **15.6 Notice of Collective Agreements and Negotiations**

Subject to Applicable Law, Licensee agrees to notify Sears in writing immediately upon becoming aware of any application for the appointment or certification of any bargaining agent of any of the Licensee's employees.

Subject to Applicable Law, Licensee further agrees to notify Sears in writing at least ten (10) Business Days prior to commencing negotiations with any trade union, council, trade unions or other employee organization in connection with the entering into, amendment or renewal of a collective agreement or the settlement or compromise of any dispute arising from a collective agreement affecting the Licensee's employees.

Subject to Applicable Law, Licensee shall permit at least two (2) representatives of Sears to attend all bargaining sessions as observers and shall provide to Sears (or to such representatives as Sears directs) all relevant documents, correspondence and other information relating to the proposed collective agreement or in the case of any amendment, renewal or dispute arising from a collective agreement, with respect to any such matters.

Subject to Applicable Law, Licensee further agrees to notify Sears in writing at least seven (7) days prior to entering into any collective agreement or any amendment or renewal of a collective agreement or any agreement with respect to the settlement or compromise of any dispute arising from a collective agreement affecting the Licensee. Such notices shall be accompanied by a copy of the proposed collective agreement, amendment, renewal, settlement or compromise, as the case may be, failing which the notice shall be deemed ineffective.

### **ARTICLE 16. TRADEMARK LICENSE**

#### **16.1 Grant of Trademark License**

Sears hereby grants to the Licensee the non-exclusive, non-transferable, non-sublicenseable, royalty-free right to use the Sears Trademark in Canada as it appears in the Brand Name, in connection with Licensee's operation of the Concession and the marketing and sale of Products and Services only, subject to the terms and conditions of this Agreement and only for the Term. For greater certainty, the rights granted in this paragraph shall terminate automatically upon termination of the Concession.

#### **16.2 Use of Trademark**

The Licensee shall only use the Sears Trademark in connection with the Concession and shall only use the Sears Trademark in accordance with this Agreement. The Licensee shall never use the Sears Trademark in association with any business that is not the Concession nor in association with any products or services that are not Products and Services authorized

pursuant to this Agreement. The Licensee shall not include the Sears Trademark as part of its or an Affiliate's name.

Except as otherwise expressly allowed, the Licensee shall only use the Sears Trademark as a trade-mark and only in the format in which the Sears Trademark is registered or has been filed for registration. All uses and presentations of a Sears Trademark by the Licensee shall clearly distinguish the Sears Trademark from any other trade-mark, design or text appearing with it. The Licensee shall not use any trade-mark which is similar to, confusing with, or which so nearly resembles as to be likely to cause confusion with the Sears Trademark.

The Licensee shall use commercially reasonable efforts to preserve the value, validity and distinctiveness of the Sears Trademark. The Licensee at Sears expense shall provide assistance to Sears and any information or other assistance that may be desirable to establish use of a Sears Trademark which Sears or the Trademark Owner may require to assist in registering, enforcing or maintaining a Sears Trademark or any other name or Trademark of Sears or the Trademark Owner.

#### **16.3 Prior Approval on Use of Sears Trademark**

All uses and presentations of the Sears Trademark whether on signs, in literature, in advertising or otherwise, shall be submitted by Licensee to Sears, or to such Person as Sears may designate, for written approval prior to any use or presentation of the same.

#### **16.4 Advertising of Sears Trademark**

Licensee shall display on all signs, literature and advertising on which the Sears Trademark appears, and in such other manner as Sears may direct from time to time, a notice similar to the following notice:

Sears®  
® Registered Trademark of Sears licensed for use in Canada

#### **16.5 Restrictions on Use of the Sears Trademark by Licensee**

The Licensee shall promptly notify Sears of any infringement, unauthorized use, advertising, imitation, dilution or other infringement of the Sears Trademarks which comes to its attention. Sears and the Trademark Owner shall each have the sole right, at its own expense, to take such action as it determines, in its sole discretion, to be appropriate to enforce its rights to the Trademarks. The Licensee waives the provisions of subsection 50(3) of the Trademarks Act R.S.C. 1985 Chap. T-13 as amended.

The Licensee shall co-operate and assist in any protest or legal action undertaken by Sears or the Trademark Owner, at Sears's or the Trademark Owner's expense, to enforce its rights to the Trademarks. If requested by Sears or the Trademark Owner, the Licensee shall join in such protest or legal action, at Sears's or the Trademark Owner's expense. The Licensee shall not undertake such protest or legal action on its own behalf.

#### **16.6 Ownership of Trademarks**

Sears represents and warrants that the Sears Trademark is valid and enforceable and that Sears has the exclusive right to use the Sears Trademark in Canada and that Sears has the right to license the Sears Trademark to Licensee. Licensee acknowledges that Sears will be involved in the supervision and control of the use of the Sears Trademark in Canada by Licensee.

The Licensee acknowledges that the Sears Trademark and the goodwill attached thereto are and shall remain the exclusive property of its owner ("Trademark Owner"). All use of the Sears Trademark by the Licensee and all goodwill resulting therefrom shall inure to the sole and exclusive benefit of the Trademark Owner. The Licensee shall not have any right, title or interest in the Sears Trademark or any goodwill associated therewith and shall not in any way use the Sears Trademark in such a way as to suggest or induce others into believing that the Licensee has any such right, title or interest. The Licensee shall never challenge the ownership of the Sears Trademark nor shall the Licensee oppose any application to register any trade-mark incorporating the word "Sears".

#### **16.7 Remedies for Unauthorized Use**

The Parties agree that in the event of any use of the Sears Trademarks by the Licensee in breach of the conditions of such use as set out in this Agreement, Sears and/or the Trademark Owner may suffer irreparable harm for which damages might be an inadequate remedy. Accordingly, the Parties consent to the granting of an order of specific performance or injunctive relief by a court to remedy such breach (such consent not intending to limit in any way any other remedies available Sears and the Trademark Owner).

#### **16.8 Trademark Owner's Remedies**

Sears represents and warrants that some or all of the Sears Trademarks are owned by one or more of its Affiliates and that the rights granted herein to use such Sears Trademarks were granted by Sears under authority from the Trademark Owner. The Licensee acknowledges that the Trademark Owner has an interest in ensuring the proper use of and enforcing its rights to such Sears Trademarks. The Parties agree that the covenants, representations, warranties, conditions and provisions of this Agreement respecting the Sears Trademarks owned by the Trademark Owner (collectively, the "Trademark Terms") are being entered into for and on behalf of the Trademark Owner, and Sears agrees to hold the Trademark Terms as agent for the Trademark Owner with the intent and purpose that the Trademark Owner shall have the benefit of the Trademark Terms and will be entitled to enforce the Trademark Terms, or any of them, in any action brought by or against the Trademark Owner.

#### **16.9 Changes to Sears Trademark**

Sears reserves the exclusive right to change the Sears Trademark (for greater certainty, including changing the trademark "Sears") and designate, upon notice to Licensee, such other or additional trademarks that are the subject of the license and use under this Agreement. Licensee shall have a period of three (3) months from the date of such notice within which to change uses and advertising of the Sears Trademark to refer only to the trademark as modified by such notice. Sears shall pay Licensee the reasonable costs of changing signage in the Licensed Areas as a result of such change.

---

**ARTICLE 17.**  
**GOODWILL AND INTELLECTUAL PROPERTY**

**17.1 Goodwill Generated by the Operation of the Concession**

All goodwill in, or which may be generated by, the operation of the Concession shall enure to the sole and exclusive benefit of Sears. Licensee shall not have any right, title or interest in said goodwill. Licensee hereby unconditionally and irrevocably transfers and assigns to Sears any and all rights it may have or may claim to have, now and in the future, to said goodwill.

**17.2 Sears Intellectual Property**

Sears is and will be the exclusive owner of all of the following Information and all Intellectual Property Rights therein (collectively, the "Sears Intellectual Property"):

- (a) an undivided joint interest in all Customer information;
- (b) any and all rights to hardware, software, systems, documentation, Sears Trade-Marks, Sears Confidential Information or other Information or Intellectual Property Rights (including any Sears website and Sears business rules and business processes):
  - (i) that were owned by Sears on the Effective Date;
  - (ii) that are procured or created by Sears (whether such activities occur before or after the Effective Date and whether such activities occur independent of or in connection with the Concession);
  - (iii) that are created or developed for, or licensed to, Sears by another Person (other than the Licensee) (whether such activities occur before or after the Effective Date and whether such activities occur independent of or in connection with the Concession), including, without limitation, technical, functional, operational, performance or other relevant specifications or requirements therefor;
  - (iv) all modifications to the property described in (i), (ii) and (iii) above created or developed at any time and for any reason by Sears or by another Person (other than the Licensee) for or on behalf of Sears; and
- (c) an undivided joint interest with Licensee in all reports and other Information created, generated, output or displayed by or as a result of the performance or receipt of the Licensee's obligations except to the extent such information contains Licensee's Confidential Information or Licensee Intellectual Property.

Licensee will acquire no rights to any Sears Intellectual Property other than the license rights expressly granted in writing by Sears to the Licensee or as provided for in this Agreement or another agreement with Sears.

Licensee will not assert any lien right or other encumbrance on Sears Intellectual Property, even if there is a dispute between the Parties.



### **17.3 Licensee Intellectual Property**

Licensee is and will be the exclusive owner of all of the following information and all Intellectual Property Rights therein (collectively, the "Licensee Intellectual Property"):

- (a) all hardware, software, systems, documentation, trade-marks, Licensee's Confidential Information or other information or Intellectual Property Rights (including Licensee's business rules and business processes):
  - (i) that were owned by Licensee on the Effective Date;
  - (ii) that are procured or created by Licensee (whether such activities occur before or after the Effective Date and whether such activities occur independent of or in connection with the Concession);
  - (iii) that are created or developed for, or licensed to, Licensee by another Person (other than Sears) (whether such activities occur before or after the Effective Date and whether such activities occur independent of or in connection with the Concession), including, without limitation, technical, functional, operational, performance or other relevant specifications or requirements therefor; and
  - (iv) all modifications to the property described in (i), (ii) and (iii) above created or developed at any time and for any reason by Licensee or by another Person (other than the Sears) for or on behalf of Licensee.

Sears will acquire no rights to any Licensee Intellectual Property other than the license rights expressly granted in writing by Licensee to Sears or as provided for in this Agreement or another agreement with Licensee.

### **17.4 Establishment of New Intellectual Property Rights**

Each of the Parties acknowledges that the other Party may create and establish (or have created and established for it) new Intellectual Property Rights in connection with the operation of the Concession and provision of the Products and Services ("New Intellectual Property"), and agree as follows:

- (a) To the extent that Sears creates New Intellectual Property, Sears shall own all rights established during the Term, shall be responsible for making all filings and taking all other actions necessary to protect such New Intellectual Property and shall be deemed to have granted to the Licensee a non-exclusive, royalty-free license in Canada to use such New Intellectual Property solely in connection with the operation of the Concession and the marketing and sale of the Products and Services for the duration of the Term.
- (b) To the extent that Licensee creates New Intellectual Property, Licensee shall own all rights established during the Term, shall be responsible for making all filings and taking all other actions necessary to protect such New Intellectual Property and shall be deemed to have granted to Sears a non-exclusive, royalty-free license in Canada to use such New Intellectual Property solely in connection with the marketing and sale of the Products and Services indefinitely, provided

#### **18.5 Protection of All Sears Confidential Information**

Licensee shall take all necessary steps, including commercially reasonable efforts, to protect all of Sears Confidential Information from destruction, loss, theft, misuse or disclosure during the Term, and Sears shall take all necessary steps, including commercially reasonable efforts, to protect all of Licensee's Confidential Information from destruction, loss, theft, misuse or disclosure during the Term. Such efforts shall in any event be no less stringent than the efforts a Party exerts to ensure the protection of its own confidential information. Furthermore, Licensee's obligations respecting Sears Confidential Information and Sears' obligations respecting Licensee's Confidential Information shall survive and continue for two (2) years following the end of the Term.

#### **18.6 Restricted Use of Confidential Information**

Licensee agrees not to use or permit others to use any of Sears Confidential Information in any manner except in connection with the operation of the Concession during the Term, and Sears agrees not to use or permit others to use any of Licensee's Confidential Information in any manner except in connection with the operation of the Concession during the Term.

#### **18.7 Maintenance of Confidential Information**

Licensee shall at all times maintain all Sears Confidential Information physically separate and distinct from any information Licensee may maintain that is unrelated to this Agreement and the operation of the Concession.

#### **18.8 Return of Confidential Information**

Upon expiry or termination of this Agreement for any reason,

- (a) Licensee shall immediately deliver to Sears all copies of any Sears Confidential Information including all copies of Customer lists, potential Customer lists and all other copies of information concerning Customers, whether written, computerized or otherwise, and
- (b) Sears shall immediately deliver to Licensee all copies of any Licensee's Confidential Information.

### **ARTICLE 19. INDEMNITY AND LIMITATION OF LIABILITY**

#### **19.1 Sears's Indemnity**

Sears covenants and agrees that it will, at its own cost and expense (including legal fees and disbursements), protect, defend, hold harmless, and indemnify Licensee, its Affiliates, and any of its present and former directors, officers, employees, authorized representatives, agents, dealers, distributors, designees, contractors, sub-contractors, successors and assigns from and against all allegations (even though such allegations may be false, fraudulent or groundless) asserted in any, arising out of or relating to any Claims relating to the following:

- (a) death or injury to persons and damage to property resulting from or connected with a Designated Store other than a Licensed Area and the purchase and use

by anyone of products and services purchased in a Designated Store from Sears (such purchase including without limitation, goods sold, work done, services rendered or products utilized);

- (b) the infringement, misuse, dilution, misappropriation, or other violation by Sears or an Affiliate of Sears of any patent, trademark, service mark, trade name, trade dress, copyright, trade secret, confidential relationship, domain name, right of publicity or other intellectual property right, or any unfair competition;
- (c) any violation of any Applicable Law by Sears (or its officers, directors, employees, affiliates, subsidiaries, subcontractors, suppliers, or representatives whether or not such act is within the scope of the engagement and/or employment or responsibilities of such officers, directors, employees, affiliates, subsidiaries, subcontractors, suppliers, or representatives);
- (d) failure to promptly warn Licensee and/or Customers of any defective products and services supplied by Sears or any failure to provide adequate warnings and/or instructions in the use, assembly, service or installation of products and services supplied by Sears;
- (e) the packaging, labelling, advertising or performance claims made by Sears;
- (f) any breach by Sears of a covenant, representation or warranty to a Person other than Licensee;
- (g) the display, assembly or installation by Sears of products and services (other than Products and Services);
- (h) any and all claims, actions or costs (including legal costs, retroactive wages, awards, damages and penalties) made against the Licensee by any of Sears' officers, directors, employees or representatives:
  - (i) for salary and wages, fringe benefits, compensation, arbitration, severance or relocation costs;
  - (ii) under the Workplace Safety and Insurance Act, 1997 (Ontario) or equivalent or similar legislation in any province or territory and any successor legislation thereof;
  - (iii) arising out of any alleged negligence, acts or omissions of any Person other than Licensee; and
  - (iv) arising out of employment, engagement or termination of employment or engagement for any reason whatsoever with Sears;
- (i) the assertion by a third party of a security interest or other legal interest created by a factoring arrangement in any amount due by Sears to Licensee; and
- (j) any claims by Sears's current or former employees, representatives, suppliers, licensees, and any third parties or Customers, for failure to pay suppliers, lack of repair in or about the Designated Stores (other than Licensed Areas), the

that such New Intellectual Property does not refer to Licensee or any of its trademarks.

#### **17.5 Protection of Intellectual Property**

Each Party will use commercially reasonable efforts to cause its employees and representatives to waive, for the benefit of the other Party and their respective successors, assigns, licensees and contractors, their respective moral rights (and any similar rights to the extent that such rights exist and may be waived in each and any jurisdiction throughout the world) in and to any New Intellectual Property and existing Intellectual Property Rights of the other Party. Each Party will maintain an up-to-date copy of the source code materials for the New Intellectual Property and any Sears Intellectual Property or Licensee Intellectual Property, as the case may be, created or developed, in whole or in part, in a secure location and will promptly deliver such source code materials required by the other Party to the extent required to satisfy its obligations under this Agreement upon the other Party's request.

Each Party agrees to reasonably co-operate, and to use commercially reasonable efforts to cause its employees and representatives to reasonably co-operate with respect to signing such documents and doing such acts and other things reasonably requested by the other Party to confirm the assignment of ownership and waiver of moral and similar rights referred to herein and to obtain registrations of Intellectual Property Rights relating to the Sears Intellectual Property, Licensee Intellectual Property and New Intellectual Property, as the case may be. Without limiting the generality of the foregoing, each Party agrees that it will, and will use reasonable commercial efforts to cause the employees and representatives to, execute any assignment requested by the other Party related to the Sears Intellectual Property, the Licensee Intellectual Property or the New Intellectual Property, as the case may be.

#### **17.6 Residual Rights**

Subject to the terms and conditions of this Agreement, the Parties agree that either Party may use and exploit any information developed or created in the course of operating the Concession which relates to the Products and Services and/or the Concession (including general knowledge, skills, experience, know-how and techniques) and which may be retained in the unaided memory of such Party's personnel, provided that in doing so such Party does not breach its obligations with respect to confidential information or infringe, violate or constitute a misappropriation of any Intellectual Property Right of the other Party or any third party.

Neither Party will be precluded from independently developing for itself, or for others, anything which is competitive with, or similar to, the other Party's Intellectual Property Rights, provided that in so doing no use is made of the other Party's Intellectual Property Rights or confidential information.

### **ARTICLE 18. CONFIDENTIAL INFORMATION**

#### **18.1 Customer Lists, Customer Information; Sales Information**

Sears goodwill shall always include the exclusive right to an interest in Customer information, including Customer lists. All customer information and lists of customers of the Licensee and the employees of its Concession, including, without limitation, lists developed by the Licensee, its

employees or agents and any other information relating to such customers, shall belong exclusively to Sears and Sears shall have sole copyrights over such customer information and lists. The Licensee and its employees agree that they will not make use of said lists other than for the purpose of the business conducted by them in the Concession, which lists and information shall be immediately transferred in its entirety by Licensee to Sears upon expiration or termination, for any reason, of this Agreement. The Licensee shall keep customer lists and other customer information separate from any customer lists or other information that the Licensee may maintain that do not relate to this Agreement.

Information regarding Gross Revenue, Net Sales, Commissions and other information regarding the financial and sales performance of the Concession belong jointly to the Licensee and Sears (but for greater certainty, information regarding financial performance of any Licensee's business other than the Concession shall belong solely to Licensee). The Licensee agrees that all sales figures of all other departments and any and all other information obtained at or from any meeting of departments of the Designated Stores shall be deemed confidential and exclusively within the control of Sears. The obligations of the Licensee under this section shall be subject to any provisions to the contrary under Applicable Law.

#### **18.2 Sears Confidential Information**

Sears policies, processes, operating methods, source relationships, computer software and all tangible items on which there is recorded information related to Sears' business, are deemed to be the exclusive property of Sears. In addition all information relating to the presentation, merchandising, marketing, provision and sale of the Products and Services, including all Customer lists and Customer information other than those developed by Licensee and/or the Licensee's Representatives from the operation of the Concession either during the Term, or after termination of this Agreement is also deemed to be the exclusive property of Sears (collectively, the "Sears Confidential Information"). Licensee shall have no right, title or interest in the Sears Confidential Information.

#### **18.3 Licensee's Confidential Information**

All the policies and processes of Licensee, Licensee's operating methods, Licensee's source relationships, any Licensee computer software and information relating to the operation of the Concession and the procurement of the Products and Services are, where such information is not Sears Confidential Information, deemed to be the exclusive property of Licensee (collectively, the "Licensee's Confidential Information"). Sears shall have no right, title or interest in such Licensee's Confidential Information. For greater clarity Licensee's Confidential Information shall not include any information relating to the presentation, merchandising, marketing and sales of the Products and Services or any Customer information and Customer lists derived from the operation of the Concession.

#### **18.4 No Disclosure of Confidential Information**

All Sears Confidential Information and Licensee's Confidential Information shall be treated by the Parties as confidential and neither Party shall reproduce, disclose nor in any way make available, either directly or indirectly, any of the other Parties' confidential information to any other Person at any time without the prior written consent of the Party whose confidential information is being disclosed. Licensee shall ensure that all employment and engagement contracts contain an express written provision to this effect.

operation of, or defects in, any machinery, vehicles, or equipment used in Sears's business (other than in connection with the operation of the Concession by the Licensee after the Effective Date), previous license agreements for the Concession (other than with Licensee or an Affiliate of Licensee) and the use by anyone of products and services obtained in such previous Concession (other than if sold by Licensee or an Affiliate of Licensee) or supplied by Sears. Licensee may, at its election and at any time, take control of the defence and investigation of said Claims and employ legal advisers, consultants, investigators and experts of its own choice to manage and defend any such Claims at the cost and expense of Sears.

#### 19.2 Licensee's Indemnity

The Licensee covenants and agrees that it will, at its own cost and expense (including legal fees and disbursements), protect, defend, hold harmless, indemnify Sears, its Affiliates, and any of its present and former directors, officers, employees, authorized representatives, agents, dealers, distributors, designees, contractors, sub-contractors, successors and assigns from and against all Claims related to:

- (a) death or injury to persons and damage to property resulting from or connected with the operation of the Concession and the purchase and use by anyone of the Products and Services, including without limitation, goods sold, work done, services rendered or products utilized;
- (b) the infringement, misuse, dilution, misappropriation, or other violation by Licensee of any patent, trademark, service mark, trade name, trade dress, copyright, trade secret, confidential relationship, domain name, right of publicity or other intellectual property right, or any unfair competition;
- (c) any violation of any Applicable Law by Licensee (or its officers, directors, employees, affiliates, subsidiaries, subcontractors, suppliers, or representatives whether or not such act is within the scope of the engagement and/or employment or responsibilities of such officers, directors, employees, affiliates, subsidiaries, subcontractors, suppliers, or representatives) in the operation of the Concession or the possession, use or sale of the Products and Services;
- (d) failure to promptly warn Sears and/or its customers of any defective Products or Services or any failure to provide adequate warnings and/or instructions in the use, assembly, service or installation of the Products and Services;
- (e) the packaging, labelling, advertising or performance claims concerning any Products or Services;
- (f) any breach by the Licensee of a covenant, representation or warranty made herein or to a Person other than Sears;
- (g) the display, assembly or installation of the Products and Services;
- (h) any and all claims, actions or costs (including legal costs, retroactive wages, awards, damages and penalties) made against Sears by any of the Licensee's officers, directors, employees or representatives;

- (i) for salary and wages, fringe benefits, compensation, arbitration, severance or relocation costs;
  - (ii) under the Workplace Safety and Insurance Act, 1997 (Ontario) or equivalent or similar legislation in any province or territory and any successor legislation thereof;
  - (iii) arising out of any alleged negligence, acts or omissions of any Person, including Sears, except where said act or omission by Sears is the sole cause of said claim; and
  - (iv) arising out of employment, engagement or termination of employment or engagement for any reason whatsoever with Licensee;
- (i) the assertion by a third party of a security interest or other legal interest created by a factoring arrangement in any amount due to Sears by the Licensee; and
  - (j) any claims by the Licensee's current or former employees, Licensee's Representatives, suppliers, and any third parties or Customers, including failure to pay suppliers, lack of repair in or about the Licensed Areas, the operation of, or defects in, any machinery, vehicles, or equipment used in connection with the operation of the Concession, and the use by anyone of the Products and Services. Sears may, at its election and at any time, take control of the defence and investigation of said Claims and employ legal advisers, consultants, investigators and experts of its own choice to manage and defend any such Claims at the cost and expense of Licensee.

### **19.3 Notification of Third-Party Claims**

Upon receipt by a Party of a Claim, audit, demand or assessment made or brought by an unaffiliated third party against the other Party (a "Third-Party Claim"), the Party shall notify the other Party, in writing, within fifteen (15) days of receipt of such Third-Party Claim indicating the nature of such Third-Party Claim and the basis therefor.

### **19.4 Limitation of Liability**

Each Party acknowledges and agrees that it shall not have any liability to the other for payment of any actual, perceived and/or anticipated loss of revenue or profit or for payment of any actual, perceived and/or anticipated decrease in value of the others' business due to the expiration or termination of this Agreement by any Party, for any reason.

## **ARTICLE 20.**

### **NON-SOLICITATION AND NON-COMPETITION DURING THE TERM**

#### **20.1 Non-Solicitation of Customers**

Except as set out in this Agreement or as otherwise agreed by Sears, Licensee shall not, during the Term, directly or indirectly perform services for, interfere with or endeavour to entice away from Sears any Sears customers other than for the provision of Products and Services in connection with the Concession.

---

#### **20.2 Non-Solicitation of Employees by Sears**

Sears shall not, directly or indirectly through another Person, without consent of Licensee, during the Term, induce, recruit, solicit or cause, or attempt to induce, recruit, solicit or cause any employee or independent contractor of Licensee or an Affiliate of Licensee to leave the employ of or engagement with Licensee or such Affiliate. A general advertisement contained in a newspaper or other medium and not targeted at Licensee's employees or contractors will not be prohibited by this section.

#### **20.3 Non-Solicitation of Employees by Licensee**

Licensee shall not, directly or indirectly through another Person, without consent of Sears, during the Term, induce, recruit, solicit or cause, or attempt to induce, recruit, solicit or cause any employee or independent contractor of Sears or an Affiliate of Sears to leave the employ of or engagement with Sears or such Affiliate. A general advertisement contained in a newspaper or other medium and not targeted at Sears employees or contractors will not be prohibited by this section.

#### **20.4 Non-Competition During the Term**

The Licensee agrees that, during the Term, it will not, without the prior written consent of Sears, either individually or in partnership or jointly or in conjunction with any Person, firm, association, syndicate or corporation, as principal, agent, shareholder or in any manner whatsoever, carry on or be engaged in or be concerned with or interested in or advise, lend money to, guarantee the debts or obligations of or permit its name or any part thereof to be used or employed in any business which is the same or similar to or competitive with any aspect of the business of marketing and selling products and services similar to or competitive with the Products and Services in Canada.

The Licensee agrees that, during the Term, no Affiliate of Licensee shall, without prior written consent of Sears, either individually or in partnership or jointly or in conjunction with any Person, firm, association, syndicate or corporation, as principal, agent, shareholder or in any manner whatsoever, carry on or be engaged in or be concerned with or interested in or advise, lend money to, guarantee the debts or obligations of or permit its name or any part thereof to be used or employed in any business of marketing or selling products and services similar to or competitive with the Products and Services to an ultimate end user in Canada.

For greater certainty, the foregoing provision does not restrict an Affiliate of the Licensee from engaging in any business that is not marketing or selling products and services similar to or competitive with the Products and Services in Canada on behalf of a Competitor or other Person, such as the procurement or installation of products and services similar to or competitive with the Products and Services.

The foregoing provision does not restrict an Affiliate of Licensee that is, at the time of signing this Agreement, in the business of marketing or selling floor covering products and services for a Competitor from continuing to engage in such business for such Competitor only.



---

**ARTICLE 21.**  
**CHANGES TO CONCESSION**

**21.1 Reduction of Designated Channels or Designated Markets**

Sears shall have the right to terminate the operation of the Concession in any Designated Channels and/or Designated Markets without cause, cost, penalty or damages (subject to the possible cost to Sears of a Store Reduction Commission Adjustment) for any reason whatsoever, upon providing the Licensee with no less than 120 days written notice.

**21.2 Reduction of Designated Stores by Sears**

Sears shall have the right to close one or more Licensed Areas in Designated Stores and/or terminate the operation of the Concession in any Designated Store upon written notice to Licensee of no less than 90 days, provided such notice is delivered no earlier than 90 days after the Effective Date. Notwithstanding the previous sentence, Sears shall have the right to close any Licensed Area and terminate the operation of the Concession in a Designated Store on simple notice if such Designated Store is being closed such that Sears is no longer operating a store at such location. All direct costs associated with closing a Licensed Area at Sears' request shall be borne by Sears.

For greater certainty, applicable provisions of Schedules "D", "L" and "K" may apply in the event the number of Designated Stores is reduced by Sears.

**21.3 Reduction of Designated Stores by Licensee**

Licensee shall have the right to terminate the operation of the Concession in any Designated Store upon written notice to Sears of no less than 90 days, provided such notice is delivered no earlier than 90 days after the Effective Date, and provided that the removal of the Concession from such Designated Store would not bring the total number of Designated Stores below the Minimum Number of Designated Stores as set out at Schedule "A". All direct facilities and leasehold costs associated with closing a Licensed Area at Licensee's request shall be borne by Licensee.

**21.4 Increase of Designated Stores**

Sears may offer to Licensee to add one or more Designated Stores to the Concession by providing written notice to Licensee, provided such notice is delivered no earlier than 90 days after the Effective Date. Licensee shall have the option to refuse to add such proposed Designated Store to the Concession by providing notice of such refusal no later than 30 days after receipt of Sears's notice of the proposed addition.

**ARTICLE 22.**  
**ASSIGNMENT AND CHANGE OF CONTROL**

**22.1 Assignment by Sears**

Licensee acknowledges that Sears may, at its sole discretion, assign, encumber or transfer its rights under this Agreement.

## **22.2 Assignment by Licensee**

Licensee acknowledges that Sears, in granting this license and the rights and interests under this Agreement, has relied upon, among other things, the character, background, qualifications and financial ability of Licensee and, where applicable, its partners, officers, directors, shareholders and managers. Accordingly, this Agreement, Licensee's rights and interests hereunder and the assets owned and used by Licensee in connection with the operation of the Concession shall not be encumbered, sold, assigned or transferred in whole or in part in any manner whatsoever without the prior written consent of Sears, which consent may be withheld at Sears's sole discretion. Any actual or purported assignment occurring by operation of law or otherwise without Sears's prior written consent shall be null and void. For greater certainty, where Sears provides consent to the assignment of this Agreement, it is understood and agreed that the assignor shall immediately upon the effective date of such assignment be required to meet all Licensee's obligations under this Agreement, including, without limitation, all representations, warranties and covenants, including Financial Covenants.

## **22.3 Change of Control**

Licensee may not undergo a Change of Control except in accordance with this Agreement (other than that occurring as the result of trading in shares listed upon a recognized stock exchange where such trading is not for the purpose of acquiring effective control). A Change of Control in the Licensee shall be deemed to be an assignment of this Agreement.

## **22.4 Right of First Offer**

Licensee shall not make any offer to any Person to enter into a transaction that would result in a Change of Control (or solicit such an offer) unless such offer is first made to Sears in writing and Sears, in its entire discretion, refuses such offer in writing. Sears shall have 21 days from receipt from Licensee of such written offer, in sufficient detail so that Sears may fully consider such offer, to accept such offer. If Licensee does not receive such acceptance within such 21 day period, Licensee shall be free to make such offer to other Persons who are not Competitors.

## **22.5 Right of First Refusal**

If Licensee receives a bona fide offer from a Person to enter into a transaction that would lead to a Change of Control (whether such offer was solicited or unsolicited) ("**Third Party Offer**"), then Licensee shall provide to Sears a copy of such Third Party Offer and Sears shall have the right, but not the obligation, to enter into a transaction with Licensee on the terms and conditions as set out in such Third Party Offer. Sears shall have 21 days from receipt from Licensee of such written Third Party Offer to notify Licensee of Sears's option to enter into such transaction. If Licensee does not receive notice from Sears of its election to enter into such transaction within such 21 day period and such Third Party Offer did not come from a Competitor, then Sears shall be deemed to have consented to Licensee for Licensee to enter into a transaction on the terms and conditions of the Third Party Offer. If such transaction is not consummated within 180 days of Sears's consent or deemed consent thereto, such consent shall be deemed to be withdrawn, and Licensee shall be required to once again seek Sears's consent to consummate such transaction. Where Sears has provided consent or is deemed to have provided consent to Licensee to enter into a Change in Control transaction with a third party on the basis of the Third Party Offer, such consent shall be deemed to be Sears's written consent to the assignment of this Agreement in conjunction with such transaction.

---

**ARTICLE 23.**  
**DEFAULT AND TERMINATION**

**23.1 No Fault Termination**

During any Renewal Term, Sears shall have the right to terminate this Agreement without cost or penalty upon written notice to Licensee of no less than one year, provided no such notice shall be made in a Fiscal Year following a Fiscal Year during which the Guarantee Gross Revenue for such Fiscal Year was achieved.

**23.2 Termination Due to Event of Default**

Sears may terminate this Agreement upon simple notice upon the occurrence of an Event of Default.

**23.3 Events of Default by Licensee**

An "Event of Default" under this Agreement occurs upon the occurrence of any one or more of the following events or circumstances when such event or circumstance is not a result of Force Majeure:

- (a) **Financial Covenants:** Licensee has breached its Financial Covenants and has failed to remedy such breach within 45 days following receipt of a notice to remedy such breach;
- (b) **Material Misrepresentation:** (i) Licensee has wilfully provided incomplete, false or misleading information of a material nature in connection with its application to be approved as a licensee of Sears, or any representations and warranties provided by Licensee in this Agreement or in the Asset Transfer Agreement are false, in any material respect; or (ii) Licensee has falsified or intentionally misrepresented any report or other information furnished to Sears pursuant to this Agreement ("Material Misrepresentation");
- (c) **Late or Incomplete Reporting:** Licensee has failed to provide a report to Sears with all the information required for such report pursuant to this Agreement and within the deadline provided for such report in this Agreement, provided Sears has first provided Licensee no less than four Business Days' written notice to remedy such breach and Licensee has failed within such time to remedy such breach;
- (d) **Failure to pay:** Licensee has failed to pay any amount owing hereunder on the date or dates appointed for the payment thereof (provided Sears has given no less than five Business Days' written notice to Licensee of any such failure and Licensee has failed within such time to remedy such breach) ("Payment Default");
- (e) **Licensee policy infraction:** Licensee has failed to operate the Concession in accordance with Licensee's policies and processes and such failure has not been rectified within 15 days following notice by Sears;

- (f) **Disposition of assets:** Licensee has made a sale in bulk of any of its assets, wherever situated (other than a bulk sale made to a transferee permitted under this Agreement), and such sale was not in the normal course of business;
- (g) **Change of Control:** Licensee has effected or attempted to effect a Change of Control of Licensee that is not permitted by this Agreement;
- (h) **Failure to remove employee:** Licensee has failed to remove from the operation of the Concession a Licensee's Representative or employee of Licensee within five Business Days following a demand by Sears that such Person be removed, in accordance with this Agreement;
- (i) **Insurance:** Licensee has failed to provide evidence of insurance as required by this Agreement within 15 days of notice of same being given by Sears to Licensee;
- (j) **Involuntary insolvency:** a court order has been made for the winding up, dissolution or liquidation of the Licensee;
- (k) **Voluntary insolvency:** the Licensee has
  - (i) undertaken corporate proceedings for the winding-up, dissolution or liquidation of the Licensee; or
  - (ii) lost its corporate charter by expiration, forfeiture or otherwise;
- (l) **Failure to operate Concession:** Licensee has without Sears's prior approval failed to operate and conduct business in a Licensed Area during Normal Business Hours for more than three consecutive days. The foregoing will not be considered an Event of Default if Sears has also failed to operate and conduct business in the Designated Store of such Licensed Area during Normal Business Hours during such period of time;
- (m) **Unpermitted use:** Without Sears's prior approval, Licensee has knowingly permitted a Licensed Area to be used by another Person in breach of this Agreement;
- (n) **Abandonment:** Except as permitted in this Agreement, Licensee has vacated a Licensed Area or has abandoned or ceased to operate the Concession in any Designated Channel;
- (o) **Misappropriation:** Licensee has misappropriated Sears's assets and or any funds, including any shortage in or manipulation of any Customer payments, unless arising from Licensee's employee or Licensee's Representatives' dishonesty and provided such employee or Licensee's Representative is immediately removed from the Licensed Area and any involvement in the operation of the Concession in any Designated Channels and complete restitution is made by Licensee to Sears's satisfaction;

- (p) **Breach of Sears Confidential Information:** Licensee or any of Licensee's Representatives has disclosed Sears Confidential Information in breach of Article 18 [*Confidential Information*];
- (q) **Third-party performance:** Without prior approval of Sears, Licensee has authorized Persons other than its employees to perform any of Licensee's obligations under this Agreement;
- (r) **Disorderly conduct:** Licensee has engaged at any time in disorderly conduct that offends moral values or which constitutes moral turpitude, all as determined by Sears in Sears's reasonable discretion;
- (s) **Employee Obligations:** Licensee has failed to meet its employment payroll or engagement obligations in an appropriate and timely manner and has not rectified such failure within two Business Days of the due date;
- (t) **Refusal to Co-operate:** Licensee has failed or refused to co-operate with Sears in the performance of this Agreement;
- (u) **Other Covenants:** Unless agreed to by Sears or permitted under this Agreement, Licensee has failed to observe or perform any other of the terms, covenants (whether affirmative or negative) or conditions of this Agreement to be observed or performed by Licensee, provided Sears has first given Licensee 15 days' written notice of any such failure to perform, and Licensee within such period has failed to commence diligently and thereafter to proceed diligently and continuously to cure any such failure to perform;
- (v) **Minimum Marketing Commitment:** Unless agreed to by Sears or permitted under this Agreement, Licensee has failed to spend the Minimum Marketing Commitment in accordance with a Marketing Plan for three or more years or during two consecutive years;
- (w) **Annual Performance Guarantees:** Licensee has failed to meet an Annual Performance Guarantee during five or more years or during three consecutive years;
- (x) **Annual Service Level Guarantees:** Licensee has failed to meet any Annual Service Level Guarantees in any three or more years or for two consecutive years;
- (y) **Material Adverse Change:** There has been a material adverse change in the business or operations of the Licensee which materially impacts the Licensee's ability to perform its obligations under this Agreement.

#### 23.4 Bankruptcy Event

Each Party has a right to terminate this Agreement upon the occurrence of a Bankruptcy Event. A "Bankruptcy Event" shall have occurred when, with respect to such Party, there has occurred or there exists any of the following events:

- (i) the Party admits its inability to pay its debts generally as they become due or otherwise acknowledges its insolvency;
- (ii) the Party institutes any proceeding or takes any corporate action or executes any agreement to authorize its participation in or commencement of any proceeding:
  - (A) assigning all or substantially all of its property for the general benefit of its creditors or seeking to adjudicate it a bankrupt or insolvent; or
  - (B) except as part of a good faith reorganization, which is completed with 90 days of the date initiated seeking liquidation, dissolution, winding-up, reorganization, arrangement, protection, relief or composition of it or any of its property or debt or making a proposal with respect to it under any law relating to bankruptcy, insolvency, winding-up, reorganization or compromise of debts or other similar laws (including any application under the *Bankruptcy and Insolvency Act* (Canada) or the *Companies' Creditors Arrangement Act* (Canada), or the filing of a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act* (Canada)) or any reorganization, arrangement or compromise of debt under the laws of its jurisdiction of incorporation;
- (iii) any proceeding is commenced against or affecting the Party:
  - (A) seeking to adjudicate it a bankrupt or insolvent;
  - (B) seeking liquidation, dissolution, winding-up, reorganization, arrangement, protection, relief or composition of it or any of its property or debt or making a proposal with respect to it under any Applicable Law relating to bankruptcy, insolvency, reorganization or compromise of debts or other similar laws (including any reorganization, arrangement or compromise of debt under the laws of its jurisdiction of incorporation);
  - (C) seeking appointment of a receiver, trustee, agent, custodian, or other similar official for it or for any substantial part of its properties and assets, and such proceeding is not being contested in good faith by appropriate proceedings or, if so contested remains outstanding, undismissed and unstayed more than 60 days from the institution of such first mentioned proceeding;
- (iv) any creditor privately appointing a receiver, trustee or similar official for any substantial part of the Party's properties and assets, and such appointment is not being contested in good faith and by appropriate proceedings or, if so contested, such appointment continues for more than 60 days;
- (v) any proceeding or action by a Governmental Authority to take control of the Party or its assets;

- (vi) any event occurs with respect to the Party that, under the Applicable Law of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (i) to (v) above;
- (vii) the Party takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts or events specified in paragraphs (i) to (v) above.

**ARTICLE 24.**  
**SOFTWARE AND DATA**

**24.1 Licensee Software Escrow**

Within 90 days following the Effective Date, Licensee will, at its sole cost and expense, deposit into escrow: (i) all documentation, formulas and software (in source code format) relating to the Licensee Software and the processes for its application and use; (ii) all other documentation then in existence for the Licensee Software ("Escrow Materials") with such escrow agent as determined by Sears, acting reasonably ("Escrow Agent") and will enter into an escrow agreement in a form mutually agreed between the parties, acting reasonably ("Escrow Agreement"). At the earlier of: (i) an update to any of the Escrow Materials, and (ii) twelve (12) months from the last deposit of the Escrow Materials, Licensee will, at its sole cost and expense (including fees payable to the escrow agent), update or add to the Escrow Materials such new, revised or modified items then in existence and which have not been previously deposited into escrow under this Section 24.1 which will then be included in the definition of, and referred to as "Escrow Materials". During the Term, Licensee will make payments as may be reasonably required to maintain the Escrow Materials with the Escrow Agent pursuant to the Escrow Agreement.

In accordance with the provisions of the Escrow Agreement, the Escrow Materials will be released to Sears on the occurrence of any of the following:

- (i) Licensee notifying the escrow agent in writing to effect a release;
- (ii) Licensee ceasing all or substantially all business operations except as permitted under this Agreement;
- (iii) Sears sends a notice of termination of this Agreement; or
- (iv) the expiry of this Agreement.

**24.2 List of Licensee Software**

No later than 90 days after the end of each Fiscal Year, Licensee will provide to Sears a list of all then currently used software that is part of the Licensee Software. Where Licensee as part of the Licensee Software uses any software licensed from third parties, Licensee will use reasonable commercial efforts to negotiate with such third parties the ability of Licensee to assign such software to Sears upon the expiration or termination of this Agreement.

### 24.3 Concession Data

Every month during the Term, Licensee will provide to Sears a copy of all customer data and other information that Sears would require to operate the Concession with the Licensee Software upon the termination or expiration of this Agreement ("Concession Data").

If an arrangement is made whereby Sears has access to Concession Data that is backed up no less frequently than daily, stored at an external location with a third party, and Sears has contractual rights to access and receive copies of such Concession Data without interference from Licensee upon the same conditions as the release conditions that would be required in an Escrow Agreement, then, for so long as such arrangement is in effect, Licensee shall not be required to provide to Sears copies of Concession Data in accordance with the previous paragraph.

## ARTICLE 25. AFTER TERMINATION

### 25.1 Surrender

Immediately upon expiration or termination of this Agreement, the Licensee shall:

- (a) cease use of the Sears Trademark and remove from Licensee's own premises and/or the Licensed Areas and return to Sears, all signs, work orders, invoices and related documentation bearing the Sears Trademark or any other Sears identification, failing which Sears shall have the right to enter any of Licensee's premises to do so, at Licensee's sole cost;
- (b) return to Sears, or as Sears may direct, all Sears property, including all Sears Confidential Information, employee identification cards, Sears merchandise, forms, signing, operating guides, sales and distribution reports;
- (c) at the request of Sears, transfer to Sears, or as Sears may direct, all Customer goods and Customer contracts which are outstanding as at the date of expiry or termination.
- (d) cease to use all listed telephone and facsimile numbers used for the operation of the Concession, transfer such numbers to Sears or as Sears may direct, and notify the telephone company of the transfer. The Licensee hereby appoints Sears as its true and lawful attorney in fact, for it and in its name, place and stead to execute and deliver any and all documents and instruments as may be required to transfer such telephone and facsimile numbers to Sears or as Sears may direct; and
- (e) at its sole expense, remove all of the Licensee's inventory, supplies and Furnishings from the Designated Stores, and the Licensee shall, without delay and without any expense to Sears whatsoever, repair any damage to the Licensed Area caused by such removal and surrender the Licensed Area to Sears in good condition and repair, ordinary wear and tear excepted. The Licensee acknowledges and agrees that failure by the Licensee to remove its inventory, supplies and Furnishings, within the fourteen (14) days immediately



following the date of the end of the Term, shall constitute legal abandonment of such the Licensee's assets, including without limitation, all the Licensee's inventory, supplies and Furnishings and Sears may, at Sears's option, and at the Licensee's sole cost and risk, dispose of the Licensee's assets including without limitation all of the Licensee's inventory, supplies and Furnishings without payment, cost, penalty or damages owed to the Licensee by Sears.

#### **25.2 Withholding of Remittance**

Upon expiration or termination of this Agreement Licensee agrees that Sears may withhold any monies due and owing to Licensee, including but not limited to monies owing from Sears to Licensee from any outstanding settlement of Licensee's sales to Customers made on Sears credit plans, for a period of one hundred and eighty (180) days from the said termination or expiry date, in order to ensure the fulfillment of any reasonable adjustments to Customers by Sears. Such adjustments will be detailed by Sears and will be deducted from monies owing to Licensee. A final settlement will be made to Licensee within twelve (12) business days of the expiration of the one hundred and eighty (180) day withholding period.

#### **25.3 Disengagement Costs**

Licensee acknowledges and agrees that Sears shall not have any liability to Licensee for any disengagement or termination costs. Without limiting the generality of the foregoing, Licensee shall assume, to the complete exoneration of Sears, all costs and expenses relating to legal, administration, overhead, employees' wages, engagement costs and all other costs relating to severance, pensions, employment insurance, employment contracts and contractor engagement contracts and Licensee shall indemnify and hold Sears harmless from any and all claims, actions arising therefrom and all costs and expenses connected therewith.

#### **25.4 Licensed Area Restoration Costs**

Notwithstanding anything to the contrary in this Agreement, Licensee acknowledges and agrees that if the operation of the Concession in a Licensed Area in a Designated Store is terminated, vacated or abandoned by Licensee or terminated by Sears for cause, Licensee shall pay to Sears the costs reasonably incurred by Sears to restore the premises to their original broom-swept condition.

#### **25.5 Protected Asset Values**

The applicable provisions of Schedule "L" shall apply in the event of expiration or termination of this Agreement.

#### **25.6 Option to Transfer Assets**

In this section 25.6:

- (a) "Transferable Assets" means the Working Inventory, Furniture and Equipment, and Work-in-Progress;
- (b) "Working Inventory" means new inventory pertaining to the Concession which is still in the original packaging, saleable at market margins and is not distressed

or otherwise incomplete, reconditioned, altered, damaged, defective, non-functional, discontinued or obsolete;

- (c) **"Furniture and Equipment"** means all assets used in the Concession and located in Licensed Areas or other premises used by Licensee in the operation of the Concession, including office supplies and similar materials of Licensee used in the Concession containing Sears Trademarks;
- (d) **"Work-in-Progress"** means 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, of Licensee related to agreements with customers of the Concession entered into prior to the end of Term for Products and Services not yet delivered; and
- (e) **"Customer Deposits"** means deposits received by Licensee from counterparties to contracts with customers of the Concession that form the basis for the Work-in-Progress.

In addition to options available to Sears to purchase Furnishings or leasehold improvements pursuant to section 25.5, upon expiration or termination of this Agreement for any reason whatsoever, Sears shall have the right, but not the obligation, such right to be exercised by notice in writing ("Purchase Option Notice") delivered to the Licensee no later than 30 days after such date of expiration or termination, as the case may be, to purchase from the Licensee all or any portion of the Transferable Assets.

The purchase price shall be determined as follows:

- (a) for all Working Inventory, Sears shall pay an amount equal to the cost (less freight or other shipping charges) thereof to the Licensee;
- (b) for each item of Furniture and Equipment, Sears shall pay an amount equal to the net depreciated book value of each such asset. In calculating "net depreciated book value", all assets shall be deemed to have been depreciated at the greater of (A) the depreciation as shown in the Licensee's books and records; or (B) the maximum amount of depreciation allowed in accordance with the provisions of the Income Tax Act (Canada);
- (c) for all Work-in-Progress, Sears shall pay an amount equal to 5.532% of the total face value (not including Sales Taxes) of the Customer contracts that are the subject of the Work-in-Progress; and
- (d) for all Customer Deposits, Sears shall pay an amount equal to the value of the Customer Deposits.

In no event shall any amount be payable under this section 25.6 for "goodwill" or "going concern value".

No later than 5 days following receipt by Licensee of the Purchase Option Notice, Licensee shall provide to Sears the information required to determine the purchase price. After receipt of such information, Sears shall deliver to the Licensee a statement prepared by Sears's accountants setting forth the basis upon which the purchase price has been calculated. Unless disputed in

good faith, such statement shall be conclusive and binding upon all Parties. The purchase price shall be paid in immediately available funds no later than the later of: (i) closing; (ii) resolution of any dispute; and (iii) thirty (30) days after receipt by the Licensee of the Purchase Option Notice.

Closing of the transaction shall take place no later than 10 days after delivery of the Purchase Option Notice, at which time the Licensee shall: (i) deliver all documents and instruments necessary to transfer good and merchantable title to the assets purchased, to Sears or its nominee, free and clear of all liens and encumbrances and (ii) transfer or assign to Sears, or its nominee, all licenses or permits, utilized by the Licensee in the conduct of the Concession which may be assigned or transferred. The Licensee shall, prior to closing, comply with any applicable bulk sales legislation. Sears shall have the right to set off against and reduce the purchase price by any and all amounts owed by the Licensee to Sears or any of its affiliates.

#### **25.7 Option to Assign Contracts**

Upon expiration or termination of this Agreement for any reason whatsoever, Sears shall have the right, but not the obligation, such right to be exercised by notice in writing delivered to the Licensee no later than 30 days after such date of expiration or termination, as the case may be, to assume from the Licensee all or any of the contracts used by the Licensee to operate the Concession, including with suppliers and contractors ("Transferable Contracts"). Licensee shall make commercially reasonable efforts to assign the Transferable Contracts to Sears.

#### **25.8 Licensee Work-in-Progress Put Option**

If, effective on the last day of the Term, Licensee terminates 75% or more of the Concession Employees who were Concession Employees one month prior to the last day of the Term, then Licensee has the option, in its full discretion to be exercised by notice given in writing delivered to Sears no later than, in the event of expiration, 30 days prior to such date of expiration or, in the event of termination, two days after such date of termination, to require Sears, for the purchase price established in accordance with section 25.6:

- (a) to assume all Work-in-Progress and Customer contracts that are the subject of the Work-in-Progress and to purchase Customer Deposits; and
- (b) to purchase Working Inventory related to the Work-in-Progress.

If Licensee does not terminate 75% or more of the Concession Employees who were Concession Employees one month prior to the last day of the Term, Sears will pay Licensee a bonus of \$5 million.

#### **25.9 Post-Termination Transfer Further Assurances**

Each of the Parties 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 the transfer of assets and assignment and assumption of contracts made pursuant to sections 25.5, 25.6, 25.7 and 25.8 (collectively, the "Post-Termination Transfer") and will use commercially reasonable efforts and take all such steps as may be reasonably within its power to implement to their full extent the provisions of this Agreement with respect to the Post-Termination Transfer.

Licensee 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 Sears, Licensee 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 Sears in order to assign, transfer, set over, convey, assure and confirm unto and vest in Sears, its successors and assigns, good and valid title to the assets sold, conveyed, transferred and delivered pursuant to the Post-Termination Transfer free and clear of all liens except for permitted liens.

Licensee hereby constitutes and appoints Sears and its successors and assigns Licensee's true and lawful attorney and attorneys, with full power of substitution, in Licensee's name and stead, by and on behalf of, and for the benefit of, Sears and its successors and assigns to demand and receive any and all of the assets so transferred, 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, Sears and its successors and assigns any and all proceedings at law, in equity or otherwise, which Sears 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 Sears or its successors and assigns shall deem desirable. Licensee hereby declares that the foregoing powers are coupled with an interest and are and shall be irrevocable by Licensee 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 Sears 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 Sears and its successors and assigns.

#### **25.10 Transition Assistance**

Following the expiration or termination of this Agreement for any reason whatsoever, Licensee shall, at Licensee's expense, in good faith cooperate with and provide such assistance to Sears and/or such third parties as designated by Sears, as reasonably requested by Sears or such third parties, to allow the Concession to be operated by Sears or by any third party as designated by Sears, with minimal disruption to the Concession and the Customers. Without limiting the generality of the foregoing, such assistance shall include, without limitation, provision of information on Customers and suppliers, access to Licensee Software, Concession Data and other computer software and databases containing such information, work-in-progress (for customers as well as internal marketing and other planning), integration and/or transfer of computer systems, software and data. Licensee shall make available sufficient competent personnel to help with such transition assistance. The assistance contemplated by this section 24.11 will be provided for one year or such other period of time as reasonably requested by Sears and agreed by Licensee.

#### **25.11 Option to Acquire Software License**

Upon expiration or termination of this Agreement for any reason whatsoever, Sears shall have the right, but not the obligation, such right to be exercised by notice in writing delivered to the Licensee no later than 30 days after such date of expiration or termination, as the case may be, to a perpetual non-exclusive license to use any Licensee Software, at a cost per month no

greater than one-tenth of one percent of Licensee's Net Sales during the last Fiscal Year of the Term, until such time as Sears notifies Licensee that it no longer requires such license.

#### **25.12 Concession Data**

Immediately upon the expiration or termination of this Agreement, Licensee will provide to Sears electronic records in a format requested by Sears for all Concession data and other data required by Sears to operate the Concession.

#### **25.13 Licensee Non-Competition After Termination**

If, effective on the last day of the Term, Licensee terminates 75% or more of the Concession Employees who were Concession Employees one month prior to the last day of the Term, then the following shall apply:

The Licensee agrees that, for a one year period following the end of the Term, it will not, without the prior written consent of Sears, either individually or in partnership or jointly or in conjunction with any Person, firm, association, syndicate or corporation, as principal, agent, shareholder or in any manner whatsoever, carry on or be engaged in or be concerned with or interested in or advise, lend money to, guarantee the debts or obligations of or permit its name or any part thereof to be used or employed in any business which is the same or similar to or competitive with any aspect of the business of marketing and selling products and services similar to or competitive with the Products and Services in Canada.

The Licensee agrees that, for a one year period after the end of the Term, no Affiliate of Licensee shall, without prior written consent of Sears, either individually or in partnership or jointly or in conjunction with any Person, firm, association, syndicate or corporation, as principal, agent, shareholder or in any manner whatsoever, carry on or be engaged in or be concerned with or interested in or advise, lend money to, guarantee the debts or obligations of or permit its name or any part thereof to be used or employed in any business of marketing or selling products and services similar to or competitive with the Products and Services to an ultimate end user in Canada.

For greater certainty, the foregoing provision does not restrict an Affiliate of the Licensee from engaging in any business that is not marketing or selling products and services similar to or competitive with the Products and Services in Canada on behalf of a Competitor or other Person, such as the procurement or installation of products and services similar to or competitive with the Products and Services.

The foregoing provision does not restrict an Affiliate of Licensee that is, at the time of signing this Agreement, in the business of marketing or selling floor covering products and services for a Competitor from continuing to engage in such business for such Competitor only.

If, effective on the last day of the Term, Licensee does not terminate 75% or more of the Concession Employees who were Concession Employees one month prior to the last day of the Term, then there are no restrictions on competition by the Licensee or an Affiliate of Licensee after the end of the Term.

#### **25.14 Non-Solicitation of Customers**

Except as set out in this Agreement or as otherwise agreed by Sears, Licensee shall not during the six month period following the end of the Term, directly or indirectly, use Sears Customer Lists or interfere with or endeavour to entice away from Sears any Sears customers.

#### **25.15 Non-Solicitation of Employees by Sears**

Except as set out in this Agreement or as otherwise agreed by Licensee, Sears shall not, directly or indirectly through another Person, without consent of Licensee, during the six month period following the end of the Term, induce, recruit, solicit or cause, or attempt to induce, recruit, solicit or cause any employee or independent contractor of Licensee or an Affiliate of Licensee to leave the employ of or engagement with Licensee or such Affiliate. A general advertisement contained in a newspaper or other medium and not targeted at Licensee's employees or contractors will not be prohibited by this section 25.15. Notwithstanding the foregoing, Sears may, following an Event of Default that is continuing, a Licensee Bankruptcy Event or after expiry or termination of this Agreement, provide notice to Licensee that it seeks non-application of this provision. In such event, this provision shall not apply for a period beginning, as the case may be, on the date of receipt of notice of such continuing Event of Default, on the first day of such Licensee Bankruptcy Event, or on the day of expiry or the effective date of termination, and ending no later than 30 days after the end of the Term.

#### **25.16 Non-Solicitation of Employees by Licensee**

Except as set out in this Agreement or as otherwise agreed by Sears, Licensee shall not, directly or indirectly through another Person, without consent of Sears, during the six month period following the end of the Term, induce, recruit, solicit or cause, or attempt to induce, recruit, solicit or cause any employee or independent contractor of Sears or an Affiliate of Sears to leave the employ of or engagement with Sears or such Affiliate. A general advertisement contained in a newspaper or other medium and not targeted at Sears's employees or contractors will not be prohibited by this section 25.16.

#### **25.17 Sears Business After the Term**

After expiration or termination of this Agreement in accordance with the terms herein, it is agreed that Licensee shall not have any right or interest in future contracts entered into by Sears relating to the subject matter of this Agreement or in the operation by Sears or a licensee of Sears of any business which is the same or similar to that contemplated by this Agreement and it is further agreed that Sears may, without incurring any liability to Licensee:

- (a) enter into an agreement with any Person for the operation of a concession that is the same or similar to the Concession and/or the procurement, presentation, merchandising, marketing and/or sale of products and services that are the same as or similar to the Products and Services;
- (b) directly procure, present, market and/or sell products and services that are the same as or similar to the Products and Services; or
- (c) completely terminate the operation of the Concession and/or the procurement, presentation, merchandising, marketing and/or sale of the Products and Services.

**ARTICLE 26.**  
**REPRESENTATIONS, WARRANTIES AND COVENANTS**

**26.1 Representations and Warranties of Licensee**

Licensee hereby represents and warrants as follows and acknowledges that, despite any independent searches or investigations that may be undertaken by or on behalf of Sears and despite any information or document provided to Sears, Sears is relying upon the accuracy of each of such representations and warranties in connection with this Agreement:

- (a) **Corporate Status:** Licensee is a corporation duly incorporated and validly subsisting under the laws of Canada, with the requisite power and authority to enter into this Agreement with Sears in the manner contemplated herein and to perform all of its obligations under this Agreement.
- (b) **Due Authorization:** The execution and delivery of and performance by Licensee of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary action on the part of Licensee.
- (c) **No Contravention:** The execution and delivery of and performance by Licensee of this Agreement:
  - (i) does not and will not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) constitute or result in a violation or breach of, or conflict with, or allow any other Person to exercise any rights under, any of the terms or provisions of its constating documents;
  - (ii) does not and will not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) constitute or result in a breach or violation of, or conflict with or allow any other Person to exercise any rights under, any of the terms or provisions of any contracts or instruments to which it is a Party; and
  - (iii) does not and will not result in the violation of any law.
- (d) **Enforceability of Obligations:** This Agreement has been duly executed and delivered by Licensee and constitutes legal, valid and binding agreements of Licensee enforceable against it in accordance with their respective terms subject only to any limitation under Applicable Laws.
- (e) **Litigation:** There are no actions, suits, appeals, claims, applications, investigations, orders, proceedings, grievances, arbitrations or alternative dispute resolution processes in progress, pending, or to License's knowledge, threatened against Licensee, which prohibits, restricts or seeks to enjoin the transactions contemplated by this Agreement.

## 26.2 Representations and Warranties of Sears

Sears hereby represents and warrants as follows and acknowledges that, despite any independent searches or investigations that may be undertaken by or on behalf of Licensee and despite any information or document provided to Licensee, Licensee is relying upon the accuracy of each of such representations and warranties in connection with this Agreement:

- (a) **Corporate Status:** Sears is a corporation duly incorporated and validly subsisting under the laws of Canada, with the requisite power and authority to enter into this Agreement with Licensee in the manner contemplated herein and to perform all of its obligations under this Agreement.
- (b) **Due Authorization:** The execution and delivery of and performance by Sears of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary action on the part of Sears, including any approval necessary from Sears Roebuck and Co., and has the right to grant the rights under the License, including the right to use the Sears Trademark.
- (c) **No Contravention:** The execution and delivery of and performance by Sears of this Agreement:
  - (i) does not and will not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) constitute or result in a violation or breach of, or conflict with, or allow any other Person to exercise any rights under, any of the terms or provisions of its constating documents;
  - (ii) does not and will not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) constitute or result in a breach or violation of, or conflict with or allow any other Person to exercise any rights under, any of the terms or provisions of any contracts or instruments to which it is a Party; and
  - (iii) does not and will not result in the violation of any law.
- (d) **Enforceability of Obligations:** This Agreement has been duly executed and delivered by Sears and constitutes legal, valid and binding agreements of Sears enforceable against it in accordance with their respective terms subject only to any limitation under Applicable Laws.
- (e) **Litigation:** There are no actions, suits, appeals, claims, applications, investigations, orders, proceedings, grievances, arbitrations or alternative dispute resolution processes in progress, pending, or to License's knowledge, threatened against Sears, which prohibits, restricts or seeks to enjoin the transactions contemplated by this Agreement.

## 26.3 Nature and Survival

All representations, warranties and covenants contained in this Agreement on the part of each of the Parties survive the Term of this Agreement.



**ARTICLE 27.**  
**CONDITIONS PRECEDENT**

**27.1 Conditions Precedent**

This Agreement shall not be effective unless and until the following conditions shall have been met:

- a) Closing (as defined in the Asset Transfer Agreement) of the Asset Transfer Agreement has occurred;
- b) Unless waived by Sears, the security agreement referred to in Section 13.2. shall have been executed and delivered;
- c) Unless waived by Sears, the non-interference agreement referred to in Section 13.4 shall have been executed and delivered; and
- d) Unless waived by Sears, the Option Agreement between the parties, dated of even date herewith, shall have been executed and delivered and the form of Shareholders Agreement, as defined therein, shall have been agreed to.

**ARTICLE 28.**  
**GENERAL MATTERS**

**28.1 Enurement**

This Agreement shall be binding upon and enure to the benefit of Licensee and its successors and permitted assigns and shall be binding upon and enure to the benefit of Sears and its successors and assigns.

**28.2 Notices**

Any notice, consent, approvals, statements, authorizations, documents or other communications (collectively "Notices") required or permitted to be given under this Agreement shall be in writing and shall be hand-delivered personally, or mailed by registered mail, postage prepaid or by facsimile transmission or other means of electronic communication as hereinafter provided. Any such Notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, shall be deemed to have been received on the fifth (5th) Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, shall be deemed to have been received on the Business Day following the sending, or if delivered by hand shall be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address shall also be governed by this section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, Notices or other communications shall be delivered by hand or sent by facsimile or other means of electronic communication and shall be deemed to have been

received in accordance with this section. Notices and other communications shall be addressed as follows:

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

if to the Licensee:

SHS Services Management Inc.  
245, 1209 -59 Avenue SE  
Calgary, AB  
T2H 2P6

Attention: President  
Facsimile number: (403) 255-2839

### **28.3 Time of Essence**

Each of the Parties acknowledge and agree that time shall be of the essence for the purposes of this Agreement.

### **28.4 Failure to Give Notice**

Failure by a Party to give notice of or otherwise object to any default, failure or breach under this Agreement by the other Party, or any waiver of the same by a Party, shall not affect or impair such Party's rights in respect of continuous or subsequent default, failure or breach, nor shall any delay or omission by a Party in exercising or failing to exercise any right arising from any default, failure or breach hereunder, affect or impair such Party's rights in respect of the same or any other default, failure or breach.

### **28.5 Independent Contractor**

It is intended that Licensee shall operate in the capacity of an independent contractor, and that nothing contained in or done pursuant to this Agreement is to be construed as creating a partnership, agency or joint venture between or among the Parties and no Party shall become bound by any conduct, representation, act or omission of the other Party other than as specified in this Agreement. Licensee shall not do any act or make any statement that may imply that Sears in any manner owns, controls, operates or is a franchisor for the operation of the

Concession. The Parties acknowledge and agree that this Agreement is not a franchise agreement and does not allow Sears to exert ongoing operational controls over the operations of the Licensee.

#### **28.6 Not a Lease**

This Agreement is not intended to be a lease under the laws of Canada or any province, territory or municipality within Canada. This Agreement is not intended to create, nor does it create, and shall not be construed to create, a landlord-tenant relationship.

#### **28.7 Independent Legal Advice**

Licensee acknowledges that Sears has advised Licensee that prior to the execution by Licensee of this Agreement, Licensee has the right to obtain independent legal advice.

#### **28.8 Further Assurances**

Subject to specific terms and conditions of this Agreement, each of the Parties shall promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents, instruments and things as the other Party hereto may reasonably require and as are commercially reasonable from time to time for the purpose of giving effect to this Agreement and shall use commercially reasonable efforts and take all such steps as may be commercially reasonable and within its power to effectively carry out or better evidence or perfect or implement the full intent and meaning of this Agreement. Each Party will exercise its rights and perform its obligations under this Agreement and the other Relevant Agreement in good faith and in accordance with the Governing Principles.

#### **28.9 Approvals and Consents**

Any approvals or consents required to be obtained pursuant to this Agreement shall be in writing and may be withheld by either Party in such Party's entire discretion unless otherwise expressly provided for in this Agreement.

#### **28.10 Announcements**

Except as may be required by Applicable Law, Licensee shall not issue any publicity or press release regarding this Agreement, or the operation of the Concession contemplated hereunder without obtaining Sears's prior written approval, which approval may be arbitrarily withheld.

#### **28.11 Currency**

Except where otherwise expressly provided, all amounts in this Agreement, are stated and shall be paid in Canadian currency.

#### **28.12 Invalidity of Provisions**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability in respect of any such provision or part thereof by a court of competent jurisdiction shall not affect the legality, validity or enforceability of any other provision, each of which will remain in full force and effect. To the extent permitted by Applicable Law, the Parties waive any provision of law which renders any provision of this Agreement illegal, invalid

or unenforceable in any respect. The Parties shall engage in good faith negotiations to replace any provision which is declared illegal, invalid or unenforceable with a legal, valid and enforceable provision, the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provision which it replaces.

#### **28.13 Entire Agreement**

This Agreement, including all Schedules attached hereto, constitutes the entire agreement between the Parties pertaining to the subject matter of the Agreement. There are no representations (including negligent misrepresentations), warranties or conditions (including any that may be implied by statute), and there are no promises, covenants or agreements (including collateral contracts) in connection with such subject matter except as specifically set forth or referred to in this Agreement.

No reliance is placed by any Party to this Agreement on any representation (including negligent misrepresentation), warranty, promise, covenant, agreement, opinion, advice or assertion of fact made either prior to, contemporaneous with, or after entering into this Agreement, or any amendment or supplement thereto, by any Party to this Agreement or its directors, officers, employees or agents, to any other Party to this Agreement or its directors, officers, employees or agents, except to the extent that the same has been reduced to writing and included as a term of this Agreement, and none of the Parties to this Agreement has been induced to enter into this Agreement or any amendment or supplement by reason of any such representation (including negligent misrepresentations), warranty, promise, covenant, agreement, opinion, advice or assertion of fact. Accordingly, there shall be no liability, either in tort (including negligence or negligent misrepresentation) or in contract, assessed in relation to any such representation (including negligent misrepresentation) warranty, promise, covenant, agreement, opinion, advice or assertion of fact, except to the extent contemplated above.

#### **28.14 Survival**

The expiry or other termination of this Agreement shall not relieve any Party from its obligations which survive the termination of this Agreement, including the obligation to pay any amount due hereunder and the obligations and provisions of sections.

#### **28.15 No Representations**

Each Party acknowledges and confirms that no promises or representations whatsoever have been made to such Party, as to the potential amount of business, revenue, profit or otherwise, either Party can expect at any time during the Term.

#### **28.16 Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing (i) by the Parties, in the case of any amendment, or (ii) by the Party to be bound, in the case of a waiver. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

#### **28.17 Governing Law**

This Agreement shall be governed by and construed and interpreted in accordance with, the laws of the Province of Ontario and the laws of Canada applicable therein. The Parties hereby irrevocably and unconditionally attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

#### **28.18 Applicable Law**

Notwithstanding anything to the contrary, neither Party is required to do or refrain from doing anything under this Agreement which such Party is prohibited from doing by Applicable Law and such Party will not be in default of this Agreement for doing or not doing such thing as applicable.

#### **28.19 Cumulative Remedies**

It is agreed that no remedies available to a Party other than this Agreement or under Applicable Law is distinct, separate and cumulative and no one of them whether or not exercised by a Party shall be deemed to exclude any other rights or remedies available to a Party in this Agreement, by Applicable Law or equity.

#### **28.20 Injunctive Relief**

The Parties agree that if the non-competition, non-solicitation or confidentiality obligations provided for in this Agreement are breached, the Party seeking remedy shall be entitled to specific performance or injunctive relief by a court to remedy such breach, in addition to any other remedies available to it.

#### **28.21 Counterparts/Facsimile**

This Agreement may be executed and delivered in any number of counterparts, by facsimile or other means of electronic communication, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument.

#### **28.22 Language**

It is the express wish of the Parties that this Agreement and any related documents be drawn up and executed in English. Il est la volonté expresse des parties que cette convention et tous les documents s'y rattachant soient rédigés en anglais.

[Signatures follow]

IN WITNESS WHEREOF the Parties have executed this Agreement this 20<sup>th</sup> day of December, 2012

**SEARS CANADA INC.**

By: \_\_\_\_\_  
(I have authority to bind the Corporation)

Name: Peter Kalen  
Title: Executive Vice-President,  
Financial and Home Services, Direct and  
Marketing

By: \_\_\_\_\_  
(I have authority to bind the Corporation)

Name: Terri Lowe  
Title: Vice-President, Home Services

**SHS SERVICES MANAGEMENT INC.**

By: \_\_\_\_\_  
(I have authority to bind the Corporation)


Name:  
Title:

By: \_\_\_\_\_  
(I have authority to bind the Corporation)

Name:  
Title:

IN WITNESS WHEREOF the Parties have executed this Agreement this 20<sup>th</sup> day of December, 2012

SEARS CANADA INC.

By:   
(I have authority to bind the Corporation)

Name: Peter Kalen  
Title: Executive Vice-President,  
Financial and Home Services, Direct and  
Marketing

By: \_\_\_\_\_  
(I have authority to bind the Corporation)

Name: Terri Lowe  
Title: Vice-President, Home Services

SHS SERVICES MANAGEMENT INC.

By: \_\_\_\_\_  
(I have authority to bind the Corporation)

Name:  
Title:

By: \_\_\_\_\_  
(I have authority to bind the Corporation)

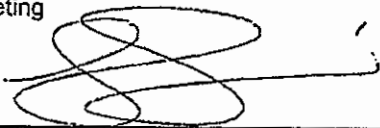
Name:  
Title:

IN WITNESS WHEREOF the Parties have executed this Agreement this 20<sup>th</sup> day of December, 2012

SEARS CANADA INC.

By: \_\_\_\_\_  
(I have authority to bind the Corporation)

Name: Peter Kalen  
Title: Executive Vice-President,  
Financial and Home Services, Direct and  
Marketing

By:  \_\_\_\_\_  
(I have authority to bind the Corporation)

Name: Terri Lowe  
Title: Vice-President, Home Services

SHS SERVICES MANAGEMENT INC.

By: \_\_\_\_\_  
(I have authority to bind the Corporation)

Name:  
Title:

By: \_\_\_\_\_  
(I have authority to bind the Corporation)

Name:  
Title:



IN WITNESS WHEREOF the Parties have executed this Agreement this 20<sup>th</sup> day of December, 2012

SEARS CANADA INC.

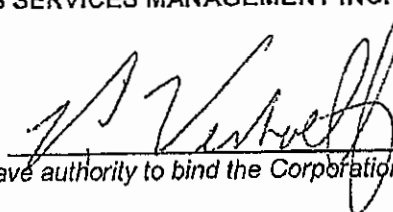
By: \_\_\_\_\_  
(I have authority to bind the Corporation)

Name: Peter Kalen  
Title: Executive Vice-President,  
Financial and Home Services, Direct and  
Marketing

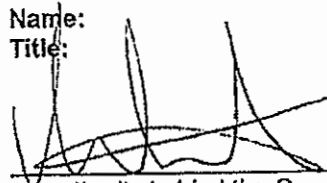
By: \_\_\_\_\_  
(I have authority to bind the Corporation)

Name: Terri Lowe  
Title: Vice-President, Home Services

SHS SERVICES MANAGEMENT INC.

By:  \_\_\_\_\_  
(I have authority to bind the Corporation)

Name:  
Title:

By:  \_\_\_\_\_  
(I have authority to bind the Corporation)

Name:  
Title:

**TAB C**

This is Exhibit "C" referred to in the  
Affidavit of Daniel Westreich  
Sworn before me, this 7  
day of January, 2014.

A handwritten signature in black ink, appearing to read "Sam Golder". The signature is fluid and cursive, with the first name "Sam" and last name "Golder" clearly distinguishable.

A Commissioner, Etc.

**Sam Golder,  
a Commissioner, etc., Province of  
Ontario, while a Student-at-Law.  
Expires August 26, 2016.**

**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**

**AND IN THE MATTER OF AN APPLICATION UNDER SECTION 243 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 DANIEL WESTREICH  
(Sworn December 13, 2013)**

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

1. I am the Divisional Vice-President, Central Administration & Senior Corporate Counsel for Sears Canada Inc. ("Sears") and, as such, have knowledge of the matters to which I hereinafter dispose, save and except where my knowledge is based on information and belief and where so stated I verily believe same to be true.

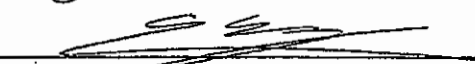
2. I have reviewed the affidavit of Michael Clements sworn on December 12, 2013. Sears denies that there were any inaccurate representations made to SHS Services Management Inc. or SHS Services Limited Partnership (collectively, "SHS").

3. In fact, on September 30, 2013, SHS signed a Release and Acknowledgement Agreement (the "Release") releasing all claims against Sears, and acknowledging that it fully understood the terms of the Release, was afforded an opportunity to have the Release reviewed by lawyers and any other party SHS wished, and entered into the Release of its own accord and without duress or coercion. A true copy of the Release is attached hereto as "Exhibit A".

4. I swear this affidavit in reply to the affidavit of Michael Clements and for no other improper purpose.

SWORN before me at the City of Toronto,  
in the Province of Ontario, this 13th day of  
December, 2013.

SPAREZ STOGNIAN

  
A Commissioner for taking affidavits.

  
Daniel Westreich

This is Exhibit "A" referred to in the  
affidavit of Daniel Westreich  
sworn before me, this 13th  
day of December, 2013

A handwritten signature in black ink, consisting of several overlapping horizontal strokes.

A. Commissioner, Etc.

## RELEASE AND ACKNOWLEDGMENT AGREEMENT

THIS RELEASE AND ACKNOWLEDGMENT AGREEMENT (the "Release" or the "Agreement") is made as of September 30, 2013.

BY:

SHS SERVICES MANAGEMENT INC. ("SHS GP") and SHS SERVICES  
MANAGEMENT LIMITED PARTNERSHIP ("SHS LP")

(collectively, the "SHS Parties" and each, a "SHS Party").

IN FAVOUR OF:

SEARS CANADA INC. ("Sears")

### RECITALS

WHEREAS reference is made to the Sears Branded Concession Agreement dated as of December 20, 2012 and effective as of March 2, 2013, between SHS GP and Sears (as amended or otherwise modified to the date hereof, the "Concession Agreement"), which together with all security agreements, documents and instruments at any time executed or delivered in connection with or related to the Concession Agreement are referred to in this Agreement as the "Concession Documents";

AND WHEREAS reference is made to the Asset Transfer Agreement dated as of December 20, 2012, between SHS GP and Sears (as amended or otherwise modified to the date hereof, the "Transfer Agreement"), which together with all security agreements, documents and instruments at any time executed or delivered in connection with or related to the Transfer Agreement, each as amended or otherwise modified to the date hereof, are referred to in this Agreement as the "Transfer Documents";

AND WHEREAS Sears and SHS GP also entered into the following agreements:

- (a) Option Agreement between SHS GP and Sears dated December 20, 2012 as amended or otherwise modified to the date hereof;
- (b) Transition Services Agreement between SHS GP and Sears dated February 28, 2013 as amended or otherwise modified to the date hereof;
- (c) Sublease between Sears and SHS GP dated March 2, 2013 as amended or otherwise modified to the date hereof;
- (d) Sublease between Sears and SHS GP dated May 1, 2013 as amended or otherwise modified to the date hereof;
- (e) Sublease between Sears and SHS GP dated September 1, 2013 as amended or otherwise modified to the date hereof;
- (f) Postponement Agreement among Sears, Alaris Income Growth Fund Partnership, SHS GP, SHS LP and Installation Services Org. Ltd. dated February 25, 2013 as amended or otherwise modified to the date hereof; and

- (g) Sears Card Merchant Agreement between SHS Services Management Inc. and Sears Canada Inc. dated January 29, 2013 as amended or otherwise modified to the date hereof,

which together with all security agreements, documents and instruments at any time executed or delivered in connection with or related to such agreements are referred to in this Agreement as the "Additional Documents";

AND WHEREAS on or about March 2, 2013, SHS GP transferred all of its beneficial interest in and to its assets (including, without limitation, an assignment of its rights as party to the Concession Documents and the Transfer Documents) (the "Transfer") to SHS LP and SHS LP became a party to the Concession Documents and the Transfer Documents as the assignee of SHS GP;

AND WHEREAS reference is made to the Loan Agreement dated as of March 2, 2013, between SHS GP, as borrower, and Sears, as lender, pursuant to which Sears provided a loan to SHS GP in the principal amount of Cdn. \$5,676,525.80 (as amended or otherwise modified to the date hereof, the "VTB Loan Agreement"), which together with all security agreements, documents and instruments at any time executed or delivered in connection with or related to the VTB Loan Agreement, each as amended or otherwise modified to the date hereof, are referred to in this Agreement as the "VTB Documents";

AND WHEREAS SHS GP has repaid the VTB Loan and all credit facilities thereunder have been cancelled;

AND WHEREAS the SHS Parties have requested that Sears provide a new credit facility in the amount of \$2,000,000 in favour of SHS [LP] (the "New Loan"), to be evidenced by way of a demand promissory note dated as of the date hereof to be provided by SHS [LP] to Sears as holder thereof (as the same may be further amended, modified, supplemented or restated from time to time in accordance with the provisions thereof, the "Note") and that Sears enter into a letter agreement dated as of the date hereof with, among others, the SHS Parties and Alaris Income Growth Fund Partnership pursuant to which Sears agrees to certain matters in respect of the Concession Agreement to the benefit of the SHS Parties, as the same may be further amended, modified, supplemented or restated from time to time in accordance with the provisions thereof, the "Letter Agreement");

AND WHEREAS it is a condition to Sears making the New Loan and entering into the Letter Agreement that the SHS Parties enter into this Release;

NOW THEREFORE, in consideration of the covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

## ARTICLE 1

### 1.1 General Release; Covenant Not to Sue

- 1.1.1 Each SHS Party, on behalf of itself and its agents, representatives, officers, directors, advisors, employees, subsidiaries, affiliates, successors and assigns (collectively, "Releasors"), hereby forever agrees and covenants not to sue or prosecute against any Releasee (as hereinafter defined) and hereby forever waives, releases and discharges, to the fullest extent permitted by law, each Releasee from any and all claims (including, without



limitation, crossclaims, counterclaims, claims of lender liability, rights of set-off and recoupment), actions, causes of action, suits, debts, accounts, interests, liens, promises, warranties, damages and consequential damages, demands, judgments, executions, costs, expenses or claims whatsoever (collectively, the "Claims"), that such Releasor now has or hereafter may have, of whatsoever nature and kind, whether known or unknown, whether arising at law or in equity, against any or all of Sears in any capacity and its affiliates, subsidiaries, shareholders and "controlling persons" (within the meaning of any applicable laws), and its successors and assigns and each and all of the officers, directors, employees, agents, attorneys and other representatives of each of the foregoing (collectively, the "Releasees"), in each case based in whole or in part on facts, whether or not now known, existing on or before the date of this Agreement, and that relate to, arise out of or otherwise are in connection with:

- (i) any or all of the Concession Documents, Transfer Documents, the Additional Documents or VTB Documents or transactions contemplated thereby or any actions or omissions in connection therewith; or
- (ii) any aspect of the dealings or relationships between or among the Releasors (or any of them), on the one hand, and the Releasees (or any of them), on the other hand, relating to any or all of the documents, transactions, actions or omissions referenced in clause (i) hereof.

For greater certainty, the Claims released pursuant to the foregoing do not include those which are based upon facts which are not existing on or before the date of this Agreement.

- 1.1.2 The entering into of this Agreement by each SHS Party shall constitute a ratification, adoption, and confirmation by such SHS Party of the foregoing general release of all Claims against the Releasees.
- 1.1.3 Each SHS Party, on a joint and several basis, hereby agrees that it shall be obligated to indemnify and hold the Releasees harmless with respect to any and all liabilities, obligations, losses, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever incurred by the Releasees, or any of them, whether direct, indirect or consequential, as a result of or arising from or relating to any proceeding by, or on behalf of any Person, including, without limitation, the respective officers, directors, agents, trustees, creditors, partners or shareholders of the Releasors (or any of them) or any of their respective subsidiaries or affiliates, whether threatened or initiated, in respect of any claim for legal or equitable remedy under any statute, regulation or common law principle arising from or in connection with the negotiation, preparation, execution, delivery, performance, administration and enforcement of the Concession Documents, the Transfer Documents, the Additional Documents, the VTB Documents, this Agreement or any other document executed and/or delivered in connection herewith; provided, that no Releasor shall have any obligation to indemnify or hold harmless any Releasee hereunder with respect to liabilities to the extent they result from the gross negligence or willful misconduct of such Releasee as finally determined by a court of competent jurisdiction.
- 1.1.4 If and to the extent that the foregoing undertaking may be unenforceable for any reason, each SHS Party agrees to make the maximum contribution to the payment and satisfaction thereof which is permissible under applicable law.

- 1.1.5 Each SHS Party, on behalf of itself and its successors, assigns, and other legal representatives, hereby absolutely, unconditionally and irrevocably, covenants and agrees with and in favor of each Releasee that it will not, sue (at law, in equity, in any regulatory proceeding or otherwise) any Releasee on the basis of any Claim released, remised and discharged by the SHS Parties hereunder.
- 1.1.6 The provisions of this Section 1.1 shall survive the termination of this Agreement, the Concession Documents, the Transfer Documents, the Additional Documents and VTB Documents and the payment in full of the New Loan.

## ARTICLE 2 ACKNOWLEDGMENT

- 2.1.1 Each SHS Party hereby acknowledges and agrees that the "Purchase Price" as defined in the Asset Transfer Agreement is \$5,344,763.66.

## ARTICLE 3 LEGAL COUNSEL

- 3.1.1 Each SHS Party hereby represents and warrants to Sears that it:
- (a) understands fully the terms of this Agreement and the consequences of the execution and delivery of this Agreement;
  - (b) has been afforded an opportunity to have this Agreement reviewed by, and to discuss this Agreement and any documents executed in connection herewith with such lawyers and other persons as such SHS Party may wish; and
  - (c) has entered into this Agreement and executed and delivered all documents in connection herewith of its own free will and accord and without threat, duress or other coercion of any kind by any Person.
- 3.1.2 In entering into this Agreement, each SHS Party has consulted with, and has been represented by, legal counsel and expressly disclaims any reliance on any representations, acts or omissions by any of the Releasees and each SHS Party hereby agrees and acknowledges that the validity and effectiveness of the releases set forth in Section 1.1 do not depend in any way on any such representations, acts and/or omissions or the accuracy, completeness or validity hereof.
- 3.1.3 The parties hereto acknowledge and agree that neither this Agreement nor the other documents executed pursuant hereto will be construed more favourably in favour of one than the other based upon which party drafted the same, it being acknowledged that all Parties hereto contributed substantially to the negotiation and preparation of this Agreement and the other documents executed pursuant hereto or in connection herewith.

## ARTICLE 4 GENERAL

- 4.1.1 Except as modified by this Agreement, no other changes or modifications to the Concession Documents, the Transfer Documents, the Additional Documents or the VTB Documents are

intended or implied, and in all other respects the Concession Documents, Transfer Documents, the Additional Documents and the VTB Documents are specifically ratified, restated and confirmed by all Parties as of the effective date of this Agreement; provided that the VTB Loan Agreement is confirmed to be terminated and all obligations thereunder, other than those which specifically provide for their survival following termination of the VTB Loan Agreement, are confirmed to be of no further force and effect.

4.1.2 To the extent of conflict or inconsistency between the terms of this Agreement, the Concession Documents, the Transfer Documents, the Additional Documents and/or the VTB Loan Documents, the terms of this Agreement will govern to the extent required to resolve such conflict or inconsistency.

4.1.3 Each SHS Party, jointly and severally, hereby absolutely and unconditionally agrees to pay to and fully indemnify Sears and the other Releasees, within five (5) business days of presentment all invoices, accounts and reimbursement requests on account of all reasonable legal fees and disbursements (on a solicitor and his own client basis) of any counsel to the Releasees, any other consultant or agent and all other expenses incurred by the Releasees in connection with the protection and enforcement of this Agreement, including, without limitation, all reasonable expenses of advisors and consultants to the Releasees (including legal expenses on a full indemnity basis) incurred in connection therewith; provided for certainty that the foregoing indemnity shall not in apply to any expenses connection with the preparation, negotiation and interpretation of this Agreement.

This Section 4.1.3 shall survive the termination of this Agreement.

4.1.4 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 Ontario and the federal laws of Canada applicable therein.

4.1.5 As disputes arising in connection with complex financial transactions are most quickly and economically resolved by an experienced and expert person and the Parties wish applicable provincial and federal laws to apply (rather than arbitration rules), the Parties desire that their disputes be resolved by a judge applying those applicable laws. Therefore, to achieve the best combination of the benefits of the judicial system and of arbitration, the Parties waive all rights to trial by jury in any action, suit, or proceeding brought to resolve any dispute, whether arising in contract, tort, or otherwise between the Parties, arising out of or connected with, or related or incidental to, the relationship established between them in connection with this Agreement or any of the Concession Documents, the Transfer Documents, the Additional Documents or the VTB Documents or the transactions related to this Agreement or any of the Concession Documents, the Transfer Documents, the Additional Documents or the VTB Documents.

4.1.6 Time is of the essence in all respects of this Agreement.

4.1.7 Any Communication (as such term is defined in the Concession Agreement) under this Agreement must be in writing and must be delivered in accordance with section 28.2 of the Concession Agreement.

- 4.1.8 Each SHS Party will from time to time forthwith at Sears' request and at the SHS Parties' own cost and expense (on a joint and several basis) make, execute and deliver, or cause to be done, made, executed and delivered, all such further documents, financing statements, assignments, acts, matters and things which may be reasonably required by Sears and as are consistent with the intention of the parties as evidenced herein, with respect to all matters arising under this Agreement.
- 4.1.9 No supplement, modification, amendment, waiver, discharge or termination of this Agreement is binding unless it is executed in writing by all of the Parties.
- 4.1.10 Neither SHS Party is entitled to assign this Agreement or any right or obligation under this Agreement without the prior consent of Sears. Sears may assign this Agreement and any of its rights and obligations under this Agreement without the consent of or notice to the SHS Parties. This Agreement enures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.
- 4.1.11 Each provision of this Agreement is distinct and severable. If any provision of this Agreement, in whole or in part, is or becomes illegal, invalid or unenforceable in any jurisdiction by a court of competent jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect:
- (a) the legality, validity or enforceability of the remaining provisions of this Agreement; or
  - (b) the legality, validity or enforceability of that provision in any other jurisdiction.
- 4.1.12 This Agreement may be executed in any number of counterparts, each of which when executed and delivered will be deemed to be an original, but all of which when taken together constitute one and the same instrument. Any party may execute this Agreement by signing any counterpart.
- 4.1.13 Delivery of this Agreement by facsimile or electronic transmission (including, without limitation, by email in a "pdf" format) constitutes valid and effective delivery.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF each of the Parties hereto have executed and delivered this Agreement as of the 30th day of September, 2013.

Releasors:

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

Per:

Name: Mike Clements  
Title: Director

Per:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SHS SERVICES MANAGEMENT INC.

Per:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per:

Name: Stephen Verhaeff  
Title: Director

Releasee:

SEARS CANADA INC.

Per:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF each of the Parties hereto have executed and delivered this Agreement as of the 30th day of September, 2013.

**Releasors:**

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

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

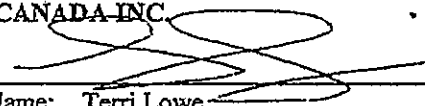
**SHS SERVICES MANAGEMENT INC.**

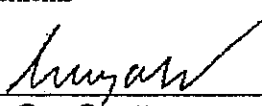
Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Releasee:**

**SEARS CANADA INC.**

Per:  \_\_\_\_\_  
Name: Terri Lowe  
Title: Vice-President, Hometown Stores and Home  
Improvements

Per:  \_\_\_\_\_  
Name: Greg Guyatt  
Title: Vice-President, Finance and Corporate  
Controller

IN THE MATTER OF THE RECEIVERSHIP OF SHS SERVICES MANAGEMENT INC. /  
GESTION DES SERVICES SHS INC. AND SHS SERVICES LIMITED PARTNERSHIP  
AND IN THE MATTER OF AN APPLICATION UNDER SECTION 243 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  
AMENDELELWAY ACQUISITIONS LIMITED

Court File No. \_\_\_\_\_

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

Proceeding commenced at Toronto

**AFFIDAVIT OF DANIEL**  
**WESTREICH**  
(Sworn December 13, 2013)

**Torys LLP**  
79 Wellington Street West  
Suite 300, TD Centre  
Toronto, Ontario M5K 1N2  
Fax: 416.865.7380

**Scott Bomhof (LSUC#: 37006F)**  
Tel: 416.865.7370  
Email : [sbomhof@torys.com](mailto:sbomhof@torys.com)

**Lily Coodin (LSUC#: 62143S)**  
Tel: 416.865.7541  
Email: [lcoodin@torys.com](mailto:lcoodin@torys.com)

Lawyers for Sears Canada Inc.

TAB D



This is Exhibit "D" referred to in the  
Affidavit of Daniel Westreich  
Sworn before me, this 7  
day of January, 2014.

A handwritten signature in black ink, appearing to read "Sam Golder". The signature is fluid and cursive, with the first name "Sam" and last name "Golder" clearly distinguishable.

A Commissioner, Etc.

**Sam Golder,  
a Commissioner, etc., Province of  
Ontario, while a Student-at-Law.  
Expires August 26, 2016.**

---

## **BACKSTOP AGREEMENT**

Made as of December 27<sup>th</sup>, 2013

Between

**Sears Canada Inc.**  
(“Sears”)

and

**SHS Services Management Inc. (“SHS”)** executed on its behalf  
by PricewaterhouseCoopers Inc., solely in its capacity as receiver of  
SHS Services Management Inc. and SHS Services Limited Partnership (“**SHS LP**”)  
and not in its corporate or personal capacity  
(the “**Receiver**”)

---

## TABLE OF CONTENTS

RECITALS.....	1
ARTICLE 1 – INTERPRETATION .....	1
Section 1.1 Definitions.....	1
Section 1.2 Headings and References .....	3
Section 1.3 Schedules.....	4
ARTICLE 2 – PROVISION OF PRODUCTS AND SERVICES .....	4
Section 2.1 Identification of Scheduled Jobs .....	4
Section 2.2 Scheduling.....	4
Section 2.3 No SHS Representation or Warranty .....	4
Section 2.4 Warranty for Scheduled Jobs .....	4
Section 2.5 Processing of Payments for Scheduled Jobs .....	4
Section 2.6 Termination of Scheduled Jobs .....	5
Section 2.7 Commencement of PSP Business .....	5
ARTICLE 3 – SEARS BACKSTOP INDEMNITY AND RESERVATION OF RIGHTS .....	5
Section 3.1 Sears Back Stop.....	5
Section 3.2 Calculation of Losses .....	5
Section 3.3 No Post-Filing Set-Offs or Deductions .....	6
Section 3.4 Warranty Claims for Products and Services Provided Prior to the Receivership .....	6
ARTICLE 4 – GENERAL PROVISIONS.....	7
Section 4.1 No Agency.....	7
Section 4.2 Publicity .....	7
Section 4.3 Severability.....	7
Section 4.4 Governing Law.....	7
Section 4.5 Waiver .....	7
Section 4.6 Entire Agreement .....	7
Section 4.7 Amendment .....	7
Section 4.8 Paramountcy.....	8
Section 4.9 Counterparts .....	8
SCHEDULE “A” SERVICES.....	10

## BACKSTOP AGREEMENT

This Agreement is made as of December 27<sup>th</sup>, 2013 between

**Sears Canada Inc.**  
("Sears")

and

**SHS Services Management Inc. ("SHS")** executed on its behalf by PricewaterhouseCoopers Inc., solely in its capacity as receiver of SHS Services Management Inc. and SHS Services Limited Partnership ("SHS LP") and not in its corporate or personal capacity (the "Receiver")

### RECITALS

A. SHS and the Receiver have identified certain contracts between SHS and its customers that have the potential to be completed in the short term and to provide a net benefit to SHS and SHS' various stakeholders.

B. Sears wishes to support SHS's efforts to complete such contracts and is prepared to provide a financial backstop on the terms and conditions set out herein.

**FOR VALUE RECEIVED**, the parties agree as follows:

### ARTICLE 1 – INTERPRETATION

#### Section 1.1 Definitions

In this Agreement:

- (1) **Agreement** means this Backstop Agreement and all its schedules and attachments, as amended and modified from time to time;
- (2) **Commission** has the meaning given to such term in Section 12.1 of the Branded Concession Agreement;
- (3) **Contractors** means all contractors, sub-contractors or any other person retained by SHS or by the Receiver to perform installation of Products or performance of Services on behalf of SHS on or after December 13, 2013;
- (4) **Costs** means, collectively, the PSP Costs and the Scheduled Jobs Costs;
- (5) **Court** means the Ontario Superior Court of Justice, Commercial List;
- (6) **Concession Agreement** means the Branded Concession Agreement dated December 20, 2012 between Sears and SHS;
- (7) **Excluded Costs** means the fees and disbursements of the Receiver and its legal counsel;

- (8) **Existing Orders** means firm and committed orders by customers with SHS for Products and Services for which no payment has been made by the customer as of the date hereof;
- (9) **Losses** has the meaning ascribed to it in Section 3.2;
- (10) **Merchant Fee** has the meaning given to such term in Section 7.7 of the Concession Agreement;
- (11) **Prior Warranty** means a warranty provided by SHS to an SHS customer in respect of a Product or Services;
- (12) **Products** means the products listed in Schedule "A" and any other products required to perform the services listed in Schedule "A";
- (13) **PSP Business** means the carpet cleaning and duct cleaning provided by SHS;
- (14) **PSP Costs** means, without duplication of any costs included in Scheduled Jobs Costs and excluding the Excluded Costs:
- (a) compensation earned by Contractors (i.e. labour costs) and up to two (2) newly retained independent contractors to provide administrative support to the PSP Business (in addition to the independent contractors for administrative service retained to support Existing Orders);
  - (b) reasonable documented recoverable expenses incurred by Contractors in performing their duties in connection with the Scheduled Jobs on a basis consistent with SHS's past practices;
- (15) **Receivership** means the appointment of the Receiver as receiver of SHS and SHS LP by Order of the Court dated December 13, 2013;
- (16) **Scheduled Jobs** means Existing Orders:
- (a) for which SHS's accounting system reflects an expected potential positive gross margin contribution together with sixteen (16) additional jobs identified by SHS to Sears which may not produce a positive gross margin (for greater certainty, Scheduled Jobs excludes in-store installation and assembly jobs);
  - (b) SHS and the applicable Contractor expect can be completed on or before January 11, 2014, including Existing Orders that are in progress as of the date hereof and Existing Orders that have not been started as of the date hereof, with priority to be given to Existing Orders which were commenced before the appointment of the Receiver;
  - (c) scheduled by the applicable customer to commence before January 11, 2014;
  - (d) in respect of which SHS obtains a Written Confirmation executed by the applicable customer; and

- (e) in respect of which a Contractor has agreed to complete the Existing Order prior to January 11, 2014 without receiving payment of any amounts owed to such Contractor by SHS in relation to work performed on or before December 13, 2013;
- (17) ***Scheduled Jobs Costs*** means, other than the Excluded Costs:
- (a) compensation earned or payable to Contractors (i.e. labour costs) and up to two (2) newly retained independent contractors to provide administrative support in respect of Existing Orders;
  - (b) reasonable documented recoverable expenses incurred by Contractors in performing their duties in connection with the Scheduled Jobs on a basis consistent with SHS's past practices (provided that such expenses shall not be duplicative of any costs included in subsection 1.1(17)(d));
  - (c) information technology usage and licensing fees deemed to be in the amount of \$12,500.00; and
  - (d) all direct material and tooling costs, including but not limited to the original purchase price of inventory or purchased materials (in each case whether or not paid for by SHS) used in the performance and completion of any Scheduled Jobs. For greater certainty, Sears acknowledges that SHS may make payments to suppliers holding valid unpaid supplier claims pursuant to section 81.1 of the *Bankruptcy and Insolvency Act* (Canada) in respect of inventory required for completing the Scheduled Jobs in an amount up to the supplier's invoice price for such inventory. Such payments will not be duplicative in the calculation of Losses;
- (18) ***Services*** means those services listed in Schedule "A";
- (19) ***Warranty*** means a warranty provided by SHS to a Sears Home Services customer in respect of a Product or Services; and
- (20) ***Written Confirmation*** means a written confirmation in form and substance satisfactory to the Receiver wherein the applicable customer confirms and acknowledges that:
- (a) the customer continues to wish to have the Product or Service completed at the existing contract price by SHS based exclusively on a warranty from SHS which Sears will agree to honour; and
  - (b) the Receiver will not make any representation or warranty whatsoever to the customer.

## Section 1.2 Headings and References

The division of this Agreement into sections and subsections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "hereunder," and

similar expressions refer to this Agreement and not to any particular section, subsection, or other portion hereof and includes all schedules and any agreement supplemental hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to "Sections" are to sections, subsections, and further subdivisions of sections of this Agreement.

### **Section 1.3 Schedules**

Schedules to this Agreement form an integral part of this Agreement and are hereby incorporated by reference.

## **ARTICLE 2 – PROVISION OF PRODUCTS AND SERVICES**

### **Section 2.1 Identification of Scheduled Jobs**

SHS, in consultation with Sears, shall use its commercially reasonable efforts to promptly identify the Existing Orders that have a reasonable prospect of becoming Scheduled Jobs. SHS makes no commitment or representation to Sears concerning the number or value of Existing Orders that can or will become Scheduled Jobs.

### **Section 2.2 Scheduling**

Priority will be given to scheduling and completing Existing Orders reasonably suitable for becoming Scheduled Jobs which; (i) firstly, were commenced, but not finished, before the appointment of the Receiver; and then (ii) secondly, prior to the date of the Receivership, were scheduled by SHS to commence between December 13, 2013 and January 11, 2014.

### **Section 2.3 No SHS Representation or Warranty**

SHS makes no representation or warranty to Sears whatsoever in connection with the work performed in connection with the Scheduled Jobs.

### **Section 2.4 Warranty for Scheduled Jobs**

Sears shall, at its own expense, honour any Warranty with respect to the Scheduled Jobs completed pursuant to this Agreement. In no event will Sears assert any claim as against SHS or its property in connection with any warranty claims it receives in respect of the Scheduled Jobs.

### **Section 2.5 Processing of Payments for Scheduled Jobs**

Sears shall remit funds received from customers in respect of completed Scheduled Jobs to SHS, net of the Merchant Fee and Commission as defined by and pursuant to the Concession Agreement, with no setoff or reduction other than chargebacks for services provided after the date that the Receiver was appointed. Such funds shall be released by Sears to SHS on Mondays (for Friday-Sunday receipts), Wednesdays (for Monday-Tuesday receipts) and Fridays (for Wednesday-Thursday receipts). For greater certainty, the Merchant Fee is 1.7% for Sears card purchases and 1.85% for other credit card providers and the Commission is 3.5%.

## **Section 2.6 Termination of Scheduled Jobs**

After consulting with Sears, SHS may terminate and cancel any Scheduled Jobs on a job-by-job basis, if:

- (a) completing those jobs would reasonably be expected to result in Losses for any reason including due to price reductions demanded by customers or demands by required suppliers; or
- (b) SHS determines that it does not have sufficient Contractors, inventory or other resources to complete the applicable Scheduled Jobs.

Details, including customer information and order information, of any cancelled jobs shall be provided to Sears.

## **Section 2.7 Commencement of PSP Business**

SHS shall use commercially reasonable efforts to re-commence the PSP Business. Sears shall remit funds received from customers in respect of the PSP Business from and after the date hereof to SHS, net of the Merchant Fee and Commission (each as described in Section 2.5 hereof) (the "**PSP Payment**"), with no setoff or reduction other than chargebacks for services provided after the date that the Receiver was appointed. Such funds shall be released by Sears to SHS on Mondays (for Friday-Sunday receipts), Wednesdays (for Monday-Tuesday receipts) and Fridays (for Wednesday-Thursday receipts).

# **ARTICLE 3 – SEARS BACKSTOP INDEMNITY AND RESERVATION OF RIGHTS**

## **Section 3.1 Sears Back Stop**

Sears agrees that it shall make a payment to SHS equal to the amount of the Losses, if any, incurred by SHS in connection with the activities contemplated by this Agreement, including in connection with SHS's efforts to complete the Scheduled Jobs.

## **Section 3.2 Calculation of Losses**

(1) The losses ("**Losses**"), if any, incurred by SHS in connection with this Agreement shall be equal to:

- (a) the aggregate of: (i) all payments remitted to SHS (whether through a credit card transaction or by way of personal cheque, bank draft or money order) with respect to Scheduled Jobs and all receivables with respect to same (the "**Scheduled Jobs Payments**"), and (ii) all payments remitted to SHS (whether through a credit card transaction or by way of personal cheque, bank draft or money order) with respect to the PSP Business from and after the date of this Agreement and all receivables with respect to same ("**PSP Payments**"), minus
- (b) all Costs, for greater certainty, excluding Excluded Costs.

For greater certainty, the calculation of Losses shall include all Costs incurred in connection with Scheduled Jobs that are subsequently cancelled by the customer before completion for any



reason except where the refusal to pay results in a valid chargeback that is confirmed by the applicable credit card provider.

(2) SHS will use its commercially reasonable efforts to report to Sears in respect of Scheduled Jobs on a daily basis and the form and substance of such reporting shall be agreed to by SHS and Sears, acting reasonably.

(3) SHS will use its commercially reasonable efforts to report to Sears in respect of the PSP Business on a daily basis and the form and substance of such reporting shall be agreed to by SHS and Sears, acting reasonably.

(4) After January 11, 2014, SHS will calculate the aggregate Scheduled Jobs Payments, PSP Payments and Costs to determine the quantum of Losses, if any, incurred by SHS referable to the term of this Agreement. If SHS has incurred Losses, Sears will pay to SHS the amount of the Losses in full within three (3) business days of notice of such Losses provided to Sears by SHS, such funds to be used for whatever purpose SHS determines appropriate in the ordinary course of the Receivership.

(5) If a dispute arises in respect of any payment owed by Sears to SHS pursuant to Section 3.2(4), the parties agree to use reasonable commercial efforts to resolve the dispute within five (5) days, if the dispute is not resolved within this period, either party may bring a motion in the Court to resolve the dispute.

### **Section 3.3 No Post-Filing Set-Offs or Deductions**

During the term of this Agreement (including any funds received after the expiry of this Agreement with respect to Scheduled Jobs and the PSP Business commenced pursuant to this Agreement), Sears agrees that it will release to SHS all amounts it receives from customer credit card settlements or other payments without setoff, netting or deduction of any kind (other than directly related Merchant Fees and Commissions pursuant to the Concession Agreement and chargebacks for services provided after the date that the Receiver was appointed) for products or services provided by SHS to its customers from and after December 13, 2013, including without limitation from Products or Services. The parties reserve their rights in relation to all other setoffs or claims that Sears may assert under the Concession Agreement or otherwise and nothing in this Agreement is intended to be an acknowledgement by SHS (or the Receiver) of any admission of any valid or permitted setoff, netting, consolidation or other claim by Sears against SHS or any cash, customer deposits or other property held or under the control of Sears.

### **Section 3.4 Warranty Claims for Products and Services Provided Prior to the Receivership**

The parties hereby acknowledge and agree that nothing in this Agreement shall prevent Sears from electing to honour a Prior Warranty claim from a customer of SHS for work done by SHS prior to December 13, 2013, provided that Sears and SHS acknowledge and agree that the parties rights are expressly reserved in connection with any claims Sears may validly assert against SHS or its property as a result of any such Prior Warranty claims.

## **ARTICLE 4 – GENERAL PROVISIONS**

### **Section 4.1 No Agency**

Nothing contained in or done pursuant to this Agreement is to be construed as creating a partnership, agency or joint venture between or among the parties and no party shall become bound by any conduct, representation, act or omission of the other party other than as specified in this Agreement.

### **Section 4.2 Publicity**

Sears shall not issue any press release or make any other public statement or announcement relating to the work to be performed pursuant to this Agreement without obtaining the prior written approval of SHS in respect of the content and the manner of presentation and publication thereof.

### **Section 4.3 Severability**

If any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions will not be affected.

### **Section 4.4 Governing Law**

This Agreement will be governed by and interpreted in accordance with the laws of Ontario and the laws of Canada applicable therein without reference to its conflict of laws principles.

### **Section 4.5 Waiver**

Any waiver by either party, whether express or implied, of any breach of any term or condition of this Agreement shall not constitute a waiver as to any subsequent breach of the same or of any other term or condition of this Agreement. Failure of a party to declare any breach upon the occurrence of such a breach, or any delay by either party in taking action with respect to any breach shall not waive any such breach.

### **Section 4.6 Entire Agreement**

This Agreement, including all Schedules hereto, forms the entire agreement between the parties and supersedes every previous agreement, communication, expectation, negotiation, representation or understanding, whether oral or written, express or implied, statutory or otherwise between the parties with respect to the subject matter of this Agreement. Amendments to or waivers of this Agreement will be effective only if in writing and signed by authorized representatives of all parties.

### **Section 4.7 Amendment**

This Agreement may only be amended, modified or supplemented by a written agreement signed by the parties hereto.

#### **Section 4.8 Paramountcy**

In the event of any conflict or inconsistency between the provisions of this Agreement and the Concession Agreement, the provisions of this Agreement shall prevail to the extent of such conflict or inconsistency.

#### **Section 4.9 Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Transmission by facsimile or electronic mail of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

*~Remainder of page deliberately left blank.~*

The parties have executed this Agreement.

**Sears Canada Inc**

By: 

Name: Terri Lowe.

Title: VP HomeTown, Carbal, HomeServices.

**SHS Services Management Inc.**, executed on  
its behalf by PricewaterhouseCoopers Inc.,  
solely in its capacity as receiver of SHS Services  
Management Inc. and  
SHS Services Limited Partnership and not in its  
corporate or personal capacity

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

The parties have executed this Agreement.

**Sears Canada Inc.**

By: \_\_\_\_\_

Name:

Title:

**SHS Services Management Inc.**, executed on its behalf by PricewaterhouseCoopers Inc., solely in its capacity as receiver of SHS Services Management Inc. and SHS Services Limited Partnership and not in its corporate or personal capacity

By: \_\_\_\_\_

Name: Mica Arlette

Title: Senior Vice President

**Schedule "A"**  
**Services**

Air Conditioners  
Attic Insulation  
Boiler - Electric  
Boiler - Gas  
Cabinets  
Carpet  
Continuous Gutter  
Custom Bedding  
Custom Closets  
Custom Drapery - Window Coverings  
Duct Heater - Electric  
Ductless - Air Conditioner/Heat Pump  
Electronic Air Cleaner  
Entry Doors  
Fireplace - Gas/Propane  
Flat Roof  
Furnace - Electric  
Furnace - Gas/Propane  
Garage Doors  
Garden Doors  
Hard Surface Flooring - Vinyl  
Hard Surface Flooring - Wood & Laminate  
Heat Pump  
Heat Recovery Ventilator Or Air Exchanger  
Hot Water Tank - Gas/Propane  
Humidifier  
Indoor Air Cleaning Products  
Indoor Shutters  
Insulation  
Kitchen Cabinets  
Kitchen Countertops - Granite Quartz Hard Surface  
Kitchen Countertops - Laminate  
Patio Doors  
Roof Semi-Detached  
Roof Shingles (Residential)Siding  
Soffit & Fascia  
Storm Doors  
Tankless Water Heater - Gas/Propane  
Water Softener  
Windows Prime  
Air Conditioners  
Attic Insulation  
Boiler - Electric  
Boiler - Gas  
Cabinets

Carpet  
Continuous Gutter  
Custom Bedding  
Custom Closets  
Custom Drapery - Window Coverings  
Duct Heater - Electric  
Ductless - Air Conditioner/Heat Pump  
Electronic Air Cleaner  
Entry Doors  
Fireplace - Gas/Propane  
Flat Roof  
Furnace - Electric  
Furnace - Gas/Propane  
Garage Doors  
Garden Doors  
Hard Surface Flooring - Vinyl  
Hard Surface Flooring - Wood & Laminate  
Heat Pump  
Heat Recovery Ventilator Or Air Exchanger  
Hot Water Tank - Gas/Propane  
Humidifier  
Indoor Air Cleaning Products  
Indoor Shutters  
Insulation  
Kitchen Cabinets  
Kitchen Countertops - Granite Quartz Hard Surface  
Kitchen Countertops - Laminate  
Patio Doors  
Roof Semi-Detached  
Roof Shingles (Residential)  
Siding  
Soffit & Fascia  
Storm Doors  
Tankless Water Heater - Gas/Propane  
Water Softener  
Windows Prime  
Bathroom Renovation  
Area Rug Cleaning Services  
Cabinet Refacing  
Carpet Cleaning  
Duct Cleaning  
Interior/Exterior Painting Services  
Kitchen Renovation/Refacing Remodel  
Upholstery Cleaning  
Air Conditioner - Tune Up/Maintenance  
Energy Assessment  
Furnace (Electric, Gas, Propane) - Cleaning/Maintenance

**TAB E**



This is Exhibit "E" referred to in the  
Affidavit of Daniel Westreich  
Sworn before me, this 7  
day of January, 2014.

A handwritten signature in black ink, appearing to read "Sam Golder". The signature is fluid and cursive, with a large initial "S" and a stylized "G".

A Commissioner, Etc.

**Sam Golder,  
a Commissioner, etc., Province of  
Ontario, while a Student-at-Law.  
Expires August 26, 2016.**

## 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.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SEARS CANADA INC.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**INSTALLATION SERVICES ORG. LTD.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

**SHS SERVICES LIMITED PARTNERSHIP**, by its general partner, **SHS Services Management Inc.**

Per: \_\_\_\_\_  
Name: Michael Clements  
Title: Director

**SHS SERVICES MANAGEMENT INC.**

Per: \_\_\_\_\_  
Name: Michael Clements  
Title: Director

\_\_\_\_\_  
Michael Clements

\_\_\_\_\_  
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  
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: \_\_\_\_\_  
Title: \_\_\_\_\_

SEARS CANADA INC.

SHS SERVICES MANAGEMENT INC.

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

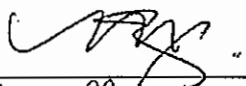
Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

INSTALLATION SERVICES ORG. LTD.

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Witness

Micheal Clements

Witness  Meaghan Bach

 Michael Strachan

**TAB F**



This is Exhibit "F" referred to in the  
Affidavit of Daniel Westreich  
Sworn before me, this 7  
day of January, 2014.

A handwritten signature in black ink, appearing to read "Sam Golder". The signature is fluid and cursive, with the first name "Sam" and last name "Golder" clearly distinguishable.

A Commissioner, Etc.

**Sam Golder,  
a Commissioner, etc., Province of  
Ontario, while a Student-at-Law.  
Expires August 26, 2016.**

## **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 Sears Canada Inc. (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 such Creditor against any deficiency in terms of the Agreed Currency in the amounts actually received by such 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 such Creditor on the Business Day following receipt. The indemnity in this Section 6.3 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 6.3 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:

if to the Guarantor, at:

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:

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

Attention: General Counsel  
Telefax No. (416) 941-2321

**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.

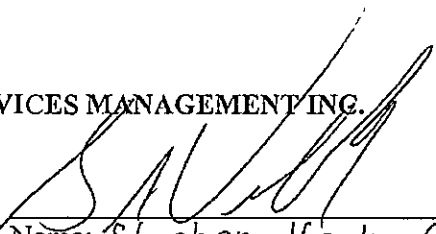
**7.10 Enurement**

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: Stephen Verhoeff  
Title: Director

**TAB G**

This is Exhibit "G" referred to in the  
Affidavit of Daniel Westreich  
Sworn before me, this 7  
day of January, 2014.

A handwritten signature in black ink, appearing to read "Sam Golder". The signature is fluid and cursive, with a long horizontal stroke at the end.

A Commissioner, Etc.

Sam Golder,  
a Commissioner, etc., Province of  
Ontario, while a Student-at-Law.  
Expires August 26, 2016.

**LOAN AGREEMENT dated as of the 31<sup>st</sup> day of October, 2013**

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

**SHS SERVICES LIMITED PARTNERSHIP (the "Borrower")**

**- and -**

**SEARS CANADA INC. (the "Lender")**

**RECITALS:**

A. The Borrower, Lender and Alaris Income Growth Partnership ("**Alaris**") 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 Alaris 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 Alaris).

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 Alaris, the "**Alaris 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 #290 Yonge Street, Suite 700, Toronto, Ontario M5C 2B3 (Attention: Vice-President, Specialty Services) 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 heretofore 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 Alaris confirming, among other things, that the Security Documents will be shared *pari passu* in right of payment between the Lender and Alaris (as amended, restated, modified or supplemented from time to time, the "**Intercreditor Agreement**"); and
- (k) an amended and restated postponement agreement dated as of the date hereof between the Borrower, the Lender, Alaris, 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 the Lender 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 the Lender 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 Alaris 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) Alaris 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 Alaris 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 Alaris 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 Alaris 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 Alaris, 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 the Lender in accordance with the Concession Agreement or Transition Agreement;
- (ix) any security in favour of the Lender which is subject to, and granted in accordance with, the terms of the Intercreditor Agreement;
- (x) any security in favour of Alaris 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 Covenants.** It shall at all times maintain such financial covenants as are set out in Schedule "N" to the Concession Agreement in accordance with the terms set out therein, provided that in the case of the requirement to provide such financial covenants (or any of them) are waived under the Concession Agreement (including, for certainty, the existing waiver thereof pursuant to the LOU which is in effect as of the date hereof), such waiver shall also be effective as a waiver of such financial covenants hereunder for so long as the applicable waiver under the Concession Agreement remains in effect;

(k) **Financial Reporting.** The Borrower shall provide the Lender with the following:

- (i) a certificate in the form as set out in Schedule "N" to the Concession Agreement within 30 days of the end of each Fiscal Month (as such term is defined in the Concession Agreement), signed by the chief financial officer of the Borrower; provided that in the case of the requirement to provide such certificate is waived under the Concession Agreement (including, for certainty, the existing waiver thereof pursuant to the LOU which is in effect as of the date hereof), such waiver shall also be effective as a waiver of such requirement hereunder for so long as the applicable waiver under the Concession Agreement remains in effect;
  - (ii) quarterly unaudited financial statements for itself and GP within 30 days of the end of each fiscal quarter;
  - (iii) annual audited financial statements for itself and GP within 90 days of the end of each fiscal year; and
  - (iv) such other financial and operating statements and reports for itself and GP as the Lender may reasonably request from time to time.
- (l) **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.
- (m) **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.
- (n) **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 Alaris Loan Agreement;
  - (iii) indebtedness under the Concession Agreement and the Transition Agreement;
  - (iv) indebtedness to Alaris 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;
- (o) **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.

(p) **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 (i) the Borrower may make distributions to Alaris 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 (ii) 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.

(q) **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;

(r) **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.

(s) **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.

- (t) **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).
- (u) **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 Alaris as a repayment of the Loan and the Alaris 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, 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 (and which has not been waived by the Lender) 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 (pursuant to the Concession Agreement, the Transition Services Agreement or otherwise) 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, provided that the provisions of Section 25 shall survive such termination. 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 Intercreditor 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. Survival of Transition Agreement and Concession Agreement Provisions**

In the event that either the Transition Agreement or the Concession Agreement is terminated while this Loan Agreement is in effect, any provisions of the Transition Agreement or the Concession Agreement, as applicable, referenced herein, shall be deemed to be those provisions as worded and in effect immediately prior to such termination of the Transition Agreement or the Concession Agreement, as applicable, and shall survive under this Loan Agreement.

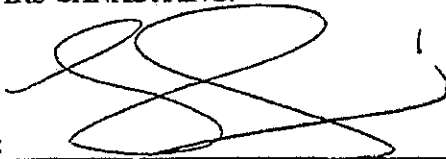
**27. Counterparts**

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.

**[Intentionally blank; signature blocks on following page]**

IN WITNESS WHEREOF the parties hereto have caused this Loan Agreement to be duly executed and delivered as of the date first above written.

SEARS CANADA INC.



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

Name: Terri Lowe

Title: Vice-President, Hometown Stores

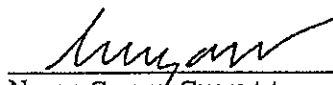
SHS SERVICES LIMITED PARTNERSHIP,  
by its general partner, SHS SERVICES  
MANAGEMENT INC.

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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



Name: Greg Guyatt

Title: Vice-President, Corporate Controller

IN WITNESS WHEREOF the parties hereto have caused this Loan Agreement to be duly executed and delivered as of the date first above written.

SEARS CANADA INC.

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

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name: Michael Clements  
Title: CEO

Per: \_\_\_\_\_  
Name:  
Title:

**TAB H**

This is Exhibit "H" referred to in the  
Affidavit of Daniel Westreich  
Sworn before me, this 7  
day of January, 2014.

A handwritten signature in black ink, appearing to read "Sam Golder". The signature is fluid and cursive, with the first name "Sam" and last name "Golder" clearly distinguishable.

A Commissioner, Etc.

**Sam Golder,  
a Commissioner, etc., Province of  
Ontario, while a Student-at-Law.  
Expires August 26, 2016.**

## 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 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 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
<hr/> <i>Officer Signature</i>				<hr/> <i>Signature</i>
<hr/> <i>Name</i>				<hr/> <i>Name</i>
<hr/> <i>Address</i>				<hr/> <i>Title</i>
				<hr/> <i>Signature</i>
				<hr/> <i>Name</i>
				<hr/> <i>Title</i>
(For Individual)				
<hr/> <i>Officer Signature</i>				
<hr/> <i>Name</i>				<hr/> <i>Debtor Signature</i>
<hr/> <i>Address</i>				<hr/> <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.



### **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.

## 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

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.

  
\_\_\_\_\_  
Witness

per:   
\_\_\_\_\_

per: \_\_\_\_\_

\_\_\_\_\_  
Witness

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.

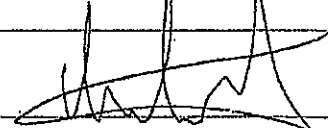
E. Address of the Grantor's head or registered office (or domicile, if the Grantor is an individual):

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.**

  
\_\_\_\_\_  
Witness

per:   
\_\_\_\_\_

per: \_\_\_\_\_

\_\_\_\_\_  
Witness



## 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.

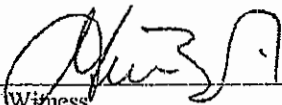
### II Obligations Secured


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.

  
Witness

Grantor:

SHS SERVICES MANAGEMENT INC.

per: 

per: \_\_\_\_\_

Witness  
LDB:3248837v2